

EXPLANATORY MEMORANDUM TO

THE PENSION PROTECTION FUND AND OCCUPATIONAL AND PERSONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2016

S.R. 2016 No. 165

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Social Development to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under sections 109(1) and (3) and 177(2) and (4) of the Pension Schemes (Northern Ireland) Act 1993, Articles 74(2) and (3)(e), 89(5)(c)(iii) and 166(3) of the Pensions (Northern Ireland) Order 1995, Articles 106(5), 113(1)(b), (1A)(b) and (3), 114(5)(b), 119(4), 122(9B), 154(2) and 287(2) and (3) of, and paragraphs 24(1) and (2), 25(1) and 33 of Schedule 6 to, the Pensions (Northern Ireland) Order 2005 and section 83 of the Pension Schemes Act 2015 and is subject to the negative resolution procedure.

2. Purpose

- 2.1 These Regulations amend a number of sets of existing Regulations in consequence of provisions in the Pension Schemes Act 2015 which extend to Northern Ireland. The Regulations ensure that the tax change flexibilities introduced by the Taxation of Pensions Act 2014 are reflected in pensions law and that the two bodies of law remain compatible and that appropriate safeguards are in place. They also make minor and technical amendments.

3. Background

- 3.1 The Taxation of Pensions Act 2014, which gives savers greater flexibility in how they access their money purchase pension pots from 6th April 2015, amended the Finance Act 2004 to enable individuals with certain types of benefits to have more flexibility of access to those benefits (known as the pension flexibilities). In particular, it introduced new types of authorised payments by registered pension schemes.
- 3.2 The Pension Schemes Act 2015 includes provision to support the pension flexibilities and created a new term “flexible benefits” which covers the types of benefits to which the pension flexibilities apply. It also established a pension guidance service (known as Pension Wise) to help members of pension schemes, and survivors of members of pension schemes, to make decisions about what to do with their flexible benefits. A series of Statutory Rules were made to reflect the changes from 6th April 2015.
- 3.3 The Regulations make further amendments to a number of sets of existing Regulations primarily in relation to the Pension Protection Fund and the winding up of occupational pension schemes to reflect the pension flexibilities. For example, they –

- allow relevant non-money purchase benefits under an occupational pension scheme to be discharged using one of the new types of authorised payment (an “uncrystallised funds pension lump sum”) when the scheme is winding up, if the member consents;
 - allow a pension under an occupational pension scheme to be commuted for a lump sum in accordance with tax legislation where the member is no longer employed by the scheme’s sponsoring employer but has not yet retired;
 - relax restrictions on the age at which a person can opt to commute the whole of their entitlement to Pension Protection Fund periodic compensation (pension) for a lump sum, where the total combined value of their pension savings and periodic compensation is less than £30,000, and provides that the earliest age at which a person can opt to receive compensation is “normal minimum pension age” as defined in tax legislation;
 - amend the conditions which an employer must satisfy, if it cannot have a qualifying insolvency event, in order for its pension scheme to be able to transfer into the Pension Protection Fund;
 - remove provisions about the payment of money purchase benefits by the Pension Protection Fund as a trivial commutation (small pension) lump sum, to reflect changes made by the Taxation of Pensions Act 2014 which prevent the payment of such lump sums in respect of money purchase benefits;
 - require the Pension Protection Fund to provide information to individuals with money purchase benefits about the availability of guidance from Pension Wise;
 - make other minor consequential amendments and revocations.
- 3.4 The changes introduced from 6th April 2015 included amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 to ensure trustees and managers of schemes provide information to support scheme members to make decisions about what to do with their flexible benefits and to inform them of the availability of the pension guidance service.
- 3.5 Trustees or managers of an occupational pension scheme are required to give to certain members –
- a standard statement informing the individual about the nature, availability and contact details of the guidance service, and
 - more detailed information about the member’s benefits (including an estimate of the value of those benefits available to transfer) and the member’s opportunity to transfer their flexible benefits.
- 3.6 These Regulations further amend the Disclosure Regulations. They require trustees to give a member –

