STATUTORY INSTRUMENTS

2017 No. 717

PENSIONS

The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017

Made - - - -	*4th July 2017*
Laid before Parliament	*6th July 2017*
Coming into force - -	*6th April 2018*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1)(ca) and (d) and (3), 168(1), (4) and (11), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(**1**).

The Secretary of State for Work and Pensions has, in accordance with section 185(1) of the Pension Schemes Act 1993(**2**), consulted such persons as the Secretary of State considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017 and come into force on 6th April 2018.

Amendments to the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015

2. The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015(**3**) are amended as set out in regulations 3 to 5.

(**1**) 1993 c. 48. Paragraph (ca) of section 113(1) was inserted by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Section 168 was substituted by section 155 of the Pensions Act 1995 (c. 26) ("the 1995 Act") and amended by paragraph 27 of Schedule 12 to the Pensions Act 2004 (c. 35). Section 181(1) is cited for the meaning it gives to "prescribe" and "regulations". There are amendments to section 181(1) not relevant to these Regulations. Section 183(1) was amended by Parts 3 and 4 of Schedule 7 to the 1995 Act.

(**2**) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the 1995 Act.

(**3**) S.I. 2015/742, amended by S.I. 2016/289.

Amendment to regulation 1

3. In regulation 1(3) (interpretation), at the end of the definition of "relevant transaction" insert ", or would apply but for the exception in regulation 5(1)".

Insertion of new regulations 8A, 8B and 8C

4. After regulation 8 (information to be provided on initial enquiry) insert—

"**Requirement to provide risk warnings in relation to safeguarded-flexible benefits**

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

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

"safeguarded-flexible benefits" means benefits within paragraph (c) of the definition of flexible benefit in section 74 of the Act (meaning of "flexible benefit")(**4**);

"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—

(**4**) *See* regulation 1(3) of S.I 2015/742 for the meaning of "the Act".

(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.

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).

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 2013(**5**);

(**5**) S.I. 2013/2734; relevant amending instruments are S.I.s 2015/482 and 2014/1711.

"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 meaning given 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 (statements of benefits: money purchase benefits; 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 he or she 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 he or she 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 their 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 (interpretation)(**6**)) may be available to help the member or survivor to understand their options in relation to what they can do with their safeguarded-flexible benefits; and

(f) the information listed in paragraphs 2 to 4 of Schedule 10 to the Disclosure Regulations (information on the Pensions Guidance)(**7**).

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

(**6**) The definition of "pensions guidance" was inserted by S.I. 2015/482.
(**7**) Schedule 10 was inserted by S.I. 2015/482.

(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% to be assumed, a rate of 5% may be assumed instead; and

(b) where it requires an annual rate of increase in earnings of less than 4% to be assumed, a rate of 4% 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.".

Insertion of new regulation 13

5. After regulation 12 (circumstances in which an employer is required to arrange or pay for advice) insert—

"**Review**

13.—(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations; and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2023.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(**8**) requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

(b) assess the extent to which those objectives are achieved;

(c) assess whether those objectives remain appropriate; and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).".

Signed by authority of the Secretary of State for Work and Pensions.

Guy Opperman
Parliamentary Under Secretary of State
Department for Work and Pensions

4th July 2017

(**8**) 2015 c. 26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 (S.I. 2015/742) ("the Advice Regulations"), which relate to the requirement in section 48 of the Pension Schemes Act 2015 (c. 8) ("the 2015 Act") that the trustees or managers of a pension scheme must check that a member or survivor has received appropriate independent advice before carrying out certain transactions. The requirement applies to a member's or survivor's "safeguarded benefits", meaning benefits which are neither money purchase benefits nor cash balance benefits as defined in pensions legislation(**9**).

Regulation 4 inserts new regulations 8A, 8B and 8C into the Advice Regulations, to require the trustees or managers of a pension scheme to provide specified information in writing (known as a "risk warning") to members and survivors in certain circumstances. The requirement applies if the member or survivor has "safeguarded-flexible benefits" (safeguarded benefits which are also flexible benefits, as defined in section 74 of the 2015 Act) and takes certain actions, such as asking the scheme for information about how to transfer their benefits to a different scheme. Paragraph (5) of regulation 8A provides the Pensions Regulator with a power to impose financial penalties in respect of a failure by a trustee or manager to comply with that regulation.

Regulation 5 inserts new regulation 13 into the Advice Regulations. This requires the Secretary of State to review the operation of the Advice Regulations and publish a report setting out the conclusions of the review, in accordance with sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (c. 26), no later than five years after these Regulations come into force, and subsequently at intervals of not more than five years.

An analysis of the impact of these Regulations on the costs of business has been made. The impact assessment is available from the Better Regulation Unit of the Department for Work and Pensions, Caxton House, Tothill Street, London SW1H 9NA, and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.

(**9**) *See* sections 48(8), 75 and 76(2) of the 2015 Act.