STATUTORY RULES OF NORTHERN IRELAND

2015 No. 165

PENSIONS

The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations (Northern Ireland) 2015

Made - - - -	*18th March 2015*
Coming into operation	*6th April 2015*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 51(2), (3)(a), (4) and (8), 52, 86 and 89(6) of the Pension Schemes Act 2015 [M1].

Marginal Citations

M1 2015 c. 8; *see* the definitions of "appropriate independent advice" and "authorised independent adviser" in section 51(8)

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations (Northern Ireland) 2015 and shall come into operation on 6th April 2015.

(2) In these Regulations—

"the Act" means the Pension Schemes Act 2015;

"the 1993 Act" means the Pension Schemes (Northern Ireland) Act 1993 [M2];

"the 2000 Act" means the Financial Services and Markets Act 2000 [M3];

"active member" has the meaning given in section 78 of the Pensions (No. 2) Act (Northern Ireland) 2008 [M4];

"cash equivalent" means a cash equivalent mentioned in sections 89A [M5] (right to statement of entitlement – benefits others than money purchase) and 90 (right to cash equivalent) **[**[F1]or, as the case may be, a cash equivalent mentioned in sections 97F (power to give transfer notice) and 97H (benefits other than money purchase: statements of entitlement)**]** of the 1993 Act;

[[F2]"eligible member" has the meaning given by section 97P(1) of the 1993 Act (interpretation of Chapter II);**]**

"FCA" means the Financial Conduct Authority [M6];

"the guarantee date" has the meaning given in section 89A(4) of the 1993 Act;

"member" means a member of a pension scheme who has subsisting rights in respect of any safeguarded benefits;

[[F3]"pension credit rights" has the meaning given in section 97B of the 1993 Act;**]**

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [M7];

"relevant transaction" means a transfer payment, conversion of benefits or payment of a lump sum to which section 51(1) of the Act (independent advice in respect of conversions and transfers) applies **[**[F4], or would apply but for the exception in regulation 5(1)**]** ;

"statement of entitlement" means a statement of entitlement within the meaning of section 89A of the 1993 Act;

"survivor" means a member's survivor who has subsisting rights in respect of any safeguarded benefits;

"the Transfer Values Regulations" means the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 [M8];

"valuation date" means—

(a) where the member is exercising the member's right to take a cash equivalent under Chapter 1 of Part 4ZA [M9] of the 1993 Act (transfers and contribution refunds), the guarantee **[**[F5]date;**]**

(aa) **[**[F6]where an eligible member is, under section 97F of the 1993 Act, exercising the right to take an amount equal to the cash equivalent of the eligible member's pension credit rights, the date determined in accordance with section 97H(2) of that Act, or**]**

(b) in any other case, the date chosen by the trustees or managers which must be a date within the period of 2 months which begins on the first day of the one month period which ends on the date the decision by the trustees or managers referred to in regulation 9(2)(b) is made;

"writing" includes electronic communication and "electronic communication" has the meaning given in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001 [M10].

[[F7]"written statement of the amount of the cash equivalent" has the meaning given in section 97H(1) of the 1993 Act.**]**

Textual Amendments

F1 Words in reg. 1(2) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(a)**

F2 Words in reg. 1(2) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(b)**

F3 Words in reg. 1(2) inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2018 (S.R. 2018/46), regs. 1(1), 3 (with reg. 6). Regulation 3 of S.R. 2018/46 is revoked and re-enacted (4.10.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 3) Regulations (Northern Ireland) 2018 (S.R. 2018/170), regs. 1, 3. Reg. 3 of S.R. 2018/170 revoked and re-enacted (2.4.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/55), regs. 1, **3**. Reg. 3 of S.R. 2019/55 revoked and re-enacted (30.9.2019) by The Pension

Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019/184), regs. 1, **3**

F4 Words in reg. 1(2) inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/40), regs. 1, **3**

F5 Words in reg. 1(2) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(c)(i)**

F6 Words in reg. 1(2) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(c)(ii)**

F7 Words in reg. 1(2) added (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(d)**

Marginal Citations

M2 1993 c. 49

M3 2000 c. 8

M4 2008 c. 13 (N.I.)