- a “retirement risk warning” when trustees become aware that a member, who has previously been given specified information in accordance with the regulations, is considering or has decided to transfer accrued rights to flexible benefits, purchase an annuity, receive a lump sum payment or designate sums for the payment of drawdown pension;
 - a statement of the options available under the scheme as well as a statement that highlights the importance of reading the retirement risk warnings and accessing pensions guidance or independent advice.
- 3.7 The Regulations provide a definition of the term “retirement risk warning”. The intention is that each risk warning should include those attributes, characteristics, external factors or other variables which have the potential to adversely affect the retirement income of the member etc.
- 3.8 In addition, other technical amendments ensure that the requirement to provide information about flexible benefits does not apply in relation to members of unfunded public service defined benefits schemes where flexible benefits are not available to the member.

4. Consultation

- 4.1 There is no requirement to consult on these Regulations as they make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain.

5. Equality Impact

- 5.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals. As the Regulations are in consequence of provisions in the Pension Schemes Act 2015 which support the pension flexibilities introduced by the Taxation of Pensions Act 2014 and are technical in nature, they would have little implication for any of the section 75 categories. In light of this, the Department has concluded that the Regulations would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

6. Regulatory Impact

- 6.1 A Regulatory Impact Assessment in respect of Regulation 9 only of these Regulations is attached as an Annex to this Explanatory Memorandum. The Regulations otherwise do not impose a cost on business, charities or voluntary bodies.

7. Financial Implications

- 7.1 None for the Department.

8. Section 24 of the Northern Ireland Act 1998

- 8.1 The Department has considered section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations –

- (a) are not incompatible with any of the Convention rights,
- (b) are not incompatible with Community law,
- (c) do not discriminate against a person or class of person on the ground of religious belief or political opinion, and
- (d) do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1 Not applicable.

10. Parity or Replicatory Measure

10.1 The corresponding Great Britain Regulations are the Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 2016 (S.I. 2016/294) which come into force on 6th April 2016. Parity of timing and substance is an integral part of the maintenance of single systems of social security, child support and pensions provided for in section 87 of the Northern Ireland Act 1998.

REGULATORY IMPACT ASSESSMENT

THE PENSION PROTECTION FUND AND OCCUPATIONAL AND PERSONAL PENSION SCHEMES (MISCELLANEOUS AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2016

RETIREMENT RISK WARNINGS AND THE ADVICE REQUIREMENT

The costs and savings outlined in this Regulatory Impact Assessment are calculated on a United Kingdom-wide basis.

Introduction

1. This impact assessment considers the impact of changes to the requirements relating to the disclosure of information that will affect trust-based occupational pension schemes. It assesses the impact of Regulation 9 of the Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 which amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014.

Background

2. From 6 April 2015 people aged 55 and over with defined contribution pensions have increased flexibility over how they take their pension. Prior to accessing their pension using the new options, it is important that individuals understand and have the opportunity to consider any risks and implications of their decision. This is particularly relevant where members are not generally engaged with retirement decision making and do not take regulated advice or the offer of guidance from the Government's free guidance service, Pension Wise.
3. Despite existing statutory requirements on all pension schemes to signpost members to Pension Wise, there are concerns that members of occupational pension schemes may not take up the free guidance or not be well equipped to select the best retirement option that is suited to them. For contract based pension schemes, the Financial Conduct Authority (FCA) rules require providers to provide personalised risk warnings to clients accessing their pensions to give them greater protection from making potentially bad decisions when purchasing new products. These rules however do not apply to occupational pension schemes. Instead good practice is available in the "essential guide" from the Pensions Regulator (TPR) and is aimed at trustees and scheme managers who may choose to use it to offer generic (rather than personalised) risk warnings to their scheme members.

