

**2018 No. 54**

**PENSIONS**

**The Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations (Northern Ireland) 2018**

*Made* - - - - *15th March 2018*

*Coming into operation in accordance with Regulation 1*

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 69(2)(b) and (4)(b) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(a) and now vested in it(b), and sections 42 and 51(6) of, and paragraphs 1(1)(a) and 7 of Schedule 18 to, the Pensions Act (Northern Ireland) 2015(c).

**Citation and commencement**

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations (Northern Ireland) 2018 and subject to paragraph (2) shall come into operation on 6th April 2018.

(2) Regulation 2(2) shall come into operation on 1st October 2019.

(3) The Interpretation Act (Northern Ireland) 1954 shall apply to these Regulations as it applies to an Act of the Assembly.

**Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations**

2.—(1) Regulation 12 of the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(d) (transfer of member’s accrued rights without consent) is amended in accordance with paragraphs (2) to (6).

(2) In paragraph (1)(e) after “accrued rights” insert “which are not relevant money purchase rights”.

(3) In paragraph (1A)(f) for “section 69(2)(a)(i)” substitute “section 69(2)(a)”;

(4) after paragraph (1A) insert—

“(1B) For the purposes of section 69(2)(b) and (4)(b), a scheme may provide for the member’s relevant money purchase rights to be transferred to another occupational pension

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(a) 1993 c. 49; section 69(2) was amended by Part 1 of Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (1999 No. 3147 (N.I. 11))  
(b) See Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N. I.))  
(c) 2015 (c. 5 (N.I.))  
(d) S.R. 1991 No. 37; relevant amending Rules are S.R. 1994 No. 300, S.R. 1995 No. 441, S.R. 2000 No. 262 and S.R. 2016 No. 158  
(e) Regulation 12(1) was amended by paragraph 26(16) of Schedule 2 to S.R. 1994 No. 300 and regulation 3 of S.R. 1995 No. 441  
(f) Paragraph (1A) was inserted by regulation 27(a) of S.R. 2000 No. 262

scheme without the member's consent where the conditions set out in one of paragraphs (7) to (9) are satisfied.”.

(5) In paragraph (2A)(a) for sub-paragraph (b)(i) substitute—

“(i) the scheme's principal employer or controlling employer, and”.

(6) After paragraph (6) add—

“(7) The condition set out in this paragraph is that the receiving scheme is authorised under the Pension Schemes Act 2017(b) or any corresponding Northern Ireland legislation.

(8) The conditions set out in this paragraph are that—

- (a) the transferring scheme employer and the receiving scheme employer are undertakings;
- (b) the transferring scheme employer is a group undertaking in relation to the receiving scheme employer, and
- (c) the member whose rights are to be transferred is a current or former employee of an undertaking which is a group undertaking in relation to the transferring scheme employer or the receiving scheme employer.

(9) The conditions set out in this paragraph are that—

- (a) within the year ending with the date of the transfer, the trustees of the transferring scheme have obtained and considered written advice in relation to the transfer from a person whom they reasonably believe to be qualified to give that advice by reason of that person's ability in, and practical experience and knowledge of, pension scheme management (“the appropriate adviser”), and
- (b) the trustees of the transferring scheme have determined that the appropriate adviser is independent of the receiving scheme after considering whether, during the year ending with the date on which the advice was provided, the appropriate adviser (or, where the appropriate adviser is an undertaking, a group undertaking in relation to the appropriate adviser) has—
  - (i) received payment for services from the receiving scheme;
  - (ii) received payment from a service provider or a group undertaking in relation to a service provider, or
  - (iii) received payment from the receiving scheme employer or a group undertaking in relation to the receiving scheme employer.

(10) Where an employer has the sole power to effect a transfer of a member's accrued rights—

(a) paragraph (9) has effect as if—

(i) for sub-paragraph (a) there were substituted—

“(a) within the year ending with the date of the transfer, the member's employer has obtained and considered written advice in relation to the transfer from a person whom the member's employer reasonably believes to be qualified to give that advice by reason of that person's ability in, and practical experience and knowledge of, pension scheme management (“the appropriate adviser”);”, and

(ii) in sub-paragraph (b) “member's employer has” were substituted for “trustees of the transferring scheme have”; and

(b) the employer must confirm to the trustees of the transferring scheme that it has complied with paragraph (9) as so modified.