M5 Sections 89A and 90 are substituted by paragraph 54 of Schedule 4 to the Pension Schemes Act 2015

M6 The Financial Conduct Authority can be contacted at 25 The North Colonnade, London E14 5HS and at
www.fca.org.uk

M7 S.I. 2001/544

M8 S.R. 1996 No. 619

M9 *See* paragraph 50 of Schedule 4 to the Pension Schemes Act 2015

M10 2001 c. 9 (N.I.); the definition of "electronic communication" in section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)

Transitional provisions relating to the coming into force of section 51 of the Act

2. Section 51 of the Act (independent advice in respect of conversions and transfers: Northern Ireland) does not apply to—

(a) a transfer payment as described in section 51(1) of the Act which is made on or after 6th April 2015 where—

(i) the payment is a result of a member exercising that member's right to a cash equivalent under section 90 of the 1993 Act (right to cash equivalent), and where the member's application for a statement of entitlement which gave rise to that right was made before 6th April **[**[F8]2015;**]**

[[F9](ia) an eligible member, before 6th April 2015 and in accordance with section 97F of the 1993 Act, required the trustees or managers to use an amount equal to the cash equivalent of the member's pension credit rights for an authorised purpose;

(ib) an eligible member made an application for a written statement of the amount of the cash equivalent before 6th April 2015, or**]**

(ii) before 6th April 2015—

(aa) the trustees or managers have confirmed in writing to the member that they agree in principle to carry out the transfer payment (subject to any relevant statutory requirements and the requirements of the scheme rules being met), or

(bb) the trustees or managers have made an offer in writing to the member of a transfer payment;

(b) a conversion of benefits as described in section 51(1) of the Act which takes place on or after 6th April 2015, where the trustees or managers have provided written confirmation to the member before 6th April 2015 that they will convert the benefits.

Textual Amendments

F8 Word in reg. 2(a)(i) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(3)(a)**

F9 Reg. 2(a)(ia)(ib) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(3)(b)**

Appropriate independent advice – further requirements

3. For the purposes of the definition of "appropriate independent advice" in section 51(8) of the Act (independent advice in respect of conversions and transfers), the advice must be specific to the type of relevant transaction proposed by the member or survivor.

Meaning of authorised independent adviser

4. For the purposes of the definition of "authorised independent adviser" in section 51(8) of the Act (independent advice in respect of conversions and transfers), the specified regulated activity is the activity described in article 53E [M11] of the Regulated Activities Order (advising on conversion or transfer of pension benefits).

Marginal Citations

M11 Article 53E is inserted by article 2(2) of S.I. 2015/731

[[F10]Exception to section 51(1) of the Act

5.—(1) The trustees or managers are not required to carry out the check in section 51(1) of the Act (independent advice in respect of conversions and transfers) if the transfer value of the member's or survivor's subsisting rights in respect of safeguarded benefits under the pension scheme is £30,000 or less on the valuation date.

(2) In this regulation "transfer value" means—

(a) where the rights referred to in paragraph (1) are transferrable rights as defined in section 89(11) of the 1993 Act (scope of Chapter 1), the amount of the cash equivalent of those rights calculated in accordance with section 93 of that Act (calculation of cash equivalents) and regulations made under it;

(b) where the rights referred to in paragraph (1) are pension credit rights, the amount of the cash equivalent of those rights calculated in accordance with regulations made under section 97I of the 1993 Act (calculation of cash equivalents);

(c) in any other case, the amount which would be the cash equivalent of the rights referred to in paragraph (1), calculated in accordance with section 93 of the 1993 Act and regulations made under it, as if—

(i) Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general) applied to the member or survivor by virtue of those rights;

(ii) references to a member in that Chapter and regulations made under it included a survivor of a member, and

