

This Statutory Instrument has been made partly in consequence of a defect in S.I. 2013/2734 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2022 No. 30

PENSIONS

The Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022

<i>Made</i>	- - - -	<i>12th January 2022</i>
<i>Laid before Parliament</i>		<i>17th January 2022</i>
<i>Coming into force</i>	- -	<i>1st June 2022</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 113(1), 113B(1), (4) and (6) and 182(2) and (3) of the Pension Schemes Act 1993(1).

In accordance with section 185(1)(2) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022.

(2) These Regulations come into force on 1st June 2022.

(3) These Regulations extend to England and Wales and Scotland.

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

2.—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(3) are amended as follows.

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- (1) 1993 c. 48. Section 113(1) was amended by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Section 113B was inserted by section 19(2) of the Financial Guidance and Claims Act 2018 (c. 10) (“the 2018 Act”). For the meaning of “regulations” and “prescribed”, see section 181(1).
- (2) Section 185(1) was amended by sections 122 and 151 of, and paragraph 46 of Schedule 3 to, the Pensions Act 1995 (c. 26) and by paragraph 80(a) of Schedule 5 to that Act.
- (3) S.I. 2013/2734, amended by S.I. 2015/482; there are other amending instruments but none are relevant.

(2) In regulation 2(1), for the definition of “pensions guidance” substitute—

““pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc. about flexible benefits under pension schemes);”.

(3) In regulation 4(7) (requirement of trustees or managers to provide postal and electronic address for request for further information or other enquiry), after “18B(3)” insert “or 18C(4) or (7)”.

(4) In regulation 18A(2) (information to be given on request and on a member providing certain information), in sub-paragraph (b), after “benefits) and” insert “, subject to regulation 18C,”.

(5) In regulation 18B(1) (information to be given on communicating with a member about what the member may do with flexible benefits), after “paragraph (5)” insert “and regulation 18C”.

(6) After regulation 18B insert—

“Requirement to refer members and survivors to guidance etc.

18C.—(1) Where this regulation applies, the requirements in the following regulations to provide the information on pensions guidance in Part 1 of Schedule 10 do not apply—

- (a) regulation 18A(1) and (2)(b) (information to be given on request and on a member providing certain information); and
- (b) regulation 18B(1) and (2) (information to be given on communicating with a member about what the member may do with flexible benefits).

(2) Subject to paragraph (3), this regulation applies where the trustees or managers of an occupational pension scheme receive on or after 1st June 2022 from any person an application, or communication made in relation to an application, from a relevant beneficiary (“B”)—

- (a) to transfer any rights to flexible benefits accrued by B under the scheme; or
- (b) to start receiving flexible benefits provided by the scheme.

(3) This regulation does not apply where the trustees or managers of an occupational pension scheme receive on or after 1st June 2022 from any person an application, or communication made in relation to an application, from B to transfer rights in accordance with paragraph (2)(a) if—

- (a) B is under the age of 50;
- (b) receiving flexible benefits is not the purpose, or one of the purposes, of the application; or
- (c) the trustees or managers have received from B or a person authorised to act on behalf of B confirmation (given verbally or in writing) in relation to the application that—
 - (i) B—
 - (aa) has been referred by the trustees or managers of a different pension scheme to appropriate pensions guidance; and
 - (bb) has received or opted out of receiving that guidance, in accordance with the requirements of this regulation; or
 - (ii) B is transferring rights to flexible benefits into a relevant pension scheme in respect of which the trustees or managers are required to comply with rules made under section 137FB of the Financial Services and Markets Act 2000⁽⁴⁾

(4) Section 137FB was inserted by paragraph 6 of Schedule 3 to the Pension Schemes Act 2015 (c. 8) (“the 2015 Act”) and amended by section 18(2) to (7) of the 2018 Act. For the meaning of “relevant pension scheme” in section 137FB, see the definition in subsection (4).

(FCA general rules: disclosure of information about the availability of pensions guidance).