(11) In this regulation—

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(a) Paragraph (2A) was inserted by Article 2(2)(b) of S.R. 2016 No. 158

(b) 2017 c. 17

“controlling employer”, in relation to a scheme, is the employer that has the power to act on behalf of all employers in the scheme in relation to the scheme rules;

“group undertaking” has the meaning given by section 1161(5) of the Companies Act 2006(a) (meaning of “undertaking” and related expressions);

“principal employer”, in relation to a scheme, is the principal employer for the purposes of the scheme in accordance with the scheme rules;

“receiving scheme employer” means the principal employer or controlling employer of the receiving scheme;

“relevant money purchase rights” are rights to money purchase benefits, where the assets held for the purpose of providing those benefits do not include any guarantee or promise in relation to the amount of the benefits to be provided, or the amount available for the provision of the benefits;

“services” means advisory, administration or investment services provided to the receiving scheme, and a “service provider” is a provider of such services to the scheme;

“transferring scheme employer” means the principal employer or controlling employer of the transferring scheme;

“undertaking” has the meaning given by section 1161(1) of the Companies Act 2006.”.

### **Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations**

**3.**—(1) Regulation 4 of the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015(b) (restrictions on charges) is amended in accordance with paragraph (2).

(2) After paragraph (2) add—

“(3) The application of this regulation and regulations 5 to 9 in respect of the value of a member’s rights is not affected by—

- (a) a transfer of those rights from one relevant scheme to another, or
- (b) a subsequent transfer of those rights from one arrangement to another within the receiving scheme,

where the member has not given consent to the transfer.

(4) This Part does not apply to a member of a relevant scheme to the extent of the value of that member’s rights in an arrangement (“Arrangement A”) where—

- (a) the value of the rights has been transferred to Arrangement A from an arrangement which is not a default arrangement;
- (b) the member has not given consent to the transfer;
- (c) before the transfer took place, Arrangement A was not a default arrangement, and
- (d) the member has, in the 5 years ending with the date of the transfer, expressed a choice as to where that member’s contributions were allocated.”.

Sealed with the Official Seal of the Department for Communities on 15th March 2018

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Communities

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(a) 2006 c. 46

(b) S.R. 2015 No. 309; regulation 4 was amended by regulation 4 of S.R. 2016 No. 171

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991 (“the Preservation Regulations”) and the Occupational Pension Schemes (Charges and Governance) Regulations (Northern Ireland) 2015 (“the Charges and Governance Regulations”).

Regulation 2 amends the Preservation Regulations to provide for the circumstances in which, where a member of an occupational pension scheme has accrued rights to money purchase benefits without guarantees in the scheme, those rights can be transferred to another occupational pension scheme without the member’s consent. Such a transfer is permitted if the receiving scheme is a master trust, or other scheme, authorised under the Pension Schemes Act 2017 (c. 17) or any corresponding Northern Ireland legislation; if the transfer is made between schemes controlled by connected employers; or if the trustees of the transferring scheme have taken written advice from an appropriate independent adviser before making the transfer.

Regulation 3 amends the Charges and Governance Regulations to provide that restrictions on the charges that may be imposed on members continue to apply where members’ rights have been transferred without their consent from one occupational pension scheme to another, or from one arrangement to another within a scheme. A further amendment provides that restrictions on charges (excluding early exit charges) do not apply to members who are transferred without their consent from one non-default arrangement to another, and who selected an arrangement within the five years before the transfer.

As these Regulations, in so far as they are made under Schedule 18 to the Pensions Act (Northern Ireland) 2015, 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, the requirement for consultation does not apply by virtue of paragraph 8 of Schedule 18 to that Act.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which is laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Communities, Social Security Policy and Legislation Division, Level 8, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: <https://www.communities-ni.gov.uk/articles/pension-information>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>.

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£4.25

NI201803161002 03/2018 19585

<http://www.legislation.gov.uk/id/nisr/2018/54>

ISBN 978-0-33-800917-3



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