

EXPLANATORY MEMORANDUM TO

THE PENSIONS ACT 2004 (DISCLOSURE OF RESTRICTED INFORMATION BY THE PENSIONS REGULATOR) (AMENDMENT OF SPECIFIED PERSONS) ORDER 2022

2022 No. 1285

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 This instrument enables the Pensions Regulator (TPR) to disclose restricted information to the Money and Pensions Service (MaPS) in relation to its pensions dashboards role and to support delivery of pensions dashboard services. This instrument is related to the Pensions Dashboards Regulations 2022/1220¹ (the Dashboards Regulations) which introduce requirements that will bring pensions dashboard services into operation.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales and Scotland.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales and Scotland.

5. European Convention on Human Rights

- 5.1 The Secretary of State, Mel Stride has made the following statement regarding Human Rights:

“In my view the provisions of the Pensions Act 2004 (Disclosure of Restricted Information by the Pensions Regulator) (Amendment of Specified Persons) Order 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument amends Schedule 3 to the Pensions Act 2004² to support delivery of pensions dashboard services.
- 6.2 Article 2 adds MaPS to Schedule 3, the list of bodies to whom TPR can disclose its restricted information. It enables this disclosure for the purpose of facilitating the

1 <https://www.legislation.gov.uk/uksi/2022/1220/contents/made>

2 <https://www.legislation.gov.uk/ukpga/2004/35/contents>

exercise of MaPS pensions dashboard functions. The functions it specifies are those under sections 238A to 238G of the Pensions Act 2004 (as amended by the Pension Schemes Act 2021³). Sections 238A to 238G contain pensions dashboard provisions including regulation-making powers, under which the Dashboards Regulations are made. Article 2 also specifies functions relating to pensions dashboard services and the pensions dashboards ecosystem in the Financial Guidance and Claims Act 2018⁴.

- 6.3 The pensions dashboards ecosystem is defined in the Dashboards Regulations⁵ and enables pensions dashboard services to work. It encompasses the digital architecture and the parties and technical services that connect to it. It enables schemes to meet their requirements for connection and respond to requests for pensions information to the Money and Pensions Service (MaPS) in accordance with the staging profile of each individual scheme.
- 6.4 The provision does not authorise a disclosure of information if the disclosure would contravene data protection legislation⁶. Data protection legislation restricts circumstances and imposes conditions on sharing of personal data. The effect of the European Union (Withdrawal) Act 2018⁷ means that the disclosure of information under Article 2 of this statutory instrument does not in any event override data protection legislation. It is therefore not necessary to state this specifically within this instrument.
- 6.5 This instrument is related to the Dashboards Regulations which introduce requirements that will bring pensions dashboard services into operation. It is the first time that the powers to make Dashboards Regulations under the Pensions Act 2004, as amended by Part 4 of the Pension Schemes Act 2021, have been used.
- 6.6 In addition to this amending order, Part 5 of the Dashboards Regulations includes a provision to expressly enable MaPS to disclose information to the Pensions Regulator (TPR) to facilitate the dashboards functions of either TPR or MaPS. TPR also has the power to disclose information to other bodies in relation to fulfilling its own duties (section 84 of the Pensions Act 2004).

7. Policy background

Explanations

What did any law do before the changes to be made by this instrument?

- 7.1 Before these changes, MaPS was not included in the list of bodies with whom TPR could share information.