(iii) in the case of an active member, the member had ceased to accrue rights to benefits on the valuation date,

but, in each case, disregarding regulations 7D and 7E of the Transfer Values Regulations (reductions to initial cash equivalents and alternative manner of calculating and verifying cash equivalents).**]**

Textual Amendments

F10 Reg. 5 substituted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2018 (S.R. 2018/46), regs. 1(1), 4 (with reg. 6). Regulation 4 of S.R 2018/46 is revoked and re-enacted (4.10.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 3) Regulations (Northern Ireland) 2018 (S.R. 2018/170), regs. 1, 4. Reg. 4 of S.R. 2018/170 revoked and re-enacted (2.4.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/55), regs. 1, **4**. Reg. 4 of S.R. 2019/55 revoked and re-enacted (30.9.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019/184), regs. 1, **4**

Information to be provided to the member or survivor

6. The information to be provided to the member or survivor in accordance with regulations 8, 9 and 10(2) is a written explanation that—

(a) unless the exception in regulation 5(1) applies, the trustees or managers are required to check that appropriate independent advice has been received by the member or survivor, before the trustees or managers are able to carry out a relevant transaction;

(b) confirmation that appropriate independent advice has been received by the member or survivor should be in the form set out in regulation 7, and be provided to the trustees or managers before the end of a period of 3 months beginning with—

(i) the day on which a statement of entitlement is **[**[F11]provided;**]**

[[F12](ia) in the case of a pension credit member, the day on which a written statement of the amount of the cash equivalent is provided, or**]**

(ii) where a statement of entitlement is not provided, the day—

(aa) on which the trustees or managers provide written confirmation that they agree in principle to carry out the relevant transaction requested, or, if later,

(bb) on which the trustees or managers provide the member or survivor with a valuation of the member's or survivor's, as the case may be, safeguarded benefits for the purposes of the relevant transaction requested, and

(c) unless the member or survivor confirms otherwise, the trustees or managers will assume that the purpose of any transfer of the member's or survivor's subsisting rights in respect of safeguarded benefits under the scheme is to provide flexible benefits under another pension scheme.

Textual Amendments

F11 Words in reg. 6(b)(i) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(4)(a)**

F12 Reg. 6(b)(ia) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(4)(b)**

Form of confirmation of appropriate independent advice

7. Confirmation from the member or survivor that appropriate independent advice has been received must be in the form of a statement in writing from the authorised independent adviser providing the advice confirming—

(a) that advice has been provided which is specific to the type of transaction proposed by the member or survivor;

(b) that the adviser has permission under Part 4A [M12] of the 2000 Act (permission to carry on regulated activities), or resulting from any other provision of that Act, to carry on the regulated activity in article 53E of the Regulated Activities Order (advising on conversion or transfer of pension benefits);

(c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the FCA to carry on the regulated activity in article 53E of the Regulated Activities Order, and

(d) the member's or survivor's name, and the name of the scheme in which the member or survivor has subsisting rights in respect of safeguarded benefits to which the advice given applies.

Marginal Citations

M12 Part 4A was substituted for sections 40 to 55 by section 11(2) of the Financial Services Act 2012 (c. 21)

Information to be provided on initial enquiry

8.—(1) Subject to paragraph (4), the trustees or managers must provide any member or survivor with the information specified in regulation 6, if the circumstances set out in paragraph (2) apply.

(2) The circumstances referred to in paragraph (1) are where the member or survivor—

(a) makes a written request for information from the trustees or managers as to how to carry out a relevant transaction;

(b) makes a written request for information from the trustees or managers as to how to make an application for a statement of entitlement **[**[F13]or a written statement of the amount of the cash equivalent**]** ;

(c) makes an application for a statement of **[**[F14]entitlement or a written statement of the amount of the cash equivalent;**]**

[[F15](ca) by notice in writing, in accordance with section 97F(1) of the 1993 Act, requires the trustees or managers of the scheme to use an amount equal to the cash equivalent of the member's pension credit rights for an authorised purpose, or**]**

(d) otherwise makes a written request for a valuation of the member's subsisting rights to safeguarded benefits under the scheme.