Problem under consideration

4. To support the increased pension flexibilities new requirements were introduced from April 2015 so that trustees or managers must signpost members to Pension Wise and also give other key information to help members with their guidance conversation. For contract based schemes these requirements are part of the FCA's Conduct of Business Sourcebook (COBS) rules whereas occupational pension schemes must follow the Disclosure Regulations¹.
5. To strengthen member protection the FCA introduced new COBS rules from April 2015. These apply to contract based schemes only and requires them to give personalised risk warnings to clients² accessing their pension. Schemes must ask the client relevant questions, based on how they want to access their pension savings, to determine whether risk factors are present. If there are, a risk warning must be given which may include setting out the options available to the client.
6. The FCA rules do not apply to occupational pension schemes. However, to ensure that members of occupational pension schemes did receive some further level of protection, TPR developed guidance on generic risk warnings which are included in the TPR's essential guide for trustees and managers on how to communicate about pension flexibilities³. This guidance however is good practice only with no statutory backing, so schemes can choose to ignore it. This means some members of trust-based schemes may not have the information they need to understand the risks associated with the retirement options they are choosing between. This missing information, combined with a lack of forward thinking, means there is a risk that individuals may make inappropriate decisions for their circumstance.

Rationale for intervention

7. In order to provide members of occupational pension schemes with sufficient protection to enable them to consider the risks involved with the new pension flexibilities, it is considered that legislative intervention is required. This will also ensure that all members receive risk warnings, not just those who are members of contract based schemes or occupational pension schemes that adopt good practice by issuing risk warnings to members based on TPR's guidance.

Policy objective

8. The policy objective is to provide members of occupational pension schemes with the appropriate level of protection to help them to consider the risks involved with the new pension flexibilities that are available to them.

¹The impacts of these changes to the Disclosure regulations are set out in the accompanying Impact Assessment <https://www.dsdni.gov.uk/publications/occupational-and-personal-pension-schemes-disclosure-information-regulations-northern-0>

² FCA use the term 'client' as these individuals may be existing members of that scheme or alternatively potential new members shopping around.

³ <http://www.thepensionsregulator.gov.uk/docs/essential-guide-pension-flexibilities-april-2015.pdf>

Description of options considered

9. Option 1 - A requirement to be added to regulations for occupational pension schemes to provide generic risk warnings to members with flexible benefits. These risk warnings would be tailored to the decumulation options available to the member when accessing their benefits. It will require trust-based schemes to give members information on the main risk factors.
10. Option 2 - Schemes to be required to provide members with risk warnings when the member notifies them that they wish to apply for a retirement product or transfers. This was rejected on the basis that for many schemes this would either involve introducing a new communication point, or system changes, which would be costly compared to altering the wording of existing communications.
11. Option 3 - Occupational pension schemes to provide personalised risk warnings to their members, was also ruled out. While it is important that members have access to risk warnings in all pension schemes, it is also important that disproportionate burdens aren't put on trust based schemes. Many members will transfer out of the scheme in order to take advantage of products offered by personal pension schemes that will also provide the personalised risk warnings to these members at the point they make a decumulation decision and decide on a specific product.
12. Option 4 - A non-legislative approach of doing nothing was ruled out as it would not tackle the risk that only members of those occupational schemes adopting good practice will receive appropriate levels of consumer protection.

Preferred option

13. The preferred approach is option 1, requiring occupational pension schemes to provide generic risk warnings to members, tailored to the decumulation options available to the member when accessing their benefits. Trust-based schemes will be required, most likely through existing communications, to give members information on the main risk factors (similar to information included in TPR's "essential guide").
14. The legislation would not prescribe how trust-based schemes would deliver the risk warnings, only that the risk warnings should be included in the process by which members apply to access their benefits. It is anticipated that these schemes would utilise TPR's existing guidance and include risk warnings in existing communications to members. For many schemes this would most likely be achieved by adding the appropriate risk warnings to the application forms sent to members. The member will then see the risk warnings before applying. This will therefore only apply to the member's existing scheme (ceding scheme). DWP consulted on draft regulations based on this option between November 2015 and January this year⁴.

