

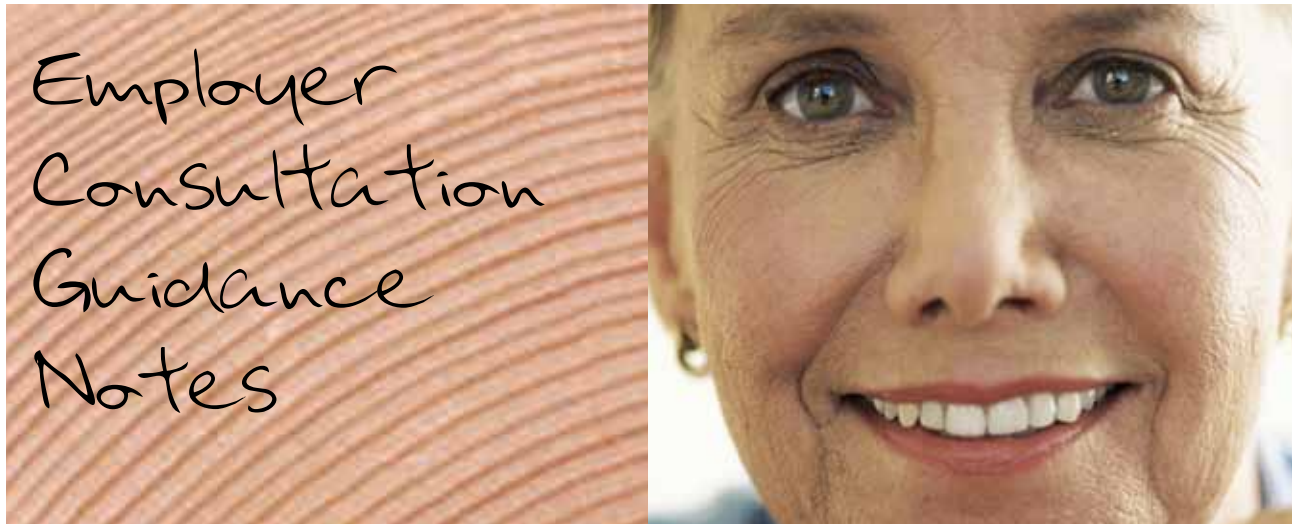
# Employer Consultation Guidance Notes

The CARE Scheme

Defined Benefit and Defined Contribution



The Pensions Trust



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## 1. Introduction

A letter has been issued (in August 2011) to all employers who participate in The CARE Scheme (the Scheme). The letter summarises the Scheme's 2010 valuation results and, as part of this, outlines the Trustee's proposal regarding increases to future service contribution rates which will take effect from 1 April 2012.

In addition, employers that currently offer one of the defined benefit (DB) structures to their employees can now choose whether to continue offering the current DB structure, or offer the defined contribution (DC) structure instead, from 1 April 2012.

Please note that only employers willing and able to bear the risk of continuing to accrue DB benefits (and build up contingent buy-out liabilities) will be able to remain in one of the DB structures for future service. Each employer currently participating in one of the DB structures has been notified of The Pensions Trust's covenant assessment, the outcome of which determines the benefit structures available to each employer.

There is now a requirement for some employers to consult with their employees about sharing the contribution increases for the DB 80ths and 100ths structures of the Scheme. In addition, some employers will need to consult with their employees about a change in benefit structure from 1 April 2012.

These Guidance Notes provide information we hope will be useful to employers as you plan and implement your consultation. If further assistance is required, contact details are provided on page 6. You are welcome to photocopy these Guidance Notes for internal use within your organisation.

## 2. What do employers need to do?

Employers need to consider the Trustee's proposal regarding the sharing of future service contribution rate increases. Some employers also need to consider the benefit structures available from 1 April 2012. Details are contained in the letter that was issued by The Pensions Trust in August 2011.