(3) The information specified in regulation 6 must be provided within one month beginning with the date on which the request or application was made by the member or survivor.

(4) Paragraph (1) does not apply—

[[F16](a) if the circumstances in paragraph (2)(c) or (ca) apply, where the information has already been provided to the member or survivor because the circumstances in, as the case may be, paragraph (2)(a) or (b) previously applied;**]**

(b) where the information specified in regulation 6 is to be provided to the member or survivor in accordance with regulation 9(1)(b)(i) within a period of one month beginning with the date of the request or application described in paragraph (2) of this regulation, or

(c) where the trustees or managers meet the condition in paragraph (6).

(5) If the trustees or managers meet the condition in paragraph (6), the information in paragraph (7) must be provided in writing to the member or survivor within one month beginning with the date on which the request or application was made.

(6) The condition referred to in paragraphs (4)(c) and (5) is that the trustees or managers can satisfy themselves that, **[**[F17]if the transfer value (as defined in regulation 5(2)) of the member's or survivor's subsisting rights to safeguarded benefits under the scheme were to be calculated within**]** one month beginning with the date of the member's request or application, the exception in regulation 5(1) would apply.

(7) The information referred to in paragraph (5) is a written statement that there will be no requirement for the trustees or managers to check that appropriate independent advice has been received before they are able to carry out the relevant transaction.

Textual Amendments

F13 Words in reg. 8(2)(b) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(5)(a)(i)**

F14 Words in reg. 8(2)(c) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(5)(a)(ii)**

F15 Reg. 8(2)(ca) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(5)(a)(iii)**

F16 Reg. 8(4)(a) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(5)(b)**

F17 Words in reg. 8(6) substituted (4.10.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 3) Regulations (Northern Ireland) 2018 (S.R. 2018/170), regs. 1, 5. Reg. 5 of S.R. 2018/170 revoked and re-enacted (2.4.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/55), regs. 1, **5**. Reg. 5 of S.R. 2019/55 revoked and re-enacted (30.9.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019/184), regs. 1, **5**

[[F18]Requirement to provide risk warnings in relation to safeguarded-flexible benefits

8A.—(1) In this regulation and regulation 8C—

"risk warning" means a written communication which satisfies the requirements specified in regulation 8C(2) to (5);

"safeguarded-flexible benefits" means benefits within paragraph (c) of the definition of "flexible benefit" in section 74 of the Act;

"subsisting right" and "survivor" have the meanings given in section 76(1) of the Act (interpretation of Part 4).

(2) Subject to paragraph (4), the trustees or managers of a pension scheme must provide a risk warning to a member of the scheme or a survivor of a member in accordance with this regulation if the member or survivor has subsisting rights in respect of safeguarded-flexible benefits under the scheme and—

(a) the member or survivor makes an application or written request, or gives a notice in writing, referred to in regulation 8(2), or

(b) the trustees or managers—

(i) provide a statement of entitlement or a written statement of the amount of the cash equivalent to the member or survivor, or

(ii) communicate their intention or agreement in principle to carry out a relevant transaction requested by the member or survivor, or make an offer of a relevant transaction,

in respect of those safeguarded-flexible benefits.

(3) The trustees or managers must provide any risk warning required by paragraph (2)—

(a) where the member or survivor has made an application or written request or given a notice in writing within paragraph (2)(a), before the expiry of one month beginning with the date of that application, request or notice;

(b) where the trustees or managers provide a statement to the member or survivor within paragraph (2)(b)(i), on or before the day on which that statement is provided;

(c) where the trustees or managers communicate their intention or agreement or make an offer within paragraph (2)(b)(ii), on or before the day on which they provide written confirmation of that intention, agreement or offer to the member or survivor,

and in any event no later than two weeks before the date on which the trustees or managers carry out the relevant transaction in relation to the member's or survivor's safeguarded-flexible benefits.

