

What Is “Electronic Communication”?

Provided trustees follow a statutory process, they are permitted to send the information which the law requires them to send to pension plan members and beneficiaries by email or make it available on a website, instead of posting paper copies.

How Do I Communicate by Email?

The following conditions must all be satisfied before information can be sent to a member by email:

- The member has not made a written request to opt out of electronic communications
- The trustees are satisfied the member will be able to get access to, store and print the information (e.g. is it clear, legible and in an easily accessible format?)
- The trustees have taken into account the requirements of disabled persons, including any specific needs
- The trustees have, by post, informed anyone who was a member or beneficiary on 1 December 2010 and who had not received information by electronic means previously that they propose to provide information electronically (although no hard copy notice needs to be sent to a person who became a member after 1 December 2010, it may be easier from an administrative perspective to ignore the distinction and send the notice to all members)

Important A member can opt out of receiving electronic communications at any time. If a member has opted out, the trustees must continue to provide information to that member by post. If a person requests a hard copy of a particular document then the trustees should provide the document in that format.

Tip: Careful planning can reduce the costs of sending out the paper notifications required in order to go paperless – combine the notification process with other announcements already being sent out in paper format.

Note: Different rules apply where information is required to be made publicly available on a website as part of the requirement to publish charges and transaction costs in relation to defined contribution benefits or the requirement to publish a scheme’s statement of investment principles and implementation report.

How Do I Communicate by Website?

Trustees can use a website to supply information to members but only if they have met the requirements noted above for communicating by email. The further conditions for using a website are:

- Trustees must notify members that they intend to provide information via a website
- Then, the trustees have two options:

Process 1 – Notify all, all the time

This means notifying all members (by post or email) each time the website information is changed/new information is posted.

Process 2 – Notify all in advance then by email only when new information is added to the website.

Provided a three-stage process is completed, notification need only be provided by email and only to those who have provided email addresses. The three-stage process, in brief:

1. Ask all members by post for their email address and inform them of the right to opt out of electronic communications
2. Repeat step (1)
3. Repeat step (1) and notify members that future information and documents will be made available on the website and no further postal notifications will be provided

For further detail on these processes, see the table overleaf.

Which Process Should I Choose?

This depends on whether the trustees wish to provide information electronically on a regular basis or only in a limited number of circumstances. If, for example, the trustees wish to use a website for certain discrete communications, they could repeat process 1 for each new post/update. If, however, the trustees wish to use a website as the default communication method, completing the additional steps from process 2 is likely to reduce the number of notifications that will need to be sent out in the future.

What Are the Consequences of Failing to Comply?

Failure to comply with the requirements, without reasonable excuse, could result in a penalty from The Pensions Regulator, payable within 28 days, of up to £5,000 (in the case of an individual) or £50,000 (for a corporate trustee).

While trustees may delegate the task of sending out information to third parties (for example to a plan administrator), it is the trustees who remain ultimately responsible for ensuring compliance with the disclosure regulations.

Step	Email Only	Website – Process 1	Website – Process 2
Check the member has not made a written request to opt out of electronic communications.	✓	✓	✓
Check the member will be able to get access to, store and print the information.	✓	✓	✓
Check the requirements of disabled persons, including any specific needs, have been taken into account.	✓	✓	✓
Send a written notice by post to persons who were members/beneficiaries on 1 December 2010 and who have not received information by electronic means previously, stating: (a) the trustees propose to provide those members/beneficiaries with information electronically; and (b) that the member/beneficiary may request not to receive information electronically.	✓	✓	✓
The first time a website is used, notify members/beneficiaries (by post or email): <ul style="list-style-type: none"> • That the information is available on the website • Of the website address • Of the details of where and how the information can be read on the website 		✓	✓
Give each member/beneficiary two letters (by hand or post and not email) which: <ul style="list-style-type: none"> • Request the recipient's email address • State the recipient may request in writing not to be provided with information electronically 			✓
Give each recipient a third letter (by hand or post and not email) that includes the information in the first two letters, and also states that: <ul style="list-style-type: none"> • Further information and documents will be available on the website • No further paper notifications will be sent to the recipient 			✓
If the initial notification and all three letters detailed above have been sent, each time new information is posted on the website only the following must be sent: <ul style="list-style-type: none"> • Email notification to those recipients who have provided email addresses • Information by post to those members who have opted out of electronic communication 			✓
Each time new information is posted/updated on a website, check all recipients have been notified by email or post, stating that the information is available on the website.		✓	

Contact

Catherine McKenna

Partner, Leeds

T +44 113 284 7045

E catherine.mckenna@squirepb.com