

# The Occupational and Personal Pension Schemes

(Disclosure of Information) Regulations 2013 – public consultation

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## Introduction

NEST<sup>1</sup> welcomes the DWP's consultation and the opportunity to comment on this important topic.

In the context of automatic enrolment and the expected increase in the volume of savers, it's vital to ensure that across the pensions industry we're able to respond to the communications challenge effectively. We can only achieve this if we're not prohibited from doing so by overly prescriptive requirements.

We want to ensure that in applying the disclosure legislation to our member communications, we're able to focus on giving members proportionate, relevant and well-timed communications. This is particularly important to aid member understanding for the section of the public that's new to pension saving.

We believe that the primary aim of these new regulations should be to enable savers who want to, to make informed judgements. The new regulations also need to be appropriate for the pension environment that now exists. Automatic enrolment is the primary means by which most people will join a scheme. Defined contribution is becoming increasingly dominant, more schemes are using electronic communications and occupational schemes such as NEST allow self-employed people, as well as members who have left the employer who enrolled them, to save into the scheme.

We've done a significant amount of research at NEST to better understand our target market and we're looking at how to communicate uncertainty, for example about investment returns. This work is ongoing as we build our membership and continue to learn what works. We're keen to ensure that any opportunity for innovation isn't held up by detailed prescriptive requirements. With this in mind, we welcome the proposals for a more principles based regulation in this area.

Making information available to our members by means of electronic communications is a critical success factor for NEST. This approach is aligned with the Government's digital strategy to which DWP has recently responded. For the majority of our members, NEST believes that provision of an online document store, where all information sent to a member will always be available, is preferable. When information is sent by post, it doesn't necessarily mean that the recipient will read it and they may not retain it for future reference.

All costs of communications will ultimately be borne by the membership as a whole. This is particularly significant in the context of automatic enrolment, which will bring a large number of lower earning workers into pension saving and for whom the cost of communications will represent a higher proportion of their pot. We believe it's of paramount importance to use our research to evaluate the benefits to members of the timing and content of our communications. Any prescriptive requirements that prevent the use of electronic methods of delivery where this is reasonable or that mandate postal disclosure, unless this is specifically requested by the member concerned, must be avoided.

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<sup>1</sup> We use the term NEST to refer to the scheme's legal name, the National Employment Savings Trust. We sometimes also use it to refer to the scheme's trustee, the National Employment Savings Trust Corporation.

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## NEST's consultation response

We've divided our comments into three categories:

- feedback to consultation questions posed where we have specific comments to make
- additional issues with the draft regulations where we feel changes are necessary (where not mentioned in the answers to specific consultation questions)
- other issues with the draft regulations that we'd like DWP to consider.

## Feedback to consultation questions

### Consultation questions 2 and 8 – 'lifestyling' requirement

Although we don't foresee any problems with the majority of the regulations coming into force in October 2013, this timescale won't be realistic for the introduction of the new requirement for information about 'lifestyling'.

NEST agrees that provision of lifestyling type information would be beneficial to members. We already provide information about our target date funds, alongside the basic scheme information required by the regulations, to members when they join.

We believe whether a member is in a lifestyled fund or not, contacting them at a suitable point before retirement would be beneficial. As well as reminding them what type of fund they're in, including lifestyling type information if it's appropriate, this could remind members to tell the scheme if their retirement plans have changed and to consider whether the fund that their pot is invested in is still appropriate.

We don't believe that the requirement as drafted in the regulations works for the type of target date funds that NEST offers, which are actively risk managed. This is because it isn't possible to identify 'a date from which lifestyling is adopted'. With this type of target date fund, there isn't one point in time when the fund begins to move out of one type of asset class into another. One of the key attributes of target date funds is that they offer the flexibility to pursue both dynamic as well as strategic asset allocation decisions. The former follow the review of prevailing market conditions and seek to avoid systemic risks and harvest opportunities as they become apparent. The latter delivers the 'glidepath'. When applied in the context of a strategy such as NEST's, both can be fluid.

