

# Stronger Nudge to pensions guidance

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## Introduction

On 17 January 2022, the DWP published its [response](#) to the [July 2021 consultation](#), together with final [regulations](#), on proposals to implement a “Stronger Nudge” to pensions guidance.

## Key points

- Subject to certain exceptions, trustees / managers of occupational pension schemes will be required to deliver a Stronger Nudge to guidance in relation to applications (or communications in relation to applications) to transfer or start receiving “flexible benefits” (broadly DC) which are received on or after 1 June 2022.
- Trustees / managers will be required to facilitate the booking of a Pension Wise appointment as part of the application process.
- Except in limited circumstances, in order for their application to proceed, a beneficiary will need to take (and confirm to the trustees / managers that they have taken) pensions guidance or opt out of doing so.
- The regulations are due to come into force on 1 June 2022, aligning with similar changes being introduced by the FCA in respect of contract-based schemes.

## Background

When the retirement flexibilities were introduced in 2015 a new service, Pension Wise, was launched alongside them to provide individuals aged 50 and over with free, impartial guidance in relation to the options for taking their DC benefits.

Currently, trustees and managers are required to provide members who are considering accessing flexible benefits with a statement that free and impartial pensions guidance is available, that members should access this and consider taking independent advice, and to provide members with details on how they may access pensions guidance.

The Financial Guidance and Claims Act 2018 placed a duty on the Secretary of State to make regulations to require trustees and managers of occupational pension schemes to:

- refer scheme members (or other beneficiaries) to appropriate pensions guidance when they apply to transfer or to start receiving their flexible benefits
- ensure the member (or other beneficiary) has either received, or opted out of receiving, the guidance before proceeding with the application.

The aim is to make taking pensions guidance a normal part of the process for applying to draw or transfer DC benefits, and to require members (or other beneficiaries) to make an active choice not to do so.

## Delivering the Stronger Nudge

Except in certain circumstances, the regulations will require trustees and managers of occupational pension schemes to deliver the Stronger Nudge whenever they receive an application, or communication made in relation to an application, from any person (“a beneficiary”) to transfer any rights to flexible benefits, or to start receiving flexible benefits from the scheme.

This approach is intended to allow trustees and managers, where appropriate, to deliver the Stronger Nudge when the member contacts the scheme to discuss their options, as opposed to having to wait until receipt of an application form as originally proposed.

There are several steps to providing the Stronger Nudge. Broadly, trustees and managers will have to:

- refer the beneficiary to appropriate pensions guidance (“Guidance”) and explain its nature and purpose
- facilitate a Guidance appointment for the beneficiary, including offering to book the appointment and, where that offer is accepted, taking reasonable steps to do so
- explain to the beneficiary that their application cannot proceed unless they have received the Guidance and notified the trustees or managers of its receipt, or opted out of doing so
- explain to the beneficiary that they can only opt out of receiving the Guidance by giving the trustees or managers an opt-out notification.

Unless the beneficiary confirms that they have received the Guidance, or they have provided the opt-out notification, the trustees or managers must repeat certain parts of the Stronger Nudge (such as the offer to book a Guidance appointment) in subsequent interactions with the beneficiary in relation to the same application.

### Exemptions

The Stronger Nudge will not be required in relation to a transfer if:

- the beneficiary is under the age of 50
- receiving flexible benefits is not the purpose, or one of the purposes, of the beneficiary’s application (eg it is a transfer for the purpose of consolidating benefits)

- the trustees or managers have received from the beneficiary (or a person authorised to act on their behalf) verbal or written confirmation that the beneficiary has opted out of, or received, the Guidance following a referral by the trustees or managers of a different scheme, or
- the beneficiary is transferring rights to flexible benefits into a relevant pension scheme which, broadly speaking, is regulated by the FCA

### **Record-keeping**

Trustees and managers will be required to keep a record of the beneficiary's receipt of the Guidance, their receipt of an opt-out communication from the beneficiary, or the applicable exemption.

## **Opting out of the Guidance**

The DWP wants the decision to opt out of the Guidance to be separated from other decisions that the beneficiary may have to take as part of the application process. The regulations therefore require that, except in certain circumstances, an opt-out notification be given "in a communication made solely for the purpose of opting-out" of the Guidance.

The DWP explains that:

- for an online journey, a separate communication would entail the application process directing beneficiaries to a separate form to opt out
- for a postal journey, it would mean including an opt-out form alongside the offer to book an appointment and other information on the beneficiary's options.

The response also clarifies that "trustees and managers do not need further evidence, beyond the verbal or written confirmation of the beneficiary, that they have either received appropriate guidance from Pension Wise or opted out of receiving such guidance". The DWP does not believe it is appropriate to require MaPS to provide evidence that beneficiaries have attended a Pension Wise appointment, as the regulations do not mandate attendance.

### **Exceptions**

The opt-out need not be provided in a separate communication where the trustees and managers receive verbal or written confirmation from the beneficiary (or a person authorised to act on their behalf) that:

- the beneficiary has received the Guidance, or regulated financial advice in connection with the application, in the previous 12 months
- the beneficiary qualifies for a serious ill-health lump sum
- the beneficiary's application is solely to transfer any of their rights to flexible benefits.

## Next steps

The regulations will come into force on 1 June 2022 and, as noted above, apply to applications (or communications in relation to applications) received on or after that date. TPR guidance is also expected to be published in the coming weeks. With timing for making the necessary changes to benefit application processes quite tight, trustees and managers should seek input from advisers as soon as possible.

Please speak to your usual Sackers contact for further information and advice on how to comply with these changes.

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