Employers then need to consider whether they agree with the Trustee's contribution rate proposal or whether an alternative approach is worth considering. In addition, some employers need to consider whether they wish to continue to offer the current DB structure to their employees or whether they would prefer to offer the DC structure instead. Some employers will only have the option to offer the DC structure, unless they can provide some form of security or reassurances about their organisation's financial strength.

In addition, employers will need to consult with employees regarding the Trustee's contribution rate proposal (or any alternative that requires an increase to member contribution rates) and any change in benefit structure. This is because an increase in member contribution rates and a change in benefit structure are 'listed changes' (see section 3) and consequently consultation is required by law where an organisation has 50 or more employees, before these changes can be implemented.

### 3. Why might consultation be required?

Your organisation may be required to consult with employees affected by the proposed changes to contribution rates or a change in benefit structure – either because of your organisation's own requirements, or because of legislative requirements.

*For reference, the relevant legislation is the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 and Occupational and Personal Pension Schemes (Consultation by Employers) (Modification for Multi-Employer Schemes) Regulations 2006 (the Regulations).*

The Department for Work and Pensions (DWP) has published guidance on the Regulations. A copy is available on our website at [www.thepensiontrust.org.uk](http://www.thepensiontrust.org.uk) > Document Library > Scheme Literature > CARE > Consultation Documents or on the DWP's website via the following link: [www.dwp.gov.uk/publications/dwp/2005/occ\\_pen\\_schemes/occ\\_personal\\_pens\\_schemes\\_regs06.pdf](http://www.dwp.gov.uk/publications/dwp/2005/occ_pen_schemes/occ_personal_pens_schemes_regs06.pdf)

#### **Contractual position**

Your organisation may or may not have statutory obligations (see section 4). However, there may be obligations under internal procedures, or governance arrangements, relating to employees' Terms and Conditions of Employment (in particular with the provision of, and changes to, pensions and related benefits) and/or the conduct of consultation.

Please take legal advice if you are in any doubt about the contractual position.

#### **Statutory position**

The Regulations require employers with 50 or more employees (see section 4) to provide information and consult on any proposed 'listed changes'. In this case, the 'listed changes' that will trigger consultation are the increase in member contributions and the change in benefit structure.

### 4. Does my organisation need to consult?

There is no statutory obligation to consult for employers with fewer than 50 employees – although your organisation's governance requirements or your employees' terms and conditions may require some form of non-statutory consultation. We would always encourage employers to consult their employees as a matter of good practice.

If you have 50 or more employees, then you must consult with 'affected members' and/or their representatives (see section 5).

#### **Do we have more than 50 employees?**

If your organisation has never employed 50 or more employees this is very simple. However, if your organisation employs some part-time employees, or has increased or decreased its workforce during the last 12 months, this may not be straightforward. Another set of regulations comes into play here. Regulation 4 of the Information and Consultation of Employees Regulations 2004 (Statutory Instrument 2004 no 3426) specifies how the average number of employees must be calculated. The wording of Regulation 4 can be downloaded from our website at [www.thepensiontrust.org.uk](http://www.thepensiontrust.org.uk) > Document Library > Scheme Literature > CARE > Consultation Documents.

#### **What is an 'affected member'?**

'Affected members' are current members of the Scheme, plus all employees who are eligible (as per their contract of employment) to join the Scheme if they wish to.

## 5. We have to consult - how do we do this?

Where there is more than one participating employer, the person or body proposing the change (in this case, The Pensions Trust) must give written notice to each employer. The letter issued in August 2011 by The Pensions Trust provides this written notice.

Each employer with active or prospective members affected by the change must provide information to those members and their representatives, and consult those members or their representatives. The intention is that employees should fully understand their pension scheme and the effect that changes will have on it and their future pensions.

The areas on which the employer wishes to consult should be established and clearly set out for employees. A 'Consultation Template' has been provided for employers so that the consultation can be delivered to their employees – an electronic version of the template can be found on our website at [www.thepensionstrust.org.uk](http://www.thepensionstrust.org.uk) > Document Library > Scheme Literature > CARE > Consultation Documents.