⁴ Consultation opened on 23rd November and closed on 15 January. It can be viewed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482743/pensions-misc-amdts-2016-and-gar-valuations-consultation-nov-2015-2.pdf

15. The legislation would also require schemes to send out a statement to members informing them they should seek advice or guidance, if they've not already done so and read the risk warning information. This can be sent out at the same time as the risk warnings. The move from a declaration to a statement should meet concerns that well-governed schemes may seek to record the declaration and therefore take on an extra administrative burden. This was considered the best approach to provide a balance between member protection, burdens on business and practical application.

Monetised and non-monetised costs and benefits

16. The changes to the regulations have been designed to minimise the extra burden on businesses by aligning as far as possible with existing requirements, including those made in April 2015 requiring schemes to signpost members to Pension Wise. For example, the trigger points that they will need to communicate with the member have been aligned with existing practices of communication, so, in line with the previous changes, it is expected that the costs will be minimal and one-off, arising from changing the wording of existing communications, most likely application forms, rather than creating new communications. In addition, some schemes will already be voluntarily issuing information from TPR's essential guide to scheme members since April 2015.

Number of businesses affected

17. Whilst the legal requirement to make the changes described above falls to the trustee, in practice this work will be done by the third party administrator, insurance provider, master trust or employer depending on how the scheme is governed. For example, bundled schemes will use an insurance provider who would make the changes centrally which means the trustees of individual schemes will not incur the costs themselves. Furthermore, the majority of unbundled schemes will have a contract with an administrator who would also make the changes centrally on their behalf. Where schemes are unbundled and self-administered then the employer or trustee would be responsible for making the changes themselves.
18. There are 1,850 trust-based defined contribution schemes with 12 or more members⁵. Information collected by TPR shows there are just over 200 unique insurers, administrators and master trusts which provide services to the vast majority of these schemes. These 200 businesses will be directly affected and will need to change the templates used for communications to members of the schemes they service. This leaves around 260 unbundled defined contribution schemes which are either self-administered or have no administrator recorded by TPR which it is assumed would carry out the work themselves.
19. In addition there are 880 dual-section hybrid schemes with 12 or more members and where the members are potentially eligible to access their pension flexibly. There is no information on how these schemes are governed so it is assumed that they are unbundled, self-administered schemes with the employer or trustee needing to carry out the work themselves.

⁵ DC trust: a presentation of scheme return data 2015-2016, TPR

<http://www.thepensionsregulator.gov.uk/doc-library/dc-trust-a-presentation-of-scheme-return-data-2016.aspx>

20. This results in a total of just over 200 businesses carrying out the work centrally for a number of schemes and up to 1,140 schemes where the employer or trustee will carry out the work separately.
21. This is likely to be a maximum figure as some of these businesses are already providing risk warnings to members in line with TPR's essential guide. The consultation provided evidence that the TPR good practice is being followed in some schemes in a mix of ways but certainly not all. There was not enough evidence provided to quantify how many schemes and providers are already complying with the requirements. Therefore, for the purposes of estimating the impacts on business it is assumed that there is currently no voluntary compliance and the costs represent a maximum.

Micro schemes

22. Micro-schemes, which have between 2 and 11 members, account for 92% of the total trust-based market, but only 1% of total trust-based membership⁶. These are not included in the number of businesses calculated above. The vast majority of these will be in bundled arrangements and use an insurance provider. For example, over 80% of micro schemes (where the split is known) are small relevant schemes and over half of these are known to use one of the 10 largest providers⁷. It is highly likely that the remaining micro-schemes will either use an administrator or smaller insurance provider and therefore it is expected that micro schemes will not be directly affected by the changes, and the associated administrators or providers will already be included in the volumes above.
23. However, even if the trustees do self-administer the scheme, the nature of the changes required will be different for micro-schemes as they are likely to provide bespoke communications already, given the small number of members. Therefore changing the wording is not likely to be a separate, one-off task but rather, it would be part of their usual business. Therefore, it is not expected that any micro-schemes will be adversely affected⁸.