**We feel that an appropriate requirement for schemes using target date funds (and other funds) could be to allow a permissive approach.** This could put the responsibility for deciding the most appropriate time to contact members about their retirement plans and remind them what they're invested in on the scheme trustees or managers. If any prescription is required, we recommend that this is left as flexible as possible, so that schemes can fit the communications to their investment model. For example the requirement could be to communicate between 5 and 15 years before the expected retirement date.

Certainty over applying this requirement to target date funds won't be available until the draft regulations are laid before Parliament. We already include target date fund information with the basic scheme information on joining. However, this timescale isn't realistic to design and build the necessary system amendments needed to trigger production of the information at the appropriate time before retirement.

We'll be looking to include this pre-retirement information with the member's annual statement and it would be realistic for us to start including this in the statements issued from April 2015 onwards. **We request that the draft regulations be amended to allow sufficient time for the necessary system changes to be made, particularly because we already provide information about our target date funds to members on joining.**

## Consultation question 10 – timing of 1st SMPI

We'd welcome a change to the timing of the first annual statement for members who have just been enrolled into a scheme as at the scheme year end.

We don't think that it's helpful to send an annual statement, including the SMPI, to a member still in their opt-out period as at the scheme year end, or where their employer isn't yet obliged to pay contributions to the scheme and the pot value is zero.

Sending such a statement is confusing for the member and, in light of the low values it will contain, may influence them to opt out.

**We recommend that where a member is in their opt-out period as at the scheme year end, or they have a zero pot value at the scheme year end having just been enrolled, their first annual statement should be sent after the end of the next scheme year.** A timescale of within three months of the end of the second scheme year would be appropriate.

## Consultation question 15 – 'principles-based' approach

**NEST would welcome further consideration of a 'principles based' approach** to the disclosure of information and would be happy to engage with DWP to discuss this further.

## Consultation question 16 – additional guidance

Additional guidance from DWP to support the disclosure regulations would be helpful if it clarified requirements. Where we're able to understand the policy intention behind requirements, it helps us to develop communications in line with our understanding of our target market.

## Issues with the draft regulations where we feel changes are necessary

### 1. Interpretation – Regulation 2 (Relevant person)

We understand that in providing the information required by the disclosure regulations we have a responsibility to check that by such provision, we're not breaching data protection principles. However, there's one particular area of the disclosure regulations that seems to present a substantial data protection risk and we ask for this to be amended.

The definition of 'relevant person' includes spouses and civil partners of members and prospective members. Although in many defined benefit schemes, the spouse or civil partner will have rights that are written into the scheme rules, this isn't the case for many defined contribution schemes. For example, if a NEST member were to die before their expected retirement, the pot would be available for beneficiaries nominated by the member. Nominated beneficiaries may or may not include a spouse or civil partner. If the spouse or civil partner was a nominated beneficiary, they would receive the pot in that capacity as a nominated beneficiary, rather than in their capacity as spouse or civil partner.

Furthermore, in many schemes, if at retirement the member doesn't choose the annuity option for payments to continue after their death, their spouse or civil partner wouldn't receive any benefit when the member dies while in receipt of their annuity.

We question whether it's appropriate for spouses and civil partners to access information about the members' rights, including contribution rates and pensionable salary via the payment schedule information, when the spouse or civil partner doesn't have an automatic right to benefits from the scheme.

In addition, schemes where the spouse and civil partner have no automatic right to benefits will find practical difficulties in trying to verify the up-to-date status of the requestor and whether the provision of information in these circumstances is appropriate.

**We request that DWP reviews the appropriateness of spouses and civil partners being included as a 'relevant person' where they have no automatic rights to benefits under the scheme concerned. An alternative approach may be to include contingent beneficiaries as a category of 'relevant person', instead of spouses and civil partners of members and prospective members.** This would have the advantage of allowing a spouse or civil partner who does have an automatic right to benefits under a scheme (for example in some defined benefit schemes), to request information from the scheme. However where the spouse or civil partner doesn't have an automatic right to benefits under a scheme, for example NEST, they wouldn't have the right to information that isn't appropriate.