### Providing information

Before the consultation starts, employers must provide information in writing to all employees who are 'affected members' as defined in section 4 (that is, active or prospective members but not deferred members).

Employers must also provide the information to, and consult with, one or more of the following employee representatives:

- Representatives of an independent trade union recognised by the employer for collective bargaining.
- Any representatives elected or appointed by employees under the Information and Consultation of Employees Regulations 2004.
- Other representatives of active and prospective members who have been elected for the purposes of participation in any consultation.

Where no representative has been appointed, the employer must consult directly with the 'affected members'.

The information to be provided to the 'affected members' and their representatives must:

- Be in writing.
- Be provided before the consultation starts.
- Describe the proposed change and the effect, or likely effect, of the change on the Scheme and its members.
- Include any relevant background information.
- Indicate the timescale for implementing the change to the Scheme.
- Specify the date set for the end of the consultation or for the submission of written comments (this must be at least 60 days after the consultation starts).
- Be accessible in terms of format (a note on a payslip directing employees to an employees intranet is not acceptable if most employees do not have access to a PC at work) and content (plain English, no pensions jargon if possible) to enable the 'affected members' and their representatives to study the proposed change and give their views to the employer on the impact on members.

The Pensions Trust has prepared a template for employers to adapt to suit their consultation requirements and timescales. This document should help employers to comply with the statutory requirement to 'provide information'. A copy can be downloaded from our website at [www.thepensionstrust.org.uk](http://www.thepensionstrust.org.uk) > Document Library > Scheme Literature > CARE > Consultation Documents.

### Consultation

Statutory consultation will begin and end on the dates specified in the information provided – **the process must last at least 60 days.**

During consultation, the DWP expects the employer and those being consulted to work together in a spirit of co-operation. The DWP considers that consultation will include an exchange of views and dialogue between the parties.

At the end of the 60 day period, the employer must consider any comments received before making its own response to the Trustee. If no comments are received by the end of the period, the consultation is regarded as complete.

### **Non-statutory consultation**

Where governance arrangements or terms and conditions require non-statutory consultation, it is likely that the arrangements for consultation will be specified. If this is not the case, then employers may adapt the statutory process to suit. A minimum period of 30 days' consultation would seem to be reasonable.

## 6. What happens next?

On completion of the consultation stage, and/or having considered employees' comments and representations, employers must decide what feedback to provide to the Trustee.

Your organisation should then complete and return Feedback Form 2, which was enclosed with the letter issued in August 2011 (a further copy can be downloaded from our website at [www.thepensiontrust.org.uk](http://www.thepensiontrust.org.uk) > Document Library > Scheme Literature > CARE > Consultation Documents) as soon as possible and by 18 November 2011 at the latest.

## 7. What happens if we don't comply with the Regulations?

If an employer does not comply with the statutory requirements that may be applicable to its particular circumstances, then 'affected members' or their representatives may complain to The Pensions Regulator. The employer may be fined up to £50,000.

If the Trustee is aware that an employer has not complied with the Regulations (see section 3) then it will be unable to implement any increase in member contribution rates or authorise any switch from the current DB structure to the proposed alternative.

## 8. Further assistance

### **Queries**

Queries relating to these Guidance Notes should in the first instance be addressed to:

Paul Smith  
Account Support Executive  
The Pensions Trust

Telephone: 0113 394 2729  
Email: [paul.smith@thepensiontrust.org.uk](mailto:paul.smith@thepensiontrust.org.uk)

### **Guidance for employers**

The following documents are available to download from our website at [www.thepensiontrust.org.uk](http://www.thepensiontrust.org.uk) > Document Library > Scheme Literature > CARE > Consultation Documents:

- DWP Guidance Booklet.
- Information and Consultation of Employees Regulations 2004.
- Consultation Template.
- Feedback Form 2.

If you do not have internet access please contact Paul Smith who will arrange for hard copies to be posted to you.

# Notes

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