(4) Paragraph (2) does not require the trustees or managers to provide a risk warning (the "current risk warning") to a member or survivor if the trustees or managers—

(a) have previously provided a risk warning to that member or survivor in relation to safeguarded-flexible benefits in accordance with this regulation, and

(b) would, in the absence of this paragraph, be required to provide the current risk warning in relation to the same safeguarded-flexible benefits before the expiry of 12 months beginning with the date on which the previous risk warning was provided.

(5) Where a trustee or manager of a pension scheme fails without reasonable excuse to comply with any requirement imposed by this regulation, the Pensions Regulator may, by notice in writing, require that trustee or manager to pay, within 28 days, a penalty that must not—

(a) in the case of an individual, exceed £5,000, and

(b) in any other case, exceed £50,000.

Textual Amendments

F18 Regs. 8A-8C inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/40), regs. 1, **4**

Meaning of "relevant guarantee"

8B.—(1) In regulation 8C "relevant guarantee", in relation to a member's or survivor's subsisting rights in respect of safeguarded-flexible benefits, means a promise or guarantee in relation to the amount of a pension which may accrue to the member or survivor, or be capable of being secured by the member or survivor, in respect of those benefits.

(2) The definition in paragraph (1) includes, in particular—

(a) a promise or guarantee that the pension will not be less than a particular amount (a "guaranteed amount");

(b) a promise or guarantee that the pension will not be less than a particular proportion of the amount available for the provision of benefits to the member or survivor (a "guaranteed conversion rate").

(3) A promise or guarantee is not excluded from the definition in paragraph (1) merely because—

(a) the member's or survivor's opportunity to take or secure a pension—

(i) of the guaranteed amount, or

(ii) calculated by reference to the guaranteed conversion rate,

(to "take up" the relevant guarantee) is subject to conditions or restrictions, or

(b) the member or survivor has an option to take or secure a pension without taking up the relevant guarantee, or to take the safeguarded-flexible benefits in another form.

(4) The definition in paragraph (1) does not include a promise or guarantee which only relates to the amount available for the provision of benefits to the member or survivor (unless it is a promise or guarantee referred to in paragraph (2)(b)).

(5) In this regulation "safeguarded-flexible benefits", "subsisting right" and "survivor" have the meanings given in regulation 8A(1).

Textual Amendments

F18 Regs. 8A-8C inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/40), regs. 1, **4**

Content of risk warnings in relation to safeguarded-flexible benefits

8C.—(1) In this regulation—

"the Disclosure Regulations" means the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014;

"pension illustration", in relation to a member's or survivor's subsisting rights to benefits under a pension scheme, means an estimate of the amount of a pension which may accrue to the member or survivor, or be capable of being secured by the member or survivor, in respect of those benefits;

"relevant guarantee" has the meaning given in regulation 8B;

"retirement date" has the same meaning as in regulation 19(5) of the Disclosure Regulations (first information on accessing benefits);

"statutory money purchase illustration" means a pension illustration provided in accordance with regulation 17 of, and Part 2 of Schedule 6 to, the Disclosure Regulations (pension illustration).

(2) A risk warning required by regulation 8A in relation to a member's or survivor's safeguarded-flexible benefits must include—

(a) a prominent statement that the member's or survivor's benefits under the scheme include a potentially valuable guarantee (or, where relevant, more than one such guarantee) which will be lost if the member or survivor proceeds with the proposed relevant transaction;

(b) where the proposed relevant transaction will proceed to completion without further action by the member or survivor, a warning that the member or survivor must inform the trustees or managers if the member or survivor does not wish the transaction to proceed;

(c) for each relevant guarantee in relation to those benefits, a clear and intelligible explanation of—

(i) its key features;

(ii) the circumstances in which the member or survivor will have an opportunity to take up the relevant guarantee;

(iii) any circumstances in which the member or survivor will lose the opportunity to take up the relevant guarantee under the scheme (whether in relation to all of the member's or survivor's subsisting rights in respect of safeguarded-flexible benefits, or part only), and

