

2018 No. 240

PENSIONS

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

<i>Made</i>	- - - -	<i>22nd February 2018</i>
<i>Laid before Parliament</i>		<i>26th February 2018</i>
<i>Coming into force</i>		
<i>Regulation 2(2)</i>		<i>1st October 2019</i>
<i>Remainder</i>		<i>6th April 2018</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 73(2)(b) and (4)(b), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a) and sections 43 and 54(5) and (6) of, and paragraphs 1(1)(a) and 7(1) of Schedule 18 to, the Pensions Act 2014(b).

In accordance with section 185(1) of the Pension Schemes Act 1993(c) and paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted such persons as she considers appropriate.

Citation and commencement

1.—(1) These Regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018.

(2) Regulation 2(2) comes into force on 1st October 2019.

(3) The remaining regulations come into force on 6th April 2018.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

2.—(1) Regulation 12 (transfer of member’s accrued rights without consent) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(d) is amended as follows.

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

(3) In paragraph (1A), for “section 73(2)(a)(i)” substitute “section 73(2)(a)”.

(a) 1993 c. 48; section 73(2) was amended by Part 1 of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c. 30); section 181(1) is cited for the meaning it gives to “prescribe” and “regulations”.

(b) 2014 c. 19.

(c) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the Pensions Act 1995 (c. 26).

(d) S.I. 1991/167, as amended by S.I. 1994/1062, 1995/3067 and 2000/1403; there are other amending instruments but none is relevant.

(4) After paragraph (1A) insert—

“(1B) For the purposes of section 73(2)(b) and (4)(b) of the Act, a scheme may provide for the member’s relevant money purchase rights to be transferred to another occupational pension scheme without the member’s consent where the conditions set out in one of paragraphs (7) to (9) are satisfied.”

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

“(i) the scheme’s principal employer or controlling employer; and”.

(6) After paragraph (6) insert—

“(7) The condition set out in this paragraph is that the receiving scheme is authorised under the Pension Schemes Act 2017(a).

(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 “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—

“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(b) (meaning of “undertaking” and related expressions);

(a) 2017 c. 17.

(b) 2006 c. 46.

“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 2015

3.—(1) Regulation 4 (restrictions on charges) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015(a) is amended as follows.

(2) After paragraph (2) insert—

“(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 Chapter 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 his or her contributions were allocated.”.

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

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

22nd February 2018

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167) (“the Preservation Regulations”) and the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) (“the Charges and Governance Regulations”).

(a) S.I. 2015/879; regulation 3 was amended by S.I. 2015/889, and regulation 4 by S.I. 2016/304 and 2017/774.

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); 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.

An impact assessment of the effect that this instrument will have on the costs of business is published with the Explanatory Memorandum alongside this instrument on the UK Legislation website and the gov.uk website, and copies can be obtained from the Department for Work and Pensions, First Floor, Caxton House, Tothill Street, London SW1H 9NA.

© Crown copyright 2018

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.25

UK201802231017 03/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/240>

ISBN 978-0-11-116628-4



9 780111 166284