**At the very least**, we think it's essential that the requirement for information to be sent to spouses and civil partners on request is restricted to what is relevant to their rights or prospective rights under the scheme. A similar restriction is already included for other categories of 'relevant person' under Regulations 6(6), 8(5) and 11(5).

## **2. Application of these regulations – Regulation 4 (paragraph 7)**

This paragraph requires NEST to give a statement of the maximum amount of contributions that may be paid. No clarification is given as to when and to whom this information must be provided. We feel that this requirement needs to be clarified as it was previously part of the basic scheme information but no longer appears in that part of the Regulations. **Could this requirement be moved from Regulation 4 paragraph 7, to Schedule 2, Part 1 and that would clarify when and to whom this information must be provided?**

## **3. Material alterations to basic scheme information - Regulation 8**

This requires schemes that make material alterations to basic scheme information to give details to members and beneficiaries, except excluded persons, and to a recognised trade union. Currently, under the 1996 regulations, this requirement only applies to members and beneficiaries.

We understand the necessity to give details of material changes to members and beneficiaries who will always, as a matter of course and without requesting it, have received the basic information to which the material changes apply. We question though whether recognised trades unions would need to be given this information as a matter of course without requesting it, particularly if they have not previously requested basic scheme information in the first place. This is not a requirement in the existing regulations where only members and beneficiaries need to be informed automatically about material alterations.

In a scheme such as NEST where hundreds of thousands of employers are likely to be using the scheme in steady state, establishing a record of recognised trades unions and ensuring that this was kept up to date would be an impossible task. **We ask that this requirement remains the same as in the current regulations, that is, members and beneficiaries must be notified of material changes, but not trades unions.** In the case of NEST, basic scheme information and therefore any changes to that information is publically available on our website.

In addition, if any material alterations are made, **we'd like to be able to notify members and beneficiaries to look at the changes on our website under new Regulation 28 (d).** We ask that the draft regulations be amended to allow for this.

## **4. Constitution of the scheme – Regulation 11 and Schedule 3 Part 1**

Paragraph 4 of Part 1 of Schedule 3 requires the disclosure of details of all persons who employ members of the scheme to relevant persons who request it. **We don't believe that this information should be available for multi-employer schemes.** Which employers choose to use a scheme is irrelevant to a 'relevant person' and employers should be free to choose whether the scheme they use is publically available information. There will also be data protection implications where the employer of scheme members is an individual rather than an incorporated body.

**If the restriction under 11(5) is designed to prevent disclosure of this employer information where this isn't appropriate then at the very least the restriction should be widened to include spouses and civil partners of members and prospective members, unless this category is removed from the 'relevant person' definition as suggested above.** Otherwise, the unintended consequence could be that a spouse or civil partner of a member or prospective member would appear to be entitled under the regulations to receive details of all employers who use a particular scheme.

## 5. Other information to be given on request – Regulation 13 and Schedule 3 Part 3

Under paragraph 12 of Schedule 3 Part 3, a relevant person can request payment schedule information 'that relates to the employer of the member'. We welcome this tightening of the wording.

**We believe that payment schedule information should be further restricted to information relevant to the recipient's rights or potential rights under the scheme. In the case of a request from a trade union, it should be restricted to information that's relevant to the members it represents.** If this restriction isn't included and all payment schedule information for an employer was provided, the recipient may be able to identify the rate of contributions and pensionable salary definition for work colleagues, or a trade union may receive information about members it doesn't represent. We feel this isn't appropriate.

We suggest a restriction to payment schedule information to be provided on request along the lines of the restrictions in Regulations 6 (6), 8 (5) and 11 (5). This restriction should be extended to spouses and civil partners unless this category is removed from the definition of 'relevant person' as suggested above.

Should the requirement that the person has not asked for the information within the last 12 months set out in regulation 6(3) also apply here?