(iv) any other material restrictions or conditions to which the member's or survivor's opportunity to take up the relevant guarantee is subject under the scheme;

(d) two pension illustrations ("the first illustration" and "the second illustration") in relation to those benefits, calculated in accordance with paragraphs (3) and (5), respectively;

(e) a statement that, depending on the member's or survivor's age, pensions guidance (as defined in regulation 2(1) of the Disclosure Regulations) may be available to help the member or survivor to understand the options in relation to what the member or survivor can do with the member's or survivor's safeguarded-flexible benefits, and

(f) the information listed in paragraphs 2 to 4 of Schedule 9A to the Disclosure Regulations (information on the pensions guidance).

(3) The first illustration in relation to the member's or survivor's safeguarded-flexible benefits must be calculated using the following assumptions—

(a) the date on which the pension commences payment ("the pension commencement date") will be the date closest to the member's or survivor's retirement date which satisfies both of the following conditions—

(i) the member or survivor has an opportunity to take up any relevant guarantee on the date, and

(ii) the date is after the risk warning is provided;

(b) the member or survivor will take up any relevant guarantee in relation to the pension, and

(c) the amount available for the provision of the safeguarded-flexible benefits to the member or survivor will be an amount determined—

(i) having regard to the value of the member's or survivor's subsisting rights in respect of those benefits on—

(aa) where there is a valuation date, that date, or

(bb) otherwise, a date chosen by the trustees or managers, which must be within one month of the date on which the risk warning is provided, and

(ii) using the same assumptions that would be used if the first illustration were a statutory money purchase illustration, except to the extent that paragraph (4) permits the use of different assumptions.

(4) The assumptions used may differ from those specified in paragraph (3)(c)(ii) to the extent that—

(a) where it requires an annual rate of return of greater than 5 per cent. to be assumed, a rate of 5 per cent. may be assumed instead, and

(b) where it requires an annual rate of increase in earnings of less than 4 per cent. to be assumed, a rate of 4 per cent. may be assumed instead.

(5) The second illustration in relation to the member's or survivor's safeguarded-flexible benefits must be calculated using the following assumptions—

(a) the pension commencement date and the amount available for the provision of those benefits to the member or survivor will be the same as those assumed for the first illustration, and

(b) the amount referred to in sub-paragraph (a) will be converted into a pension at a rate determined using assumptions which are—

(i) so far as possible, consistent with those used for the first illustration in respect of—

(aa) any lump sum payable in connection with the commencement of the pension;

(bb) any entitlement to increases in payment in relation to the pension, and the rate of any such increases;

(cc) the potential for payment of any benefits in respect of the pension on the death of the member or survivor after the pension commencement date, and the amount of any such benefits, and

(dd) the payment frequency of the pension, and

(ii) otherwise, the same as those that would be used if the second illustration were a statutory money purchase illustration.**]**

Textual Amendments

F18 Regs. 8A-8C inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/40), regs. 1, **4**

Determination of whether exception applies and check that advice received

9.—(1) Subject to paragraph (5), the trustees or managers must, if the circumstances set out in paragraph (2) apply—

(a) determine whether the exception in regulation 5(1) applies, and

(b) provide the member or survivor with—

(i) if the exception does not apply, the information specified in regulation 6 and paragraph (3), or

(ii) if the exception does apply, written confirmation that the trustees or managers do not need to check that appropriate independent advice has been received before they are able to carry out the relevant transaction.

(2) The circumstances referred to in paragraph (1) are where the trustees or managers—

(a) are required to provide the member with a statement of **[**[F19]entitlement or a written statement of the amount of the cash equivalent;**]**

[[F20](aa) have received a notice in writing, in accordance with section 97F of the 1993 Act, requiring an amount equal to the cash equivalent of an eligible member's pension credit rights to be used for an authorised purpose, or**]**

(b) where there is no requirement to provide a statement of entitlement **[**[F21]or a written statement of the amount of the cash equivalent**]** , have agreed in principle to carry out

the relevant transaction the member or survivor has requested (subject to any relevant statutory requirements and the requirements of the scheme rules being met), or have made an offer of a relevant transaction.

