

JLT Employee Benefits

AE Smart



FACT SHEET 340. Do I need to consult employees?

This fact sheet explains the changes to pension schemes that are subject to a 60-day consultation period.

Key Facts

- > You can only make certain changes to your pension scheme after you have consulted with your employees.
- > If you don't consult you could be fined up to £50,000.
- > Importantly, 'consult' does not mean 'consent'; employers can proceed with proposed changes even though their employees do not agree with them.

Introduction

You can only make some changes to your pension scheme if you have consulted with affected members first.

Affected members are:

- active members of the scheme
- prospective members of the scheme (these are employees who have not joined the scheme, but who are or may become eligible to join).

So, the definition includes employees who are in a waiting period; employees who are admitted automatically after a certain period of service (unless they opt out); and employees who may join a scheme subject to employer consent.

You don't have to consult with deferred members of a pension scheme or pensioners.

Listed Changes

The following changes are listed changes that you must consult on before implementing.

For occupational pension schemes (trust based schemes):

- increases to normal pension age
- reducing / stopping employer contributions
- increasing member contributions
- requiring members to make contributions (where a scheme was previously non-contributory)
- changing the elements of pay that constitute pensionable earnings or changing the proportion, or limiting the amount, of any element of pay that forms part of pensionable earnings.

For personal pension schemes (contract based schemes):

- reducing / stopping employer contributions
- increasing member contributions.

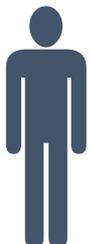
If you are replacing a contract based scheme with a trust based scheme, you will need to run a consultation exercise.

Contact Us

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What does 'consult' mean

During the consultation process, you and the affected members (and their representatives) are under a duty to work in a "spirit of co-operation", taking into account the interests of both sides.

Government guidance states that consultation should include "an exchange of views and the establishment of a dialogue between the relevant employer and the persons he consults".

However, consult does not mean consent. You simply have to provide sufficient information for members to understand the proposed changes and then consider any responses you receive before deciding whether to go ahead and make the changes.

Consultation letter checklist

As a minimum, any communication should be in writing, must last at least 60-days and should contain the following:

- a description of the changes you are making
- an explanation of the effect of the changes (for the individual member and for the scheme as a whole)
- the number of members affected by the change
- explanation of who will not be affected
- a worked example, illustrating the effect of the proposals
- an explanation of the timescale for making the changes
- a process for members to study the proposals and to give their views on the impact of the changes
- contact details for the Pensions Regulator.

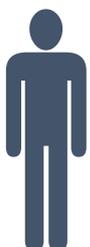
You may need to go through the consultation process again for any revised proposals you want to put forward. However, it will not be necessary to go through the process again if you are proposing to reduce contribution levels rather than stopping contributions altogether.

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Failure to consult

The Pensions Regulator is responsible for enforcement of the consultation regulations.

The Regulator does not have the power to reverse a change that an employer has made without meeting the consultation requirements.

Nevertheless, if the Regulator decides to take action against an employer who has breached the statutory requirement to consult, it has the power to:

- impose a financial penalty of up to £50,000
- issue an improvement notice, specifying that particular steps are taken.

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