

**EXPLANATORY MEMORANDUM TO  
THE PENSION SCHEMES ACT 2015 (TRANSITIONAL PROVISIONS AND APPROPRIATE  
INDEPENDENT ADVICE) REGULATIONS 2015**

**2015 No. 742**

- 1.1 This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The Pension Schemes Act 2015 (“the 2015 Act”)<sup>1</sup> gives scheme members greater flexibility to transfer pension rights and creates a new advice safeguard to ensure members are appropriately informed and protected before deciding to transfer their benefits.
- 2.2 This instrument creates new Regulations that set out how trustees must check that members with ‘safeguarded benefits’<sup>2</sup> (benefits which are not money purchase or cash balance) have taken appropriate independent advice before transferring or converting safeguarded rights to provide benefits that can be accessed flexibly. They also provide for when an employer must pay for the cost of such advice.
- 2.3 The instrument also contains transitional provisions relating to the coming into force of section 48 of the Act.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 This instrument refers to a proposed new regulated activity specified in the Financial Conduct Authority’s (FCA) Regulated Activities Order, by reference to which ‘authorised independent advisor’ is defined. On 29 January HM Treasury laid a statutory instrument, the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2015, to create this new activity, which will come in to effect on 6 April 2015<sup>3</sup>.
- 3.2 As it was necessary to wait until both Houses had given formal approval of the amendments to the Regulated Activities Order, this instrument has unavoidably breached the 21-day rule. This HM Treasury-led Order was given formal approval by both the Lords and Commons and was made on 16 March 2015.

**4. Legislative Context**

- 4.1 Reforms to private pensions in the 2014 Budget give savers greater flexibility in how they access their pension savings. The Taxation of Pension Act 2014 (“the

---

<sup>1</sup> [http://www.legislation.gov.uk/ukpga/2015/8/pdfs/ukpga\\_20150008\\_en.pdf](http://www.legislation.gov.uk/ukpga/2015/8/pdfs/ukpga_20150008_en.pdf)

<sup>2</sup> Safeguarded benefits are benefits which offer a member an element of guarantee in relation to their retirement savings.

<sup>3</sup> [http://www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi\\_9780111128237\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2015/9780111128237/pdfs/ukdsi_9780111128237_en.pdf)

2014 Act”)<sup>4</sup>, which received Royal Assent on 17 December 2014, amends, from 6 April 2015, the rules in Part 4 of the Finance Act 2004<sup>5</sup> in relation to the taxation of pension payments. The 2014 Act also introduces the concept of ‘an Uncrystallised Funds Pension Lump Sum’ or UFPLS,<sup>6</sup> and adds payments in lump sum form to the list of authorised payments that can be made by a money purchase arrangement, significantly increasing the flexibility of access to an individuals pension savings.

4.2 The 2015 Act introduces the concept of ‘flexible benefits’, which covers the pension arrangements to which the new flexibilities will apply and allows pension scheme members with such benefits a statutory right to transfer categories of benefit between schemes up to and beyond their scheme’s normal retirement age in circumstances where they are no longer accruing rights in that category.

4.3 The 2015 Act also introduces the concept of ‘safeguarded benefits’, which broadly cover pension arrangements that the new flexibilities do not apply to, and creates a new requirement for scheme members with safeguarded benefits to take appropriate independent advice before trustees can process a transfer request. This instrument creates new Regulations to deliver the advice safeguard.

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain. Northern Ireland will be making separate parallel provisions.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to the negative resolution procedure, and does not amend primary legislation, no statement is required.

## **7. Policy background**

- **What is being done and why**

7.1 The 2015 Act introduces the concept of ‘flexible benefits’ and gives pension scheme members greater flexibility in how and when they access their pension savings. It is anticipated that some pension scheme members will seek to transfer their benefits to a different scheme to take advantage of the flexible arrangements.