(3) When providing the information specified in regulation 6, the trustees or managers must inform the member or survivor of the date by which confirmation that appropriate independent advice has been received must be provided, which is the last day of the 3 month period beginning with the date on which the information is provided to the member.

(4) The trustees or managers must provide the information required under paragraph (1)(b)—

(a) on the day that the trustees or managers provide the statement of entitlement **[**[F22]or a written statement of the amount of the cash equivalent**]** to the member, or

(b) on the day that the trustees or managers provide written confirmation to the member or survivor of the trustees' or managers' agreement described in paragraph (2)(b), or, if later, on the day on which the trustees or managers provide the member or survivor with a valuation of the member's or survivor's, as the case may be, safeguarded benefits for the purposes of the relevant transaction requested.

(5) Paragraph (1) does not apply where the trustees or managers have already received confirmation in the required form that appropriate independent advice has been received.

Textual Amendments

F19 Words in reg. 9(2)(a) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(6)(a)(i)**

F20 Reg. 9(2)(aa) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(6)(a)(ii)**

F21 Words in reg. 9(2)(b) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(6)(a)(iii)**

F22 Words in reg. 9(4)(a) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(6)(b)**

Information to be provided where the value of cash equivalent is increased or reduced

10.—[[F23](1) Where the cash equivalent has been increased or reduced in accordance with—

(a) regulation 9(5) of the Transfer Values Regulations (increases and reductions of cash equivalents) after the statement of entitlement has been provided, or

(b) regulation 28 of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000 (increases and reductions of cash equivalents once the written statement has been sent to the eligible member),

the trustees or managers must provide further information to the member in accordance with this regulation, on the day on which written confirmation that the cash equivalent has been increased or reduced as the case may be is provided to the member.**]**

(2) Where the value of the cash equivalent is increased such that the exception in regulation 5(1) no longer applies, the trustees or managers must—

(a) inform the member that the exception in regulation 5(1) no longer applies;

(b) provide the information specified in regulation 6, or

(c) inform the member of the date for provision by the member or survivor of confirmation that appropriate independent advice has been received, which is the last day of the 3 month period beginning with the date on which the information under this paragraph is provided.

(3) Where the value of the cash equivalent is reduced such that the exception in regulation 5(1) now applies, the trustees or managers must inform the member or survivor that there is now no requirement for the trustees or managers to check that appropriate independent advice has been received before they are able to carry out a relevant transaction.

(4) Where the value of the cash equivalent is changed after the member has received appropriate independent advice, but the value remains over £30,000, the trustees or managers must inform the member that it is not necessary to obtain further appropriate independent advice as a result of the change in the value of the cash equivalent.

Textual Amendments

F23 Reg. 10(1) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(7)**

Requirement to check that the authorised independent adviser has permission to carry on regulated activity

11. When the trustees or managers have received the confirmation that appropriate independent advice has been received, they must check that the person providing that advice has permission to carry on the regulated activity under article 53E of the Regulated Activities Order (advising on conversion or transfer of pension benefits) by checking the Financial Services Register maintained by the FCA in accordance with section 347 [M13] of the 2000 Act (the record of authorised persons etc.).

Marginal Citations

M13 Section 347 was amended by paragraph 16 of Schedule 12 to the Financial Services Act 2012, section 34 of, and paragraph 11 of Schedule 3 to, the Financial Services (Banking Reform) Act 2013 (c. 33), **paragraph 12** of Schedule 5 to S.I. 2007/126 and regulation 3(16) of S.I. 2013/1388

Circumstances in which an employer is required to arrange or pay for advice

12.—(1) Where an employer has sent a communication of a description set out in paragraph (2) to a member or survivor, that employer must, for the purposes of satisfying the requirement in section 51(1) of the Act (independent advice in respect of conversions and transfers)—

(a) arrange for appropriate independent advice to be provided to the member or survivor, and pay for the provision of the advice so arranged, or

(b) pay for appropriate independent advice provided to the member or survivor, where the member or survivor has arranged for the advice to be provided (but see paragraph (3)).

