EXPLANATORY MEMORANDUM TO

THE PENSIONS DASHBOARDS (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 Pensions dashboard services will allow consumers to view their various pensions, including the State Pension, in one place online. This will help reconnect savers with lost or forgotten pension pots and help to support better planning for retirement. This instrument makes amendments to the Pensions Dashboards Regulations 2022[1] ("the 2022 Regulations") which came into force on 12 December 2022. It introduces a single "connection deadline" of 31 October 2026 for relevant pension schemes to connect to pensions dashboards, and removes the staging profile, staging deadlines, connection windows and the concept of 'early' connection.

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 for the Department for Work and Pensions, Mel Stride, has made the following statement regarding Human Rights:

"In my view the provisions of the Pensions Dashboards (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

6.1 Schedule 2 (the staging profile) of the 2022 Regulations sets out the order by which different cohorts of schemes (categorised by size and type) must connect to pensions dashboards. This instrument amends the 2022 Regulations to remove the staging profile and replace it with a single connection deadline by which relevant pension schemes must be connected to pensions dashboards.

[1] https://www.legislation.gov.uk/uksi/2022/1220/contents/made

7. Policy background

What is being done and why?

7.1 The Pensions Dashboards Regulations 2022 require trustees or managers of relevant pension schemes to connect their scheme to the digital architecture of pensions dashboards.

7.2 The Pensions Dashboards Programme, under the supervision of the Money and Pensions Service, is responsible for delivering the digital architecture which underpins pensions dashboards. Since the 2022 Regulations came into force on 12 December 2022, the Pensions Dashboards Programme has confirmed that the digital architecture will not be ready to facilitate the connection of pension schemes in time for the first connection deadline in the staging profile of 31 August 2023

7.3 The Minister for Pensions subsequently issued a Written Statement[2] in March 2023, which announced the delay and set out that the Pensions Dashboards Programme would be reset to get it onto a path for successful delivery, and the Department for Work and Pensions would legislate at the earliest possible opportunity to provide clarity to schemes.

Explanations

7.4 The Pensions Dashboards Programme experienced challenges with several issues. The technical solution has not been sufficiently tested, more work is needed to set up adequate support for industry with their connection journey and there is still work to do to finalise the necessary supporting guidance and standards. Pausing to review and reset the Pensions Dashboards Programme is providing time to rectify issues and ensure complete delivery of the ecosystem and supporting documentation before industry begins to connect. The work of the reset so far has ensured that we have clarity on what needs to be delivered and the steps to achieve this. Resilience and contingency time have been built into this approach to ensure the Pensions Dashboards Programme has time to deliver before industry begins to connect. This will also allow for greater collaboration with industry on areas such as user testing.

7.5 This instrument uses powers in the Pensions Act 2004[3] to amend the 2022 Regulations to deliver a single connection deadline of 31 October 2026 for all schemes in scope. This date has been informed by the ongoing work of the reset team to develop a new timeline for delivery and is 12 months later than the date by which all schemes would have previously been required to have completed connection. Furthermore, the provision requiring trustees and managers of relevant pension schemes to have regard to guidance on connection has been expanded to also allow the Department for Work and Pensions to issue such guidance, solely, or alongside the Pensions Regulator and/or the Money and Pensions Service. This guidance will support schemes with the connection process.

7.6 This instrument retains time for testing of the service ahead of dashboards being launched to the public and curtails the period of uncertainty for trustees and managers of schemes in scope. To ensure pensions dashboard services can be launched to the public as soon as possible, the Money and Pensions Service and the Pensions Regulator will communicate with trustees and managers of schemes in scope to

[2] https://questions-statements.parliament.uk/written-statements/detail/2023-03-02/hcws594
[3] https://www.legislation.gov.uk/ukpga/2004/35/part/4/crossheading/pensions-dashboards

encourage connection ahead of the single connection deadline, in line with the connection dates set out in guidance.

7.7 This instrument amends the requirements on trustees or managers to reflect the removal of connection windows and the removal of the process by which trustees or managers could apply for early connection as Schedule 2 has been revoked.

