

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(a).

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(b);

“the 2000 Act” means the Financial Services and Markets Act 2000(c);

“active member” has the meaning given in section 78 of the Pensions (No. 2) Act (Northern Ireland) 2008(d);

“cash equivalent” means a cash equivalent mentioned in sections 89A(e) (right to statement of entitlement – benefits others than money purchase) and 90 (right to cash equivalent) of the 1993 Act;

“FCA” means the Financial Conduct Authority(f);

“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;

“the Regulated Activities Order” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(g);

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

(b) 1993 c. 49

(c) 2000 c. 8

(d) 2008 c. 13 (N.I.)

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

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

(g) S.I. 2001/544

“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;

“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(a);

“valuation date” means—

- (a) where the member is exercising the member’s right to take a cash equivalent under Chapter 1 of Part 4ZA(b) of the 1993 Act (transfers and contribution refunds), the guarantee date, 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(c).

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 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.

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.

(a) S.R. 1996 No. 619

(b) See paragraph 50 of Schedule 4 to the Pension Schemes Act 2015

(c) 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)

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(a) of the Regulated Activities Order (advising on conversion or transfer of pension benefits).

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 total 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) The total value of the member’s or survivor’s subsisting rights in respect of safeguarded benefits is to be calculated—

- (a) using the method for calculation of a cash equivalent of a member contained within regulations 7 to 7C and 7E(b) of the Transfer Values Regulations (manner of calculation of cash equivalents, initial cash equivalents etc) but disregarding any references to regulation 7D(c) of, and Schedule 1A(d) to, those Regulations (reductions to initial cash equivalents), and
- (b) where the member is an active member, by making the assumption that the member ceased to accrue rights to benefits on the valuation date.

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 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.

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

(b) Regulations 7 to 7E were substituted for regulations 7 and 8 by regulation 4 of S.R. 2008 No. 370. Regulations 7B and 7C were amended by regulation 3(2) and (3) of S.R. 2008 No. 388. Regulations 7 to 7C were amended by regulation 31(3) to (6) of S.R. 2014 No. 204. Regulations 7C and 7D are amended by regulation 4(5) and (6) of S.R. 2015 No. 164

(c) Regulation 7D was amended by regulation 31(7) of S.R. 2014 No. 204

(d) Schedule 1A was inserted by regulation 8 of S.R. 2008 No. 370 and amended by Article 14(3) of S.R. 2012 No. 124 and is amended by regulation 9 of S.R. 2015 No. 164

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(a) 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.

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;
- (c) makes an application for a statement of entitlement, 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—

- (a) if the circumstances in paragraph (2)(c) apply, where the information has already been provided to the member or survivor because the circumstances in paragraph (2)(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, if the value of the member's or survivor's subsisting rights to safeguarded benefits under the scheme were to be calculated in accordance with regulation 5(2) within one month beginning with the date of the member's request or application, the exception in regulation 5(1) would apply.

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

(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.

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 entitlement, or
- (b) where there is no requirement to provide a statement of entitlement, 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 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.

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

10.—(1) Where the cash equivalent has been increased or reduced in accordance with regulation 9(5)(a) of the Transfer Values Regulations (increases and reductions of cash equivalents shown in the statement of entitlement) after the statement of entitlement has been provided, 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

(a) Regulation 9 was amended by regulation 15(7) and (8) of S.R. 2005 No. 171 and is amended by regulation 4(8) of S.R. 2015 No. 164

- (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.

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(a) of the 2000 Act (the record of authorised persons etc.).

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.

(a) 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

(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^(a)) 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^(b) (civil penalties) applies to any employer who fails to comply with the requirements in this regulation.

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

^(a) 2006 c. 46

^(b) 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))

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.

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