Transitional "One-Off" Costs

24. Transitional costs are likely to occur for providers and administrators to familiarise themselves with the new requirements and to update or supplement the wording of the information they already provide to members. These costs would occur in the run up to April 2016. However, as the requirements already feature in TPR's guidance, and given the prominence of the changes in April 2015, it is likely that industry will have already explored to an extent how they can comply with the overall requirements, so the scope of further changes resulting from the regulations is unlikely to be material.
25. The unit costs of complying with the new requirements are difficult to quantify as it will depend on the current level of automation in providers' communications, the complexity involved in changing them, and the number of communication products (or application forms) that need to be changed. However, the additional text required to comply – at a minimum level – only amounts to a few paragraphs with example wording already

⁶ DC trust: a presentation of scheme return data 2015-2016, TPR

<http://www.thepensionsregulator.gov.uk/doc-library/dc-trust-a-presentation-of-scheme-return-data-2016.aspx>

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/298436/better-workplace-pensions-march-2014.pdf

⁸ This is in line with assumptions made for similar regulatory changes, such as the requirement to signpost members to Pension Wise (see Footnote 1).

available from TPR's essential guide. This will need to be inserted into existing application forms; the number of which will depend on the number of decumulation options provided by the schemes.

26. The industry has already had to make changes to their member communications from April 2015 to signpost members to the Pension Wise service and it is expected that these costs will be broadly equivalent. The affected businesses have been split into two groups:
- For the 200 insurers and administrators carrying out the work centrally, a unit cost based on two hours⁹ of labour costs at £19.10 per hour (including any non-wage costs)¹⁰ in 2014/15 prices, is used. This would cover the time taken to produce the statement and change the templates of their application forms for any of the schemes they administer and this would apply to each application form that requires changing.
 - For the 1,140 self-administered schemes, the unit cost is based on one hour of work at the same wage level, as the change should be more straightforward for an individual scheme. Again, this would apply to each application form which requires changing.
27. The number of application forms that require changing will depend on the number of decumulation products offered by trust-based schemes. In September 2015, TPR conducted a survey of flexible pension access¹¹ which showed the majority of schemes (93%) provided access to at least one decumulation option and a minority (14%) provided access to all four main decumulation options asked about¹². Therefore, the following assumptions have been made:
- For the 200 insurers and administrators carrying out the work centrally, it is assumed that the schemes they provide services to will between them offer all four main decumulation options, so four application form templates will need changing, plus the statement. This gives a unit cost of £191.00 based on 5 times 2 hours of work at £19.10 per hour, giving a total cost of £40,000.
 - For the 1,140 self-administered schemes, the expectation is an average of around 2 decumulation options provided (based on the TPR evidence), plus the statement. This would give an average unit cost of £57.30 based on an average of 3 times 1 hours of work at £19.10 per hour, giving a total cost of £65,000.
28. It is envisaged that the new wording will need to be inserted into the existing communication product used when sending the member their application or transfer details. Therefore it is estimated there will be a maximum transitional cost of **£105,000**. This is expressed in 2014/15 prices.

⁹ This is in line with assumptions made for similar regulatory changes, such as the requirement to signpost members to Pension Wise (see Footnote 1).

