HYMANS ROBERTSON

Sixty second summary

Nudge-nudge, know what I mean?

Trustees and managers of occupational pension schemes must in some cases give their members (and members' survivors) a '*stronger nudge to pensions guidance*', if they enquire about accessing money purchase benefits on or after 1 June 2022. This will necessitate changes to administration processes and record keeping.

I'm afraid I don't quite follow you

From July to September 2021, the Department for Work and Pensions (DWP) held a consultation exercise on draft Amendment Regulations designed to result in scheme members and surviving beneficiaries receiving a stronger 'nudge' toward the Pension Wise guidance service (now a function of the Money and Pensions Service) when considering their money purchase benefit options.[1]

The DWP has now announced the outcome of that consultation exercise[2], and laid the (somewhat-revised) Amendment Regulations[3] before Parliament. They make changes to the disclosure legislation, and come into force on 1 June 2022.

A nod's as good as a wink to a blind bat

The 'stronger nudge' requirements will generally apply when a '*relevant beneficiary*', who could be either a scheme member or a person entitled to benefits on the death of a member, makes an application, or communication related to an application, to transfer or start receiving '*flexible*' (for example money purchase or cash balance) benefits from the scheme. The requirements will not, however, apply to transfer applications or communications if—

- the member is under age 50;
- receiving flexible benefits is not a purpose behind the application;
- the person was referred to the guidance service by the trustees of another scheme, and either received that guidance or opted out (the DWP explains in its post-consultation report that this is to cater for the possibility that some receiving scheme trustees might wish to extend the 'nudge' to enquiries about *inward* transfers, even though they are not obliged to do so); or
- the transfer is to a scheme in which the member will have to be told about the availability of the guidance under Financial Conduct Authority (FCA) rules.

[1] *Stronger Nudge to Pensions Guidance* (July 2021) <www.gov.uk/government/consultations/stronger-nudge-to-pensions-guidance/stronger-nudge-to-pensions-guidance>. For a summary of the original proposals, please see *Current Issues* August 2021 <www.hymans.co.uk/media/uploads/Current_Issues_-_August_2021.pdf>.

[2] *Government Response: Stronger Nudge to Pensions Guidance* (January 2022) <www.gov.uk/government/consultations/stronger-nudge-to-pensions-guidance/outcome/government-response-stronger-nudge-to-pensions-guidance>.

[3] The *Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations 2022* (SI 2022 No. 30).

If the trustees (or managers, for example in the case of a public service pension scheme) receive such an application on or after 1 June 2022, they will need to offer to book a Pension Wise guidance appointment on the beneficiary's behalf. If the offer is accepted, they must take reasonable steps to make the booking. When the offer is not accepted, or the trustees are unable to arrange a suitable appointment, they must explain how the beneficiary can do so. They must also explain that the transfer or benefit crystallization cannot proceed until the beneficiary either confirms receipt of guidance or gives an opt-out notification. These steps must be repeated in subsequent interactions about the same application, until the beneficiary either confirms that guidance was received or opts out.

Opt-out notifications in connection with benefit-commencement applications must be given in a *separate communication*, although this stipulation could be satisfied by (for example) a phone call or email. A separate notice is unnecessary if the beneficiary confirms (even just verbally) that Pension Wise guidance, or regulated financial advice about the application, has been obtained during the preceding twelve months; that he or she qualifies for a serious ill-health lump sum (note that the person need not be *applying* for a SIHLS); or that the application is solely to transfer flexible benefits accrued under the scheme.

Look… are you insinuating something?

Trustees will need to maintain records of their 'stronger nudge' interactions. Specifically, they must keep a note of a relevant beneficiary's receipt of Pension Wise guidance or opt-out notification, and any confirmation of circumstances that meant that opting out did not need to be accomplished via a separate communication.

'*That's good, that's good!*' (and with that, we shall desist from nerdishly quoting Monty Python's '*Nudge Nudge*' sketch). We are very much in favour of telling members about any high-quality guidance that is available to assist them in making their benefit choices. However…

Trustees will need to ensure that their administrators have adapted their processes and communications in time for 1 June 2022 (this may involve making and testing changes to online member portals). They will also need to be prepared to collect and retain sufficient information for the new record-keeping obligations. Note that the '*flexible benefits*' caught by these rules include money purchase additional voluntary contributions within defined benefit schemes.

Even though there are no time limits specific to the 'stronger nudge' obligations, and the legislation puts applications on hold pending confirmation of guidance-taking or an opt-out, administrators may need to pull off some deft juggling to accomplish all of the tasks expected of them without drawing out retirement and transfer processes unreasonably. A morsel of judgement must also be reserved until we see how easy it is in practice to arrange Pension Wise appointments, systematically, on others' behalf.

Another issue raised in response to the consultation is the interaction of the 'nudge' with the new statutory conditions for transfers that came into force in November 2021. They too, in some circumstances, push members toward MaPS guidance—albeit in that case there is no opting out. The DWP appeared to brush aside the challenges of explaining two separate guidance types: one voluntary, the other mandatory; one bookable by trustees, the other by the member; one requiring nothing more than verbal confirmation, the other a unique proof-of-receipt. We fear that such Byzantine details—one might add the need to advise members that they must hang up and call back to opt out—risk bringing the pensions system into disrepute.

'*Say no more.*'

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