- (4) As part of the application process, the trustees or managers—
 - (a) must offer to book a pensions guidance appointment on behalf of B on a date, at a time and of a kind suitable for B;
 - (b) where B accepts the offer mentioned in sub-paragraph (a), must take reasonable steps to book that appointment;
 - (c) where B does not accept that offer, or where the trustees or managers are unable to book such an appointment on a date, at a time and of a kind suitable for B despite having taken reasonable steps, must provide B with details of how to book a pensions guidance appointment;
 - (d) must explain to B that they cannot proceed with the application unless—
 - (i) B has received, and notified them of receipt of, appropriate pensions guidance; or
 - (ii) B opts out of receiving such guidance by giving them an opt-out notification; and
 - (e) must explain to B that B can only opt out of receiving appropriate pensions guidance by giving them an opt-out notification.
- (5) Where the trustees or managers receive an application, or communication made in relation to an application, as mentioned in paragraph (2), B may give an opt-out notification—
 - (a) in a communication made solely for the purpose of opting out of receiving appropriate pensions guidance; or
 - (b) where paragraph (9) applies.
- (6) Paragraph (7) applies to any interaction subsequent to the interaction mentioned in paragraph (4) where B contacts the trustees or managers in connection with B's application unless—
 - (a) B has confirmed to the trustees or managers that B has received appropriate pensions guidance in connection with the application; or
 - (b) B has provided to the trustees or managers an opt-out notification in a communication made solely for the purpose of opting out of receiving appropriate pensions guidance.
- (7) Where this paragraph applies, the trustees or managers must repeat the steps required by paragraph (4).
- (8) If, at any point while the trustees or managers are repeating the steps required by paragraph (4) by virtue of paragraph (7), B confirms to them that B has received appropriate pensions guidance in connection with the application, the trustees or managers may treat the requirements of paragraph (4) as having been satisfied.
- (9) This paragraph applies where the trustees or managers have received from B or a person authorised to act on behalf of B confirmation (given verbally or in writing) that—
 - (a) B has received—
 - (i) appropriate pensions guidance; or
 - (ii) regulated financial advice in connection with the application, provided by a financial adviser regulated and authorised by the Financial Conduct Authority to provide such advice,

in the 12-month period (excluding the date of receipt) before the trustees or managers received an application, or communication made in relation to an application, as mentioned in paragraph (2);

- (b) B qualifies for a serious ill-health lump sum within the meaning of paragraph 4(1) of Schedule 29 to the Finance Act 2004⁽⁵⁾; or
- (c) B's application is solely to transfer any of their rights to flexible benefits accrued under the scheme.

(10) In this regulation—

“appropriate pensions guidance” means pensions guidance⁽⁶⁾ accessible by B during a pensions guidance appointment which includes the facility for real-time human interaction between the parties during the appointment (whether face to face, by telephone or through another electronic medium);

“opt-out notification” means a notification (given verbally or in writing) given to the trustees or managers of an occupational pension scheme for the purpose of confirming that B is opting out of receiving appropriate pensions guidance in connection with an application or communication made in relation to an application;

“pensions guidance appointment” means an appointment of B with the provider of appropriate pensions guidance;

“regulated financial advice” means advice of a kind mentioned in article 53 of the Financial Services and Markets Act (Regulated Activities) Order 2001⁽⁷⁾ (advising on investments);

“relevant beneficiary” has the meaning given by the definition in section 113B(6) of the 1993 Act and for the purposes of paragraph (b) of that definition another person of a prescribed description is a survivor of a member.

Consequential modifications of sections 99 and 101J of the 1993 Act

18D.—(1) The 1993 Act has effect subject to the following modifications.

(2) Where regulation 18C of these Regulations applies in relation to an application under section 95(1)⁽⁸⁾ (ways of taking right to cash equivalent), section 99(2)(b)⁽⁹⁾ (trustees' duties after exercise of option) has effect as if the duty it imposes only applies if, within the 6-month period to which it refers, the requirements under that regulation for proceeding with the application have been satisfied.

(3) Where regulation 18C of these Regulations applies in relation to the requirement under section 101G(4)⁽¹⁰⁾ (restrictions on power to give transfer notice) for a member to make an application under section 95(1) in addition to giving a transfer notice, section 101J(1)(b)⁽¹¹⁾ (time for compliance with transfer notice) has effect as if the duty it imposes only applies if, within the 6-month period to which it refers, the requirements under that regulation for proceeding with the application have been satisfied.