## 6. Accessing benefits in advance of retirement – Regulation 19

We've identified an unintended consequence of this requirement that relates to automatic enrolment, particularly during the staging of the employer duties. Many defined contribution schemes like NEST don't have a 'normal pension age' as such and use a default benefit age for members who don't select an expected retirement date.

We're in the relatively early days of staging. We're already experiencing a high number of workers who are automatically enrolled as their employer reaches their staging date, where the worker is already within six months of their default benefit age with NEST – usually age 65 or their state pension age. These workers have often taken benefits from their employer's main scheme and continue to work part time for the same employer. As their employer's staging date arrives, their employer has a duty to automatically enrol them, but the rules of the main scheme say that the worker can't re-join that scheme where they're already drawing benefits. So the employer needs to use another automatic enrolment scheme for these workers.

Due to the wording of Regulation 19(4), being enrolled within four months of their default benefit age would seem to trigger the requirement to provide the information listed in paragraph 2 (a) and (b) of Regulation 19. The information must be sent within seven days of being enrolled.

In practical terms this means that along with the basic scheme information, or before, these members are being sent details of their options to access benefits at retirement and detailed information about annuities. At this stage the value of their pot in the automatic enrolment scheme is likely to be zero because of the timescales for employers to pay the first contribution.

This is confusing for the member concerned. **We'd like to be able to send these members details of their retirement options, possibly as part of their welcome pack, without the detailed information about annuities.** We'd include a link to the annuity information on our website, that is, 'signpost' the information.

This isn't only an issue for NEST and could happen in any automatic enrolment scheme. We'd like DWP to consider amending the draft regulations so that in this situation, the detailed annuity information can be highlighted as being available on request or signposted on a website. It's worth noting that even when these members reach the default benefit date, due to the short contribution period, the size of the pot is unlikely to be sufficient to enable the member to secure an annuity with an annuity provider.

## Other issues with the draft regulations that we'd like DWP to consider

### 7. Recognised trade union – Regulation 3

Regulation 3 confirms that where there's any question about whether an organisation is a recognised trade union, that question must be referred to an employment tribunal. Could DWP confirm which party should take responsibility for any referrals?

Regulation 11(5) includes a restriction on information that needs to be sent on request to a recognised trade union that differs from the restrictions in Regulations 6(6) and 8(5). The restriction in 11(5) is on information relevant to the rights of members who are in a class of employee in relation to which the trade union is a recognised trade union. However the restriction in 6(6) and 8(5) is on information relevant to the rights of members who are in that recognised trade union. **It would be helpful if all the regulations where this restriction appears are consistent.**

### 8. Basic scheme information – Regulation 6 and Schedule 2 Part 1

Paragraph 2 of Regulation 6 includes the phrase 'Except where paragraph (6) applies...'. This refers to restricting information given to members, prospective members and beneficiaries to what's relevant to the recipient's rights or prospective rights. We feel this restriction, but widened to apply to all categories of relevant person, is equally applicable to paragraph 3 of Regulation 6 (basic scheme information to be given to a relevant person on request). **The same wording in Paragraph 2, the words 'Except where paragraph 6 applies', should be added to Paragraph 3 and the scope of paragraph 6 should be extended.**

**Paragraph 3 of Regulation 6 doesn't include any timescale** for provision of the information, for example, within two months of the request being made.

Under the same paragraph, a 'relevant person' can request basic scheme information once in any 12 month period. Basic scheme information about NEST is publically available on our website and in our Welcome to NEST booklets. **We'd welcome a change to this requirement so that if we receive a request from a relevant person for the basic scheme information, we can give it in accordance with the new Regulation 28 (d)** by giving details of where it's publically available.

Paragraphs 4 and 5 of Regulation 6 refer to 'every person' and 'the person'. **We think these references should be to 'every member' and 'the member'** because this is about giving information to members and prospective members.

