

2016 No. 165

PENSIONS

The Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2016

Made - - - -

15th March 2016

Coming into operation -

6th April 2016

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 109(1) and (3) and 177(2) and (4) of the Pension Schemes (Northern Ireland) Act 1993(a), Articles 74(2) and (3)(e), 89(5)(c)(iii) and 166(3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), 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(d) and section 83 of the Pension Schemes Act 2015(e).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund and Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations (Northern Ireland) 2016 and shall come into operation on 6th April 2016.

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- (a) 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.))
- (b) S.I. 1995/3213 (N.I. 22); Article 74(2) was amended by Schedule 11 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)) and Article 74(3)(e) was added by Article 247(2)(c) of that Order; Article 89(5)(c) was amended by paragraph 46(4)(a) of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))
- (c) See Article 8(b) of S.R. 1999 No. 481
- (d) S.I. 2005/255 (N.I. 1); Part 3 is modified in its application to multi-employer schemes by S.R. 2005 No. 91; Article 113 was modified by regulations 17(3) and 65(1) of S.R. 2005 No. 91 for certain cases to read as if paragraph (1A)(b) were inserted (regulation 17 was substituted by regulation 3 of S.R. 2005 No. 357), Article 113(1)(b) is cited in its unmodified form; Articles 119(4)(za) and 122(9B) were inserted respectively by sections 64(3) and 65(10) of the Pension Schemes Act 2015 (c. 8). Paragraphs 24(1) and 25(1) of Schedule 6 were amended respectively by paragraphs 25 and 19(3)(a) of Schedule 4 to the Pensions Act (Northern Ireland) 2012 (c. 3 (N.I.))
- (e) 2015 c. 8

PART 2

Occupational pension schemes amendments

Amendment of the Occupational Pension Schemes (Winding Up) Regulations

2.—(1) The Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996(a) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 6(2)(b) (arrangements for discharge of liabilities under Article 74) before head (i) insert—

“(ai) in the way mentioned in regulation 8(6)(b)(i)(aa)(b) in a case where the proposed lump sum is an uncrystallised funds pension lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004(c);”.

(3) In regulation 8(6) (requirements to be satisfied by transferee schemes, annuities, etc.)—

(a) in sub-paragraph (a) for “Chapter 5 of Part IV” substitute “Chapter 2 of Part 4ZA(d)”;

(b) in sub-paragraph (b)(i)(aa) after “trivial commutation lump sum” insert “, an uncrystallised funds pension lump sum”.

Amendment of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations

3. In regulation 2(1B)(b) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997(e) (commutation of a pension under an occupational pension scheme) for “from the employment of the employer in relation to the scheme,” substitute “for the purposes of paragraph (5)(c)(i) of that Article, and”.

PART 3

Pension Protection Fund amendments

Amendment of the Pension Protection Fund (Compensation) Regulations

4.—(1) The Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005(f) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 1(2) (interpretation) for the definition of “PPF trivial commutation lump sum”(g) substitute—

““PPF trivial commutation lump sum” has the meaning given in regulation 18(2)(h) (circumstances in which the portion of compensation to be commuted may exceed 25 per cent);”.

(3) In regulation 2(2) (circumstances where a person shall be entitled to early payment of compensation) for sub-paragraph (b)(i) substitute—

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- (a) S.R. 1996 No. 621; relevant amending Regulations are S.R. 2005 No. 171 and S.R. 2009 No. 365
(b) Regulation 8(6) was added by regulation 11 of S.R. 2005 No. 171 and amended by regulation 5 of S.R. 2009 No. 365
(c) 2004 c. 12. *See* paragraph 4A of Schedule 29 (registered pension schemes: authorised lump sums: uncrystallised funds pension lump sum), which was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30)
(d) *See* paragraph 50 of Schedule 4 to the Pension Schemes Act 2015
(e) S.R. 1997 No. 153; regulation 2(1B) was inserted Article 33(3)(b) of S.I. 2006/744 and amended by regulation 4 of S.R. 2015 No. 155
(f) S.R. 2005 No. 149; relevant amending Regulations are S.R. 2006 No. 155, S.R. 2010 No. 80 and S.R. 2014 No. 204
(g) The definition of “PPF trivial commutation lump sum” was inserted by regulation 22(2) of S.R. 2006 No. 155; there are other amendments to regulation 1(2) but none is relevant
(h) Regulation 18 was substituted by regulation 22(4) of S.R. 2006 No. 155
(i) Sub-paragraph (b) was substituted by regulation 4(2)(a) of S.R. 2010 No. 80

