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By email: PENSIONS.DISCLOSURECONSULTATION@DWP.GSI.GOV.UK

Dear Mr Needham

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

ICAEW is pleased to respond to your request for comments on *The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013*.

In view of the complexity and number of issues, we recommend that the DWP hold a joint meeting with the actuarial, accounting and legal professions as well as the Pensions Management Institute to go through the draft regulations. Only by getting together can we really ensure that points are not overlooked or thought through properly, resulting in gaps or unnecessary burdens.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

THE OCCUPATIONAL AND PERSONAL PENSION SCHEMES (DISCLOSURE OF INFORMATION) REGULATIONS 2013

Memorandum of comment submitted in April 2013 by ICAEW, in response to Department for Work and Pensions consultation paper The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 published in February 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013* published by Department for Work and Pensions on 18 February 2013, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. This response reflects consultation with the ICAEW Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

MAJOR POINTS

Support for the initiative

5. We support the issue of regulations to simplify and consolidate the disclosure regulations. In our responses to previous consultations we have emphasised the need for a principles-based approach to the provision of information for different types of schemes and we welcome the use of schedules in the draft regulations to set out the information requirements for different types of scheme and in relation to different circumstances. However, we consider that there are some further issues that should be addressed. These relate to the content of the scheme annual report, the need to amend the audited accounts regulations alongside the disclosure regulations, and the need for consideration be given to the interaction of Financial Reporting Standard (FRS) 102 *The Financial Reporting Standard applicable in the UK and Republic of Ireland* with the pensions SORP. On this last point, we recommend that the issue of the Regulations and revision of the SORP be aligned as closely as possible.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Chapter 1: Review of the Disclosure of Information Regulations for Occupational and Personal Pension Schemes

Q1: Do you agree these amendments meet the overall aims?

6. We agree with the overall tenor of the amendments with some reservations which we have added to our response in the following paragraphs.
7. The stated objective of the proposed regulations is 'to harmonise, simplify and consolidate the regulations which require pension schemes to disclose information to members and others ... [and to simplify] the legislation for basic scheme information, Annual Benefit Statements (ABS) and Statutory Money Purchase Illustrations (SMPI).' The Regulations also seek to establish a principles-based, rather than rules-based, approach to the disclosure of information.

8. The proposed revocation of the Personal Pension Schemes (Disclosure of Information) Regulations 1987 and the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 will certainly be very helpful in meeting the stated objective. However, the fact that the revocations clause is followed by 16 further clauses amending other statutory instruments shows the scale and complexity of legislation to which the sector is subject. In response to the 2009 consultation Review of Disclosure of Information Requirements applying to Occupational, Personal & Stakeholder Pension Schemes we affirmed our support for the consolidation of general disclosure provisions into one set of regulations, rather than the existing position where disclosure requirements affecting occupational, personal and stakeholder pension schemes are dealt with separately.
9. The arrangement of the proposed regulations into basic principles and requirements supported by Schedules setting out what information is to be given in what circumstances is therefore welcome. However, until the multitude of different Statutory Instruments can be collated into a complete and coherent set of regulations, there needs to be more cross-referencing between these provisions and the regulations that still apply in different circumstances.

Q2: Do you foresee any problems with these regulations coming into force in October 2013, particularly relating to the new provision on lifestyleing?

10. As far as the proposal for bringing these regulations into force in October 2013, the schemes responsible for implementing this are better-placed to confirm whether or not there are difficulties, but we believe that this is too short a timescale. Many schemes have year ends of 31 March, and it may be necessary for systems changes to be put in place to produce the relevant information which might mean that the changes ought to be deferred for a year. A number of schemes may wish to change their deed and rules and member booklets as well and this may not be achievable by October. We therefore recommend that the regulations not be committed to come into force on a particular date, but rather allow, say, three months for implementation from the date the regulations are made.

Chapter 2: Consolidation and Simplification of the Disclosure of Information Regulations

Consolidation

Q3: Do you agree with the scope of the consolidation?

11. Yes, we agree with the scope of the consolidation.

Removal of some personal pension scheme information requirements

Q4: Where our requirements duplicate FSA rules do you agree they should be removed? If not, which provisions should be retained and why?

12. Yes, where the DWP requirements duplicate FSA rules, we agree that they should be removed. However, this will mean that the DWP and the Pensions Regulator and the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) need in future to liaise closely to ensure that there are no gaps in what is required.

Simplification

Q5: Do you consider the new structure of the regulations to be a useful change?

13. Yes – the constant amendments to the previous regulations meant that the Disclosure Regulations were much too complex for a lay reader.

Chapter 3: Changes to Information to be Disclosed

Q6: Do you think any of the changes mentioned in this Chapter will have any unintended consequences?

- 14.** We do not think that the changes will have any unintended consequences provided that, as noted in our response to Question 4, there is regular liaison between the DWP, the Regulator and the FCA and PRA.

Basic information about the scheme

Q7: Are you content with the changes we propose to make to the basic scheme information which schemes are required to disclose?

- 15.** Yes, but we make further suggestions in paragraphs 26 to 28 in our response.

New provision on lifestyling information

Q8: Do you agree that this requirement would be beneficial to members and that the wording of this requirement would cover all forms of lifestyling, including target date funds?

- 16.** We agree that the requirements in relation to lifestyling would be beneficial.

Benefit Statements and Statutory Money Purchase Illustrations (SMPIs)

Q9: Do you agree that the changes will allow schemes to provide more personalised statements?