7.8 All schemes in scope must be connected by the connection deadline set out in the Regulations (31 October 2026). Failing to do so could result in regulatory action by the Pensions Regulator. The 2022 Regulations include a requirement to have regard to guidance issued on connection. We expect to set out a connection timetable in guidance in due course, developed in collaboration with industry. Although the timetable in guidance will not be mandatory, trustees or managers will be expected to demonstrate how they have had regard to the guidance. Trustees or managers must have regard to the guidance and not doing so would be a breach of the Regulations.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union or 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 The Department for Work and Pensions' policy to compel relevant pension schemes to connect to the Money and Pensions Service, and the use of a staged approach, were posed as part of the December 2018 consultation "Pensions dashboards: Working together for the consumer"[4], where there was broad agreement on this course of action. The staging profile was set out in the January 2022 consultation on the draft 2022 Regulations[5].

10.2 The Department for Work and Pensions conducted a targeted consultation on the proposed revised approach to connection with representatives across the pensions industry during April and May 2023. This included a range of pension schemes, third party administrators, integrated service providers, pensions lawyers, and industry groups.

10.3 This consultation also sought views on the factors which should be considered when amending the connection dates, including any other regulatory requirements, or competing priorities. It also asked whether connecting later than required in the 2022 Regulations would create additional costs, and where these costs would arise.

10.4 The consultation found support for the idea of increased flexibility regarding connection, particularly from pension schemes, which could help them manage competing priorities. Responses also highlighted that connecting as per guidance may retain time for testing and could be used positively by schemes who wish to promote that they are participating in dashboards. There was also acknowledgement of the

[4] https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation/pensions-dashboards-working-together-for-the-consumer

[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1051798/pensions-dashboards-consultatiom-on-the-draft-pensions-dashboards-regulations-2022.pdf

Department for Work and Pensions' rationale in legislating to remove Schedule 2, while at the same time allowing the Pensions Dashboards Programme reset to complete.

10.5 Concern was expressed by some of those who responded to the consultation – particularly from Third Party Administrators and Integrated Service Providers – about the placement of new dates in guidance, where the view expressed was that a proportion of industry might choose to connect closer in time to the legislative deadline, rather than the dates set out in guidance. The Department is working closely with the Money and Pensions Service, the Pensions Regulator, and the Financial Conduct Authority to encourage schemes to connect in line with dates set out in guidance. The Pensions Regulator will write to all schemes informing them of their proposed connection date as set out in guidance and the action they would need to take to connect by said date. The Regulator will expect trustees to be able to demonstrate how they have had regard to the guidance, and failure to do so may result in enforcement action. Some of those who responded to the consultation noted that additional costs will arise as a result of the amended timetable, primarily from keeping project management and other teams active for a longer period.

11. Guidance

11.1 The Regulations include a requirement to have regard to guidance issued on connection. This instrument removes the staging profile from the 2022 Regulations and guidance will be published to support schemes with the connection process, including suggested connection dates. Trustees and managers must have regard to such guidance. Through this instrument, the Department for Work and Pensions is retaining the policy of compulsory connection by a set date and intends to encourage a staged approach set out in guidance, rather than mandated in Regulations. The connection timetable set out in guidance will be developed in collaboration with industry and is expected to be published in due course.

11.2 The 2022 Regulations provided the Pensions Regulator with new pensions dashboards-specific powers to tackle non-compliance. In the event of non-compliance with any of the requirements in Part 3 of the 2022 Regulations, the Pensions Regulator may, at their discretion, issue compliance notices, third party compliance notices, and penalty notices. If the Regulator chooses to issue a financial penalty, this can be up to a maximum of £5,000 in the case of an individual, or up to £50,000 in other cases, such as corporate trustees. The levels are consistent with other areas of pensions legislation. In the event of multiple breaches of the Regulations, the Pensions Regulator may issue multiple penalties. If the Pensions Regulator is of the opinion that non-compliance by a trustee or manager was "wholly or partly, a result of an act or omission by another person", then they may issue third party compliance notices to that person. A failure to comply with a third party compliance notice may lead to a penalty notice being issued. The Pensions Regulator will also continue to be able to utilise its general powers where appropriate, which includes the ability to issue improvement notices, appoint skilled persons to a scheme, remove trustees, or even wind up a scheme.