3 <https://www.legislation.gov.uk/ukpga/2021/1/contents/enacted/data.htm>

4 <https://www.legislation.gov.uk/ukpga/2018/10/contents/enacted>

5 Defined within the Pensions Dashboards Regulations (2022) as ‘the interconnected system that enables pensions dashboard services to work in accordance with these Regulations, comprised of—

(a) the Money and Pensions Service,

the pensions dashboard services that connect to the Money and Pensions Service, the interfaces of pension schemes that connect to the Money and Pensions Service, the interfaces of pension schemes that connect to pensions dashboard services, and any other party or service that needs to be connected in order for the system to work’

6 The phrase ‘data protection legislation’ here has the same meaning as in Section 3 of the Data Protection Act 2018: <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

7 <https://www.legislation.gov.uk/ukpga/2018/16/contents/enacted>

- 7.2 This is because under the Pensions Act 2004, the Pensions Regulator (TPR) is subject to a ‘restricted information’ regime. This means that any information TPR obtains under its functions cannot be disclosed, apart from under certain circumstances and/or unless it is specifically enabled to do so. The bodies with whom TPR can share restricted information are included in the list in Schedule 3 to the Pensions Act 2004.

Why is it being changed?

- 7.3 TPR holds key data and information about occupational pension schemes which is critical for the Money and Pensions Service (MaPS) to carry out its new pensions dashboards functions and to enable the pensions dashboard services to operate securely and successfully.
- 7.4 Pensions dashboard services are intended to bring together an individual's pensions information from across their various pension schemes and their State Pension into one place online - and therefore make it easier to access this information. Various requirements to enable, deliver and regulate these services are provided for under the Pensions Act 2004 (as amended by the Pension Schemes Act 2021 Part 4) and the Dashboards Regulations.
- 7.5 MaPS and TPR have various functions in respect of the pension dashboards – including those set out under the Dashboards Regulations and wider primary legislation. The Dashboards Regulations also include requirements on occupational pension schemes to connect to the pensions dashboards ecosystem and respond to data requests from scheme members via the pensions dashboards ecosystem, according to staging profiles and data format.

What will it now do?

- 7.6 By amending Schedule 3 to the Pensions Act 2004 this instrument means the law now allows TPR to disclose ‘restricted information’ to MaPS – where TPR considers that the disclosure would enable or assist MaPS to exercise its functions under the Dashboards Regulations and functions relating to pensions dashboard services and the pensions dashboards ecosystem under particular provisions in the Financial Guidance and Claims Act 2018.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not give rise to any need for consolidation measures.

10. Consultation outcome

- 10.1 There have been three types of consultations regarding this instrument for these purposes – with public and industry; TPR; and the Information Commissioner’s Office (ICO).

Public consultations including the pension industry:

- 10.2 There have been a number of public consultations and published updates about how the pensions dashboards will work – from both the DWP and the MaPS Pensions Dashboards Programme (PDP):

- Pensions dashboards: Working together for the consumers – December 2018⁸
 - PDP Call for Input – Staging – Summer 2021⁹
 - DWP consultation on draft Dashboards Regulations – January 2022¹⁰
 - DWP response document – July 2022¹¹
- 10.3 These consultations have informed the primary legislation, and the Dashboards Regulations. They have also informed the Money and Pensions Service (MaPS) and the Pensions Regulator (TPR) engagement with industry concerning how the pensions dashboards ecosystem, pensions dashboard services and MaPS and TPR functions will work in practice.
- 10.4 Consultation about the disclosure of information between MaPS and TPR for dashboard purposes was included in the ‘Pensions Dashboards – Further Consultation’ - published on 28 June 2022¹². Although there is no legislative requirement to publicly consult on amendments to Schedule 3, this consultation did include the proposal to amend Schedule 3. In addition, it also included the proposal and draft regulation to enable MaPS to share information with TPR – which is part of the Dashboards Regulations. This consultation ran for three weeks, which was considered sufficient on this matter as it relates to TPR and MaPS activities with no impact on business. The consultation was also promoted in advance with various industry working groups and consumer representatives’ organisations.
- 10.5 A total of 49 responses to the Further Consultation were received from pension schemes, administrators, consumer groups and trade bodies. The vast majority (95%) of respondents either explicitly agreed or did not disagree or comment on the disclosure of information proposal.
- 10.6 Some additional points and questions were raised about safeguards and the sharing of personal data. DWP considers these points are addressed by the fact that:
- data protection legislation, including the Data Protection Act 2018¹³ and the UK General Data Protection Regulation (UK GDPR)¹⁴ will continue to apply;
 - additional data sharing agreements and protocols will be in place between TPR and MaPS; and
 - various governance arrangements, duties on public bodies, and privacy statements will also be in place for each body.

