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Disclosure of information – consultation published

1 BACKGROUND

Back with a vengeance after the summer break, two separate (but complementary) consultations were published on 9 September 2005 by the Department for Work and Pensions (DWP) and the Pensions Regulator (TPR) respectively. In its consultation, the DWP is seeking views on the proposed replacement of the current legislation governing the disclosure of information to members (and beneficiaries) of occupational pension schemes¹. In a shift away from rigid time-frames for providing such information, the DWP is looking towards information being provided “within a reasonable period”. This is where TPR comes in; with a draft code of practice dealing with what this means (see sections 4 and 6 below).

2 KEY POINTS

- Trustees of occupational pension schemes have a legal responsibility to provide individuals with certain information at different stages of their membership.
- Some information is required to be given automatically, some only on request.
- Current legislation is prescriptive, setting out specific time-frames within which information must be provided. From 6 April 2006, this will be replaced by a requirement to provide information “within a reasonable period”, with a code of practice indicating what this means.
- Other changes include, for example, the need for information to be given to defined benefit members annually (see section 3 below).

¹ The Occupational Pension Schemes (Disclosure of Information) Regulations 1996

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3 THE DRAFT REGULATIONS (IN BRIEF)

Other disclosure elements covered by the draft regulations² include:

3.1 Informed Choice - building on the Pensions Green Paper (published in December 2002) and its February 2004 paper entitled "Simplicity, security and choice; Informed choices for working and saving"³, the Government is keen that people get the right information, at the right time, in the right way. The three strands of the Government's "Informed Choice agenda" (activation, education and information) are therefore a key theme of the consultation.

3.2 Annual Information on Defined Benefits (DB) - recognising the current disparity between information provided to members with defined contribution benefits (who are entitled to receive annual illustrations of their pension entitlements) and those with DB benefits, DB members will automatically receive annual information on benefits each year. The new DB disclosure requirements will first bite in respect of scheme years ending on or after 6 April 2007. From this date, within "a reasonable period", schemes must provide annual benefit information concerning their DB benefits automatically to:

- all active members;
- all active members who become deferred members on or after 6 April 2007; and
- anybody who becomes a pension credit member on or after 6 April 2007.

² The draft Occupational Pension Schemes (Disclosure of Information) Regulations 2006

³ See our Sackers Extra Alert "Informed choices for working and saving" dated 4 February 2004

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Trustees must also provide information to any other deferred member or pension credit member on request and, where such a request is made, will have to do so automatically in future.

3.3 Type of information provided - the draft regulations also introduce some changes here. In particular, active members:

- must be provided with both the amount of their own benefit and their survivors' benefit on the basis that pensionable service terminates at normal scheme pension age (but ignoring possible salary increases); and
- may (if the trustees decide) have the option of being provided with the amount of their own benefit and their survivors' benefit payable from normal scheme pension age on the assumption that pensionable service terminates within one month of the date of the annual benefit statement.

3.4 Member-nominated trustees / directors (MNTs) - the revised nomination process for MNTs will give "groups representing active members, and groups representing pensioner members" legislative recognition. The draft regulations require basic scheme information and the annual report to be provided to any group recognised by the trustees in this capacity.

3.5 Form and content - conscious that legislative simplification does not necessarily result in simplification for practitioners, the draft regulations aim to "strike a balance to allow trustees...as much discretion as possible as to the form and content of non-critical information to be provided, whilst ensuring that members have access to the information they require".

SACKER[®]
& PARTNERS

Solicitors specialising in pensions law

Sacker & Partners LLP
29 Ludgate Hill London EC4M 7NX
Tel 020 7329 6699 Fax 020 7248 0552

enquiries@sackers.com
www.sackers.com

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4 “A REASONABLE PERIOD” – THE DRAFT CODE OF PRACTICE

The move to furnish information within “a reasonable period” harks back to the recommendations for greater simplicity set out in Alan Pickering's report “A simpler way to better pensions” (published way back in July 2002). The draft code gives guidance on what TPR believes each such period means in practice (see section 6 for examples).

Codes of practice published by TPR are not legally binding and there is no penalty as such for non-compliance⁴ (provided that the underlying legal requirements are met). So, whilst many of the “periods” referred to in the draft code closely resemble the current statutory time limits, the draft code of practice does offer greater flexibility. The draft code specifically highlights circumstances in which it may not be possible to provide information requested within the “normal” reasonable period (for example, where the delay is outside a scheme's control). TPR says that it “is likely to take a sympathetic approach to the difficulties faced”. But this will depend upon the facts and it will be up to schemes to demonstrate why the particular period taken was reasonable.

5 RESPONDING TO CONSULTATION

The new legislation is scheduled to come into force on 6 April 2006. Comments on both consultations are due by 2 December 2005 and copies can be found at:

http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/disclosure-info.pdf

<http://www.thepensionsregulator.gov.uk/pdf/codeDisclosureConsultation.pdf>

⁴ Although codes of practice must be taken into account in proceedings before a court or tribunal

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Disclosure of information – consultation published**6 EXAMPLES OF “REASONABLE PERIODS” FROM THE DRAFT CODE**

REQUIREMENT	THE REGULATOR’S VIEW OF A REASONABLE PERIOD (FROM THE EVENT)
Making scheme documentation available on request	within 2 months
Providing basic scheme information on becoming a member	within 2 months
Material change in basic scheme information	within 2 months
Details of benefits becoming payable (including details of any rights and options available on death)	within 2 months
Alteration to the amount of a benefit	within 1 month
Defined benefit annual benefit statement	within 2 months of the end of each scheme year
Statutory money purchase annual benefit statement	within 12 months of the end of each scheme year
DC member options leading up to normal pension age (NPA)	at least 4 months before NPA
Beneficiaries’ rights and options after a member’s death	within 2 months (of trustees being told of the death)
Information about transfer credits following request by member / prospective member	within 2 months
Informing members about the scheme wind-up	within 1 month of the start of winding-up
Annual funding statement to DB members / beneficiaries	within 12 months of the end of each scheme year
Availability of information about scheme finances and the annual report and accounts	within 7 months of the end of each scheme year

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