¹⁰ This estimate is based on the assumption that pension's administration is likely to be a higher wage paying profession than general administration. The estimate of £19.10 is based on the gross median hourly rate for an associate professional, which has then been increased by 27% in line with the Green Book to account for non-wage costs. The hourly rate data are taken from the most recent available ASHE, 2015: <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2015-provisional-results/rft-2.zip>

¹¹ <http://www.thepensionsregulator.gov.uk/docs/flexible-pension-access-survey-2015.pdf>

¹² Withdrawal of tax-free lump sum, Uncrystallised Funds Pensions Lump Sum (UFPLS); drawdown; lifetime annuity

Familiarisation costs

29. It is inevitable that administrators and providers will need to familiarise themselves with the changes required before making them, but given the existence of the TPR guidance and the FCA rules on 'personalised risk warnings', the content of new regulations is likely to be familiar. Based on it taking around 30 minutes reading and digesting time for a professional with a wage of £24.77 per hour¹³ in each of the businesses affected¹⁴ to familiarise themselves with the requirements, it is anticipated that total familiarisation costs will be no more than **£17,000**.

Potential Printing Costs

30. A further cost that potentially may occur is the cost of printing communication materials. It is likely that any such costs, if they occur, will be negligible because TPR already provide examples with the required information that, at a minimum, could be adapted and inserted into existing printed material.

Ongoing costs

31. The new risk warning requirements can be met by amending existing communication material sent out by providers, currently used to meet existing regulations. This means the new requirements can be delivered without material ongoing costs to business as firms should only have to change their communications once to accommodate the new wording in their existing materials.

Direct costs and benefits to Business

32. The regulations have been designed to minimise the burdens on schemes whilst providing more protection to members considering their retirement options. Based on the reasoning above, it is expected that total one-off costs of around **£122,000** will occur in 2015/16 as a result of providers amending their communications. No other ongoing costs are expected. The Equivalent Annual Net Cost to Business (EANCB) based on a 10 year appraisal period rounds to **£0.01m**.

Small and Micro Business Assessment

33. The pension providers and administrators affected are typically large businesses, although there will be some smaller businesses also. It is not considered that it would be appropriate to provide an exemption from the new signposting requirements for any small businesses because:

- failure to ensure that all trust-based pension providers clearly and prominently signpost all of their eligible customers to the guidance service at all of the key communication points above risks further consumer detriment;

¹³ The estimate of £24.77 is based on the gross median hourly rate for a professional, increased by 27% in line with the Green Book to account for non-wage costs. It is assumed that for a single professional employee would undertake this work. The hourly rate data are taken from the Annual Survey of Hours and Earnings (ASHE), 2015: <http://www.ons.gov.uk/ons/rel/ashes/annual-survey-of-hours-and-earnings/2015-provisional-results/rft-2.zip>.

¹⁴ The total of 200 insurers, administrators and master trusts carrying out work centrally, and the 1,140 self-administered schemes

- this may create an unfair playing field (in terms of lower regulatory compliance costs for smaller firms and, more significantly, in terms of these firms having a greater likelihood of remaining as benefiting from consumer inertia if their customers don't seek guidance); and
- it is not likely that the costs will pose a significant burden on even the smallest providers.

Even where micro-schemes are self-administered the required changes are not likely to be a separate, one-off task but instead will be part of their usual business due to the small number of members affected. Therefore, it is not expected that any micro-schemes will be adversely affected.

Other Impacts

Equality

34. In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department has conducted a screening exercise on these legislative proposals. As the Regulations are in consequence of provisions in the Pension Schemes Act 2015 which support the pension flexibilities introduced by the Taxation of Pensions Act 2014 and are technical in nature, they would have little implication for any of the section 75 categories. In light of this, the Department has concluded that the Regulations would not have significant implications for equality of opportunity and considers that an Equality Impact Assessment is not necessary.

Environmental

35. There are no implications.

Rural proofing

36. There are no implications.

Health

37. There are no implications.

Human rights

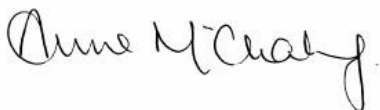
38. The Department considers that the regulations are compliant with the Human Rights Act 1998.

Competition

39. There are no implications.

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed for the Department for Social Development



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