8 <https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation-pensions-dashboards-working-together-for-the-consumer>

9 <https://www.pensionsdashboardsprogramme.org.uk/2021/05/27/call-for-input-staging/>

10 <https://www.gov.uk/government/consultations/pensions-dashboards-consultation-on-the-draft-pensions-dashboards-regulations-2022/pensions-dashboards-consultation-on-the-draft-pensions-dashboards-regulations-2022>

11 <https://www.gov.uk/government/consultations/pensions-dashboards-consultation-on-the-draft-pensions-dashboards-regulations-2022/outcome/government-response-draft-pensions-dashboards-regulations-2022>

12 <https://www.gov.uk/government/consultations/pensions-dashboards-further-consultation/pensions-dashboards-further-consultation#disclosure-of-information--the-pensions-regulator-and-the-money-and-pensions-service>

13 <https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted>

14 <https://www.legislation.gov.uk/eur/2016/679/contents>

10.7 The Government’s consultation response¹⁵ provided on 17 October provides more detail.

Consultation with TPR

10.8 In addition to the public consultation, the Secretary of State consulted with the Pensions Regulator (TPR) about amending Schedule 3 to the Pensions Act 2004, as required by the Pensions Act 2004. Following policy discussions between DWP and TPR officials, formal consultation with TPR was concluded via correspondence on 27 June 2022, to which TPR responded on 1 July 2022. The outcome of this consultation was agreement to the amendment.

Consultation with ICO

10.9 DWP also consulted with the Information Commissioner’s Office (ICO) during the preparation of this instrument and before public consultation on this policy – as required under Article 36(4) of the UK General Data Protection Regulation (UK GDPR) in respect of proposals for legislative measures regarding the processing of personal data. The ICO confirmed that the requirement to consult had been met. The extent of disclosure of personal data under this instrument is highly limited.

11. Guidance

11.1 Guidance is not required as this instrument relates to activities by TPR who are aware of and clear on the new provision.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there is no impact on business and no significant impact on the public sector. This is because this instrument is about disclosure of information between TPR and the Money and Pensions Service (MaPS). This is for the purpose of MaPS functions in relation to pensions dashboards, including under the Dashboards Regulations - and the Dashboards Regulations have a separate impact assessment¹⁶ which is published alongside its Explanatory Memorandum on the [legislation.gov.uk](https://www.legislation.gov.uk) website.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This measure does not regulate or create an impact on business - and so is not subject to the statutory review requirement.

14.2 The measures in this instrument are necessary for the operation of the Pensions Dashboards Programme and refer to the Dashboards Regulations and MaPS functions

15 <https://www.gov.uk/government/consultations/pensions-dashboards-further-consultation/outcome/government-response-to-the-pensions-dashboards-further-consultation>

16 <https://www.legislation.gov.uk/uksi/2022/1220/impacts>

in relation to the pensions dashboards ecosystem. It is intended that the dashboard policy and delivery will be subject to a wider review – including the Dashboards Regulations. The Department for Work and Pensions (DWP) is planning a multi-strand monitoring and evaluation strategy. This is subject to ministerial review and approval. DWP’s emerging plans are to consider longitudinal surveys with users; qualitative research with users and industry; assessing changes in number of lost pension pots; and monitoring usage of dashboards. DWP will consider whether the findings from those reviews have any implications for this provision.

15. Contact

- 15.1 Zara Iqbal at the Department for Work and Pensions - Zara.Iqbal@dwp.gov.uk, or Microsoft Teams at 0300 089 8153 can be contacted with any queries regarding the instrument.
- 15.2 Simon Boniwell, Deputy Director for Pensions Strategy, Guidance and Dashboards, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Laura Trott, the Parliamentary Under Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.