7.2 Safeguarded benefits offer a level of security in retirement which a member would lose if they were to exchange them for benefits that can be accessed flexibly. To ensure that members fully understand the implications of giving up their safeguarded benefits, the advice safeguard requires that members take appropriate independent advice before they exchange their safeguarded rights for those that can be taken flexibly. The advice requirement is triggered by a number of different transactions. These are: the statutory or non-statutory transfer of safeguarded benefits to flexible benefits, the conversion of safeguarded benefits to flexible

---

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2014/30/contents/enacted>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2004/12/contents>

<sup>6</sup> An UFPLS is a new type of authorised lump sum, which can be paid directly from pensions savings under a money purchase arrangement to certain individuals aged 55 or over. It is introduced in Part 3 of the Taxation of Pensions Act 2014, which amends schedule 29 of Finance Act 2004.

benefits, and the withdrawal of an Uncrystallised Funds Pension Lump Sum from safeguarded benefits.

- 7.3 The 2015 Act introduces the concept of ‘appropriate independent advice’ and states that this is advice given by an FCA authorised advisor. Section 48 of Part 4 of the 2015 Act allow for regulations to be made to prescribe how the new advice safeguard will operate in practice. This instrument sets out what trustees and managers must do to check that ‘appropriate independent advice’ has been received, where a member makes a request to transfer or convert their safeguarded benefits for those which can be taken flexibly, including the timeframes for sending out notices to members and the deadlines for receiving confirmation. The Regulations set out what this confirmation must contain, and that trustees must check that the advisor named on the confirmation is authorised by the FCA.
- 7.4 The Regulations also prescribe that where the cash equivalent value of a members safeguarded benefits in the scheme are equal to £30,000 or less then the member is exempt from the requirement to take appropriate independent advice. Trustees must notify members whether they fall into this exemption.
- 7.5 The Regulations also make provision allowed for under section 49 of the 2015 Act that an employer must arrange and pay for a member or survivor to receive ‘appropriate independent advice’ if they send out communications to actively encourage, induce or persuade more than one member to transfer or convert their safeguarded benefits.
- 7.6 These Regulations will ensure that the new advice safeguard operates as intended when the new pension flexibilities come into force on 6 April 2015. It will also ensure that these Regulations and the transfer process set out in the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>7</sup> operate in unison.

- **Consolidation**

- 7.7 Informal consolidated text of instruments is available to the public free of charge via ‘The Law Relating to Social Security’ (Blue Volumes) on the Department for Work and Pensions website at <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/> or the National Archive website [legislation.gov.uk](http://www.legislation.gov.uk) . An explanation as to which instruments are maintained on each site is available [here](#)

## **8. Consultation outcome**

- 8.1 The government ran a 12 week consultation on Freedom and choice in pensions between March and June 2014, and 372 responses were received. The majority of the responses were from organisations, which varied from the insurance and legal industries, to consumer groups and local governments.
- 8.2 The government response to the consultation’ published on 20 July 2014, confirmed that transfers of defined benefits to a defined contribution scheme would continue to be permitted. The government response also announced primary legislation would be introduced to create a new safeguard to ensure that members

---

<sup>7</sup> <http://www.legislation.gov.uk/uksi/1996/1847/contents/made>

with safeguarded benefits take financial advice before proceeding with a decision to transfer or convert their safeguarded benefits, to ensure that they understand the implications of such a decision. The proposal to make it a statutory requirement that members take financial advice was recommended by a large number of stakeholders who responded to the consultation, including the Association of British Insurers and the Confederation of British Industry, to ensure that members who wished to exchange their safeguarded benefits had adequate protections.

- 8.3 Regulations created by this instrument were not subject to a formal consultation due to the need to have them in place alongside the flexibilities in April 2015. However, DWP did establish an Industry Working Group in January 2015 to ensure that the Regulations that are required as a consequence of the changes delivered by the 2015 Act, were informed by stakeholder views and expert knowledge. The Working Group met regularly to discuss the proposed Regulations as DWP's thinking on the policy evolved. The Group also commented on draft versions of this instrument. An additional group of industry experts was convened specifically to discuss the appropriate independent advice regulations. This group met three times in January and commented on the regulations in draft.