- 17.** Yes.

Q10: Do you think changes need to be made to the timing of the first SMPI to take account of the introduction of automatic enrolment? If so what timing do you think would be the most appropriate?

- 18.** Yes – the first SMPI should not be due until the member has been in the scheme for at least 12 months.

Q11: Do you think the regulations allow for concise statements? If not which elements of the regulations prevent this?

- 19.** No comments.

Chapter 4: Electronic Communications

Amendments to existing provisions

Q12: Are you content with the proposed changes in relation to electronic forms of communication?

- 20.** Yes.

Q13: The existing regulations require certain information (such as the constitution of the scheme) to be available for inspection at a reasonable location. Do you consider that this method of communication is still appropriate given the availability of electronic communications?

- 21.** Yes – not all members have access to electronic communications.

Extension of electronic communications to further regulations

Q14: Do you consider that all the appropriate legislation has been included in the draft regulations?

- 22.** No, we have noted some additional issues in paragraphs 25 to 30 below.

Chapter 5: Next Steps

A Principles Based approach

Q15: Would you welcome further consideration of a “principles based” approach to the disclosure of information as outlined in the 2009 consultation?

- 23.** Yes. Trustees are mindful that in the interests of good governance, members should receive the information they require. We believe that if issues were to arise, then guidance from the Pensions Regulator would be appropriate. Members also have straightforward ways of obtaining redress if they feel that the trustees have not provided what they need, in that they can approach the Pensions Advisory Service and the Pensions Ombudsman if they have to.

Guidance

Q16: We would like views on whether you feel any additional guidance would be useful to support the disclosure regulations and if so the type of details this should contain.

- 24.** As noted above, guidance should be produced if necessary. If there were to be additional guidance, this should be produced once the system has had time to bed down so that any issues arising are addressed.

Wider pension landscape

Q17: Are there any other issues that impact on disclosure that you feel need to be considered?

- 25.** We consider that there are other issues which impact on disclosure which need to be considered. These include the content of the scheme annual report, on which we make the following comments:
- 25.1 We agree that the tax approval should be noted.
 - 25.2 We note that there is a proposed amendment to list the 100 largest investments in the scheme accounts, but that for schemes with more than one employer it is optional. We cannot see the advantage of this information, which could prove hugely complex to provide and which could be seven months out of date by the time the scheme accounts are issued. Nor can we see the sense of making the provision optional for multi-employer schemes, where employer-related investments are more likely to exist. We recommend that this requirement be removed. We recognise, however, that the whole area of employer-related investment does need attention because of the complexity of current provisions.
 - 25.3 Since the changes introduced as a result of the Pensions Act 2004, there is no requirement for actuarial information on the level of funding in the annual report of the scheme, though there is provision for the actuarial certification. Whilst the Disclosure Regulations require each member to receive a scheme funding statement, it seems to us astonishing that there is nothing to require disclosure of such a fundamental piece of information in the annual report.
 - 25.4 Schedule 3 paragraph 14(b) to the Occupation Pension Schemes (Disclosure of Information) Regulations 1996 (as amended), states that ‘where investments for the scheme have been made in the year which do not accord with the statement of the principles governing decisions about investments required under section 35 of the 1995 Act (or were made in a previous scheme year and continued to be held at the end of the year), a statement by the trustees, or the fund manager, giving the reasons why and explaining what action, if any, it is proposed to take or has already been taken to remedy the position’. Very often the trustees make changes to investments in their pension scheme and then the SIP is updated to formalise the decisions made. During the period between changing the investments and updating the SIP there is a technical ‘breach’ of the SIP based on the way the regulations are worded. We therefore recommend that the regulations allow a reasonable period for the SIP to be updated following a decision to change the investments.

26. The Occupational Pensions Schemes (Audited Accounts and a Statement from the Auditor) Regulations should be amended alongside the Disclosure Regulations. These requirements have been in place since 1997 and there is a need for some revision of the definitions.
27. The requirements relating to the content of audited accounts and disclosures on investments need to be updated to reflect the ways in which schemes invest and that there should be a requirement to comply with the guidance on pension scheme accounts issued by the Financial Reporting Council, rather than the requirement to disclose non-compliance with the Statement of Recommended Practice. We would welcome the opportunity to discuss this further with you.
28. We consider the disclosure requirement in Schedule 2(1)(c) to the Audited Accounts regulations to be outdated and of no value to the users of pension scheme accounts. The requirement is for Pooled Investment Vehicles to be analysed in the notes between those where the company operating them is UK registered and those where it is not, distinguishing between unit trusts and other categories of Pooled Investment Vehicles. The domicile of the company operating pooled funds is one of many interesting possible disclosures about pooled arrangements, but has no real value in itself, and ignores other aspects of their operation – which may be of greater relevance - such as regulatory environment.
29. We also consider that a major inconsistency should be addressed. There is an unlevel playing field in relation to the audit requirements for ear-marked schemes, in that such schemes only require an external audit of their contributions and not their financial statements. This means that some large DC schemes which happen to invest solely in unitised insurance policies do not receive a full external audit. As there is no difference in practice between these schemes and schemes which invest in other types of unit funds, we recommend that consideration be given to introducing a requirement for schemes currently defined as ‘earmarked’ to obtain audited accounts.
30. Other matters which should be addressed include the provision of information to members after winding up (Schedule 8 part 2), and whose responsibility this should be once the trust no longer exists.

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