(2) The communication referred to in paragraph (1) is any communication in writing which—

(a) is sent by, or on behalf of, the employer to 2 or more members or survivors, and

(b) sets out options available to the member or survivor in terms that encourage, persuade or induce the member or survivor to request that the trustees or managers carry out a relevant transaction.

(3) Where an employer chooses to arrange and pay for appropriate independent advice to be provided in accordance with paragraph (1)(a), that employer is not required to pay for any appropriate independent advice provided to the member or survivor where the member or survivor arranged for the advice to be provided.

(4) An employer who has sent a communication of a description set out in paragraph (2) can agree for one or more other employers to arrange or pay for appropriate independent advice for the members or survivors in question, on behalf of that employer.

(5) An employer must not seek in any way to recover, from a member or survivor, costs incurred in complying with this regulation.

(6) "Employer" means any person who—

(a) is, or was, for the purposes of the scheme rules an employer in relation to the scheme in question, and is currently, or has previously been, bound to comply with the scheme rules;

(b) employs, or has previously employed, any persons who are members of the scheme in question;

(c) has taken over a company, business or part of a business that employs, or has previously employed, any members of the scheme, or

(d) is a parent undertaking or a subsidiary undertaking (as defined in section 1162 of the Companies Act 2006 [M14]) of any person described in sub-paragraphs (a) to (c), excluding any subsidiary undertaking which is also a trustee of the scheme in question.

(7) Article 10 of the Pensions (Northern Ireland) Order 1995 [M15] (civil penalties) applies to any employer who fails to comply with the requirements in this regulation.

Marginal Citations

M14 2006 c. 46

M15 S.I. 1995/3213 (N.I. 22); Article 10 was amended by paragraph 9 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11) and Schedule 11 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1))

Sealed with the Official Seal of the Department for Social Development on 18th March 2015

L.S.

Anne McCleary
A senior officer of the
Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the requirement in section 51 of the Pension Schemes Act 2015 ("the Act"), that trustees or managers of a pension scheme check that appropriate independent advice has been received by a member or survivor before the trustees or managers can carry out the transactions specified in that section. They also make provision under section 52 of the Act, specifying circumstances in which an employer must pay for the provision of appropriate independent advice to a member or survivor when this is required by section 51.

Regulation 2 contains transitional provisions related to the coming into force of section 51 of the Act.

Regulations 3 and 4 further define "appropriate independent advice" and "authorised independent adviser".

Regulation 5 provides for an exception to the requirement in section 51(1) of the Act, where the value of the member's or survivor's safeguarded benefits under the scheme are worth £30,000 or less.

Regulation 6 sets out the information to be provided to the member or survivor in the circumstances and according to the requirements set out in regulations 8, 9 and 10.

Regulation 7 sets out the required form of confirmation that appropriate independent advice has been received.

Regulations 8, 9 and 10 set out circumstances in which the information in regulation 6 must be provided, and what else trustees and managers must do to check that appropriate independent advice has been received by the member or survivor.

Regulation 11 requires the trustees or managers to check the Financial Conduct Authority maintained Financial Services Register to ensure the person providing the advice is an authorised independent adviser.

Regulation 12 requires that where an employer sends a communication to 2 or more members or survivors which encourages, persuades or induces them to carry out a transaction to which section 51 of the Act relates, that employer must arrange or pay for the member to receive appropriate independent advice.

An assessment of the impact of the policy reflected in sections 51 and 52 of the Act on business and civil society organisations was published in November 2014 and can be found at http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London DW1H 9NA.

Changes to legislation:
There are currently no known outstanding effects for the The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations (Northern Ireland) 2015.