## **9. Guidance**

- 9.1 An overarching guidance document will be published by the Pensions Regulator to set out the major changes in place from April 2015 and highlight a number of important considerations and relevant existing technical guidance. This will assist defined benefit pension scheme trustees in managing transfer requests, including on guidance for trustees on:
- managing a potential increase in transfer volumes
  - reducing a member's cash equivalent transfer value to reflect the schemes current funding position, and
  - seeking approval from the Pensions Regulator to delay making a transfer payment.
- 9.2 It will be available on the Pensions Regulator website and registered schemes will be directed to the guidance by email.

## **10. Impact**

- 10.1 An Impact Assessment covering the advice safeguard policy's impact on business and civil society organisations was published in November 2014 alongside the Pension Schemes Bill and can be found at the following link;  
<http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>
- 10.2 The impact assessment estimated that there would be an additional cost to business of £2.1m per annum in complying with the new advice safeguard. This was made up of £0.44m in additional administrative costs to check that scheme members who wished to transfer or convert their safeguarded benefits had taken appropriate independent advice, and costs of 1.67m if for providing additional financial advice required either for intra-scheme transfers or for employers if they choose to run a transfer exercise.

- 10.3 The Impact assessment also estimated an annual cost to scheme members of £1.73m<sup>8</sup> where they wish to transfer or convert their benefits, and their employer is not obligated to cover the cost of complying with the advice safeguard. We have also an estimated potential benefit to financial advisors of £3.39m<sup>9</sup> per annum through increased demand for professional advice.
- 10.4 These Regulations will also apply to funded public sector schemes, who will bear a cost proportionate to the £0.44m additional cost calculated to fall upon private sector scheme administrators in complying with the new requirement.

## **11. Regulating small business**

- 11.1 Some small businesses may also run a pension scheme for their employees which offer safeguarded benefits, although we expect this number to be small.
- 11.2 Small businesses who fall into this category may incur additional administrative costs associated with familiarising themselves with the new legislation, and complying with the advice safeguard i.e. checking that the member has taken appropriate independent advice before processing a transfer request.
- 11.3 The impact assessment prepared alongside the Pension Schemes Bill 2014 estimated that the familiarisation cost for all schemes would be £0.29m in the first year, with an additional annual cost of £0.44m to ensure their scheme was compliant with these Regulations. Whilst this additional burden on small businesses is regrettable, it would not be appropriate to small business from these Regulations as they offer important protections for members with safeguarded benefits.

## **12. Monitoring & review**

- 12.1 No formal post-implementation review of these amendments is planned, but DWP monitor all new pensions legislation on an on-going basis by means of representation and feedback from the pensions community and the Pensions Regulator.
- 12.2 DWP will monitor practices that may emerge around the transfer of safeguarded benefits to defined contribution schemes after April 2015. The Tax Information & Impact Note published at Budget 2014, and republished at Autumn Statement 2014,<sup>10</sup> commits the Government to continuing to monitor the tax flexibilities policy through tax data, and HMRC publishes significant amounts of data on tax receipts and liabilities annually.

## **13. Contact**

Rosemary Tolhurst at the Department for Work and Pensions, 1st floor Caxton House, Tothill Street, London SW1H 9NA; Tel: 020 7449 5961; e-mail: [rosemary.tolhurst@dwp.gsi.gov.uk](mailto:rosemary.tolhurst@dwp.gsi.gov.uk)

---

<sup>8</sup> <http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>, pp 4

<sup>9</sup> <http://www.parliament.uk/documents/impact-assessments/IA14-13A.pdf>, pp 5

<sup>10</sup> <https://www.gov.uk/government/publications/pension-flexibility-2015#history>

