

## **New late retirement factors – disclosure requirements**

The LGPC Secretariat have been asked whether the significance of the change in the late retirement factors constitutes a ‘material alteration’ under regulation 8 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (‘the Disclosure Regulations 2013’) [SI 2013/2734].

### **Is there a requirement to disclose?**

Regulations 8(1) and 8(2) of the Disclosure Regulations 2013 say the following:

#### **8 Material alterations to basic scheme information**

*(1) The information mentioned in paragraph (2) must be given in accordance with this regulation where—*

*(a) there is a change in relation to the scheme, and*

*(b) that change results in a material alteration in the information listed in Part 1 of Schedule 2.*

*(2) The information is the information referred to in paragraph (1)(b) that has materially changed.*

Paragraph 15 of Part 1 of Schedule 2 to the Disclosure Regulations 2013 says the following:

*15 The following information about benefits payable under the scheme (referred to in this paragraph as “benefits”)—*

*(b) how benefits are calculated,*

*(e) the rate at which rights to benefits accrue, if appropriate,*

So, pension schemes have a requirement to inform their members of a change to the scheme resulting in a material alteration to ‘how benefits are calculated’ and / or ‘the rate at which benefits accrue’. Does this mean there is a requirement to inform scheme members of the change in the late retirement factors?

One interpretation is that there is such a requirement:

- For a member retiring with some or all of their benefits due to attract late retirement increases, the change in the late retirement factors is a material alteration as to how their pension will be calculated (paragraph 15(b)).
- Additionally, where a member’s pension will attract late retirement increases, it could be argued that the rate at which their benefits build up changes with the introduction of the new factors (paragraph 15(e)).

An alternative interpretation is that there is no such requirement:

- *How* LGPS pension benefits are calculated (i.e. the basic principles of the calculation) will not change with the introduction of the new factors and the basic accrual rate for the scheme (i.e. 49ths) has also not changed.

- In support of the above bullet point, where a new member joins the scheme, the information included in Part 1 of Schedule 2 must be provided to the member (regulation 6 of the Disclosure Regulations 2013). In satisfying this requirement, the majority of LGPS funds do not send members details of the late retirement factors that may apply to their pension in the future. This would appear to imply that late retirement factors are not considered to be part of 'how benefits are calculated' or 'the rate at which rights to benefits accrue' for this purpose.

LGPS administering authorities will need to consider the approaches and determine whether they believe there is a requirement under the Disclosure Regulations 2013 to inform their members of the changes in the late retirement factors.

### **Additional comments**

If a fund determines that there is a requirement to inform their members of the changes, they should bear the following issues in mind. All references are to the Disclosure Regulations 2013.

- Regulation 8(4) requires that the information must be provided to the member before or within three months of the change taking place.
- Regulation 8(5) says that the information does not need to be provided unless relevant to the member's rights or prospective rights. Members who are already over the age of 65 should certainly be informed of the change. For those members under 65 who would not currently have late retirement factors applied to their pension, the change would still affect their 'prospective rights' and so it would appear that they should also be informed of the change.
- The usual disclosure requirements as set out in Part 9 will apply in informing members of the change.
- Taking this approach in respect of the changes to the late retirement factors may also imply a similar approach should be adopted for informing members of other scheme factor changes that may take place in the future (where these are also deemed 'material alterations').