12. Impact

12.1 The impact of implementing pensions dashboards on business, charities or voluntary bodies is estimated to be £687.9 million (discounted to present value), over 10 years from 2022-23 until 2031-32 under the central scenario. These costs are driven by

£324.0 million upfront costs to industry in the transition period and then ongoing costs broadly level off at around £80 million per year. For this remaining period and going forward, overall monetised benefits (mainly to consumers) are expected to outweigh costs. The net present value of the policy over ten years is positive at £173.8 million and net benefits are expected to increase after the ten-year period. This is a revision upwards from the 2022 Impact Assessment which estimated a net present value of £29.5 million.

12.2 The impact on the public sector of delivering and regulating the Pensions Dashboards Programme are £251.4 million over 10 years in present values from 2022/23 to 2031/32. The most significant costs to the public sector are the Pensions Dashboards Programme costs (84% of costs), which includes the provision of the digital architecture and the identity service solution.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website. To note, the impact assessment for the 2022 Regulations has been updated to take account of the new timing and approach to the connection of pension providers to dashboards. The Department for Work and Pensions has estimated the total costs for dashboards has decreased from the 2022 Impact Assessment. This reflects a decrease in ongoing costs because of the new connection timetable (to be set out in guidance) happening at a later date in the 10-year assessment period. Transitional costs for industry have increased to reflect that some schemes may have faced additional costs ahead of the proposed changes (estimated at £69.4 million), but this does not offset the overall decrease in total costs. Total transitional costs (industry and public costs) are estimated at £463.9 million – an increase of £121.2 million compared to the 2022 Impact Assessment. The benefits to all dashboards' users have been revised slightly downwards from around £1.1bn to around £1.0bn, reflecting a reduction in the number of years consumers are able to access dashboards over a 10-year period. However, this is largely offset by an increase in the estimate of lost pots recovered using the latest survey data.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. To minimise the impact on small businesses (employing up to 50 people), the requirements do not apply to occupational pensions schemes with fewer than 100 relevant pension scheme members. Comprehensive guidance around connection will be provided to further ease the burden on trustees or managers. Pension schemes will connect to a single digital architecture, developed by the Money and Pensions Service which uses existing methodology to send data. The requirements on the provision of values to dashboards remain unchanged and are aligned as closely as possible with existing requirements for benefit statements, which include permission for schemes to use values from recent statements, to minimise the additional resource requirement of delivering new calculations.

13.2 The impact on small business is estimated to be £166.1 million (discounted to present value) over 10 years under the central scenario. The costs facing small pension providers break down as £77.9 million for the upfront transitionary period and £88.2 million for the ongoing elements over 10 years. As we do not have information on the number of employees per provider, we have defined the size of providers using their membership size.

14. Monitoring & review

14.1 The Small Business, Enterprise and Employment Act 2015[6] requires that a Minister must make a "provision for review" clause in secondary legislation when regulations have significant regulatory impact or publish a statement explaining that it is not appropriate in the circumstances to make provision for a review clause.

14.2 Instead of a provision for review, the approach to monitoring of this legislation is to put in place a multi-strand evaluation strategy, the details of which are being explored. This will be developed alongside the Pensions Dashboards Programme, the Financial Conduct Authority, and the Pensions Regulator, to ensure the critical success factors can be successfully tested with learning helping to further develop dashboards over time. Our plans include: a longitudinal quantitative survey to monitor outcomes from dashboard usage; qualitative research with consumers to explore dashboard use; qualitative research with the pensions industry; estimating changes in number and value of lost pension pots; and monitoring information provided by dashboard providers (i.e., the Money and Pensions Service dashboard, and qualifying pensions dashboard services).

15. Contact

15.1 Mary Zvobgo at the Department for Work and Pensions mary.zvobgo@dwp.gov.uk 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, Parliamentary Under Secretary of State at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

[6] https://www.legislation.gov.uk/ukpga/2015/26/contents/enacted/data.htm