Paragraphs 3 and 4 of Part 1 of Schedule 2 require information to be given to the member about rights on leaving pensionable service. **We'd like the words 'if appropriate' to be added** at the start of 4 (a), otherwise the implication is that all schemes may make a charge on the member's pot to transfer out and this isn't the case for all schemes, including NEST.

**We also feel that 4 (b) places undue emphasis on further information being available on request about what can be done on leaving pensionable service.** All basic scheme information must be accompanied by an address for further information and enquiries (Regulation 4 (8)). Repeating that further information is available on request about a particular subject seems unnecessary duplication. A similar duplication also appears in Schedule 6 Part 2 paragraph 10 when the SMPI is issued.

## 9. Annual report – Regulation 12

Schedule 3 Part 5 paragraph 21 requires information about membership numbers to be included in the scheme annual report. The information specified is the number of beneficiaries and active, deferred and pensioner members at any one date during the year. Providing membership information split by these categories is meaningless for schemes such as NEST where making contributions isn't limited to when a member is in pensionable service of an employer who uses the scheme.

Occupational pension schemes such as NEST also admit members who aren't workers, for example the self-employed. These members could never be treated as having been 'in pensionable service' as defined by the legislation and can't be defined as being active or deferred.

We feel that more meaningful information should be permitted in the annual report about membership numbers where appropriate.

It could be argued that we could rely on the provision of paragraph 7 of Schedule 3 that says the information to be provided is that which is relevant to the scheme. Therefore instead of providing active and deferred member information, we could provide membership information relevant to NEST. **However to put this beyond doubt we'd prefer that an alternative option is given such as numbers of contributing and non-contributing members as defined for SMPI purposes under Schedule 6 Part 2 paragraph 8.**

Regulation 12, paragraph (4) (a) requires the most recent annual report to be given in accordance with Regulations 26 and 27. Paragraph (4) (b) requires other annual reports to be given in accordance with regulation 28. **We'd like to be able to give all annual reports by the method under Regulation 28 (d).** We ask that the draft regulations be amended to allow for this.

## 10. Statement of benefits: money-purchase benefits – Regulation 17 and Schedule 6 Part 3

Regulation 17 (3) requires an SMPI containing the information set out in Part 2 of Schedule 6 to be provided to members with one exception, outlined in paragraph 6. Regulation 17(4) requires that where the SMPI information in Part 2 of Schedule 6 is given, the information in Part 3 of Schedule 6 - Further information to be given on pension illustration - 'must also be given'.

However, in the current 1996 regulations, this 'further information' can either accompany the SMPI information or be 'otherwise furnished' (Regulation 5 (5ZD) (b)) for example 'signposted' on a website. It appears from reading the consultation document (page 31 and 39) that the policy intention is that this option should still be available. However the drafting of the regulations doesn't currently seem to match the policy intent with the result that it's not clear that this further information can still be 'signposted' from a communication given to the member. **We'd be grateful if this drafting could be reviewed to confirm that the additional information can still be signposted in the same way as it can at the moment.**

We also think that the reference to paragraph 4 of Schedule 2 in Regulation 17 (6) (b) may be an incorrect reference. Should the reference be to Schedule 6 Part 2 paragraph 14 instead?

## 11. Accessing benefits on death – Regulation 21

We think regulation 21(3)(b) should read: **'subject to paragraph (4), a person (i) who is a personal representative of the member or beneficiary, or (ii) who is authorised...'**

## 12. Methods of giving information – Regulation 26

Paragraphs 1 and 2 of this Regulation refer to 'relevant person', whereas paragraphs 3 to 6 refer to 'member or beneficiary'. **We'd recommend that these paragraphs are amended for the sake of consistency.**

## Conclusion

NEST is committed to providing members with proportionate, relevant and well-timed communications to allow them to take control of their retirement pot if they want to. The 2013 disclosure regulations as drafted give us more flexibility to make member communications fit with automatic enrolment and our target market. We ask that DWP considers our feedback in this response and makes the further changes requested.

This response is made on behalf of NEST Corporation. Any queries should be directed to:-

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