(5) [2004 c. 12](#). Paragraph 4(1) was amended by paragraph 28(2)(b) of Schedule 16 to the Finance Act 2011 ([c. 11](#)) and paragraph 1(4) of Schedule 5 to the Finance Act 2016 ([c. 24](#)). Paragraph 1(5) of Schedule 5 to the Finance Act 2016 inserted paragraph 4(2A) which sets out the meaning of “uncrystallised rights” in paragraph 4(1)(ca)(ii).

(6) “Pensions guidance” is defined in section 113B(6) of the Pension Schemes Act 1993.

(7) [S.I. 2001/544](#); relevant amending instruments are [S.I. 2003/1476](#), [2016/392](#), [2017/488](#), [500](#) and [701](#).

(8) Section 95(1) was substituted by paragraph 9(2) of Schedule 4 to the 2015 Act.

(9) Section 99(2) was substituted by paragraph 13(2) of Schedule 4 to the 2015 Act.

(10) Section 101G(4) was substituted by paragraph 16 of Schedule 4 to the 2015 Act.

(11) Section 101J(1)(b) was substituted by paragraph 18(2) of Schedule 4 to the 2015 Act.

Record-keeping requirements of trustees and managers

18E.—(1) The trustees or managers of an occupational pension scheme must, in respect of a relevant beneficiary (“B”), keep a record of—

- (a) the receipt by B of appropriate pensions guidance in connection with an application, or communication made in relation to an application, from B under regulation 18C(2);
- (b) the provision to them by B of an opt-out notification in connection with an application, or communication made in relation to an application, from B under regulation 18C(2); or
- (c) the receipt of a confirmation referred to in regulation 18C(9).

(2) For the purposes of paragraph (1), “relevant beneficiary”, “appropriate pensions guidance” and “opt-out notification” have the meanings given in regulation 18C(10).”.

Signed by authority of the Secretary of State for Work and Pensions

12th January 2022

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

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EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 2 of these Regulations amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) (“the 2013 Regulations”) and in so doing consequentially modifies the effect of related provisions of the Pension Schemes Act 1993 (c. 48) (“the Act”) as follows.

Paragraph (2) corrects, by updating, the definition of “pensions guidance” in the 2013 Regulations.

Paragraph (6) inserts new regulations 18C to 18E into the 2013 Regulations.

New regulation 18C sets out the procedures which the trustees or managers of an occupational pension scheme must follow to ensure that a “relevant beneficiary” (“B”) has received “appropriate pensions guidance” (both terms as defined in paragraph (10) of that new regulation) and the conditions that must be satisfied after they receive an application, or a communication made in relation to an application, from B on or after 1st June 2022 to transfer rights to flexible benefits accrued under the scheme or to start receiving flexible benefits provided by the scheme. New regulation 18C(3) sets out the circumstances in which these requirements do not apply to applications for a transfer of rights to flexible benefits (as defined in regulation 2 of the 2013 Regulations). New regulation 18C also sets out the circumstances in which B may opt out of receiving appropriate pensions guidance.

New regulation 18D makes consequential modifications to the effect of sections 99 and 101J respectively of the Act. These modifications modify the effect of the requirements imposed on trustees or managers of occupational pension schemes that provide money purchase benefits to carry out a qualifying member or their survivor’s request to transfer their pension benefits within six months of the date of their application or giving of a transfer notice. The effect of these modifications is to disapply those requirements where the trustees or managers are unable to proceed with an application under section 95(1), or a transfer notice under section 101G4, of the Act within that six-month period because the requirements set out in regulations made under section 113B of the Act relating to the receipt of appropriate pensions guidance, or the opting out of receiving such guidance, have not been satisfied (see further above in relation to regulation 18C made under section 113B of the Act).

New regulation 18E sets out the related record-keeping requirements of the trustees or managers.

Paragraphs (3) to (5) make consequential amendments to the 2013 Regulations. Paragraph (3) amends regulation 4(7) so that the requirement in that regulation (for trustees or managers to provide a postal and electronic address for any request for further information or other enquiry from a member) does not apply where information is given verbally by trustees or managers in accordance with new regulation 18C(4) or (7). Paragraphs (4) and (5) consequentially amend regulations 18A and 18B, respectively, to disapply the requirements in those regulations to provide information on pensions guidance where new regulation 18C applies.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector has been undertaken. A copy is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk. Copies have been placed in the libraries of both Houses of Parliament and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA.

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