- “(b) that on the date on which the compensation is to become payable early the person has attained—
- (i) except in a case to which head (ii) applies, normal minimum pension age as defined in section 279(1) of the 2004 Act;
 - (ii) in a case where the person has a protected pension age of less than 50 by virtue of paragraph 22 of Schedule 36 to the 2004 Act^(a) (rights to take benefit before normal minimum pension age), the age of 50.”.
- (4) In regulation 17^(b) (commutation of periodic compensation)—
- (a) in paragraph (1) for “paragraphs (2) and (3)” substitute “paragraph (2)”;
 - (b) omit paragraph (3).
- (5) In regulation 23(3)^(c) (cash balance schemes: modification of Schedule 6), for “In this regulation” substitute “In this Part”.
- (6) In Part 10 after regulation 23 insert—

“Cash balance schemes: modification of Schedule 6

23A.—(1) In its application to a cash balance scheme, paragraph 37 of Schedule 6 applies as if, after sub-paragraph (4) there were inserted—

“(5) In this Schedule references to a lump sum to which a person is entitled, or which a person has been paid, by reason of commuting part of a pension under the scheme include any lump sum to which the person is entitled, or which the person has been paid, by reason of opting to receive a lump sum instead of a pension, or part of a pension, in respect of cash balance benefits under the scheme.”.

(2) In its application to a cash balance scheme other than a scheme to which regulation 23 applies, paragraph 37(1) of Schedule 6 applies as if, before the definition of “deferred member” there were inserted—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014^(d).”.

Amendment of the Pension Protection Fund (Entry Rules) Regulations

5.—(1) The Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005^(e) are amended in accordance with paragraphs (2) to (10).

(2) In regulation 1 (interpretation)—

(a) in paragraph (2)—

(i) after the definition of “EEA state”^(f) insert—

““establishment” has the meaning given in Article 2 of the Insolvency Regulation;”;

(ii) after the definition of “home state regulator”^(g) insert—

““the Insolvency Regulation” means Council Regulation (EC) No 1346/2000 of 29th May 2000 on insolvency proceedings^(h)”; and

(a) Paragraph 22 was amended by paragraphs 54 and 55 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 43 of Schedule 23 to the Finance Act 2006 (c. 25), paragraph 432 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 7 of Schedule 5 to the Finance Act 2014 (c. 26)

(b) Paragraph (1) was amended and paragraph (3) was added by regulation 22(3) of S.R. 2006 No. 155

(c) Paragraph (3) was inserted by regulation 59(4)(d) of S.R. 2014 No. 204

(d) S.R. 2014 No. 204

(e) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 Nos. 194, 357, 364 and 387, S.R. 2009 No. 78 and S.R. 2014 No. 195

(f) The definition of “EEA state” was inserted by regulation 2(2) of S.R. 2009 No. 78

(g) The definition of “home state regulator” was inserted by regulation 2(2)(a) of S.R. 2009 No. 78

(h) OJ L 160 30.6.2000, p. 1

(b) after paragraph (4) insert—

“(4A) In these Regulations, references to the centre of a person’s main interests are to be construed in accordance with Article 3 of the Insolvency Regulation.”.

(3) In regulation 5A(a) (European insolvency event)—

(a) omit paragraph (4);

(b) for paragraph (5) substitute—

“(5) In this regulation “insolvency proceedings” and “liquidator” each has the meaning given by Article 2 of the Insolvency Regulation.”.

(4) For regulation 7(b) (applications and notifications to the Board) substitute—

“Applications and notifications to the Board

7.—(1) Except in a case to which regulation 7A applies, the prescribed requirement for the purposes of Article 113(1)(b) and (4)(b) (applications and notifications for the purposes of Article 112) is that at least one of paragraphs (2), (4) and (5) applies to the employer.

(2) This paragraph applies to an employer if it is not—

(a) an individual;

(b) a company as defined in section 1(1) of the Companies Act 2006(c);

(c) a company which may be wound up under Part 6 of the Insolvency Order (winding up of unregistered companies)(d);

(d) a partnership, or

(e) a relevant body as defined in regulation 5(2).

(3) For the purposes of paragraph (2)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 6 of the Insolvency Order.

(4) This paragraph applies to an employer if it is an EEA insurer or an EEA credit institution.

(5) This paragraph applies to an employer if—

(a) the centre of the employer’s main interests is situated within the territory of a member State other than the United Kingdom;

(b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation, and

(c) the employer does not have an establishment in the United Kingdom.

(6) In this regulation references to a member State do not include Denmark.”.

(5) In regulation 7A(e) (applications and notifications to the Board – multi-employer schemes) for paragraph (2) substitute—

“(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirement for the purposes of Article 113(1A)(b) and (4)(a)(ii)(f) (applications and notifications for the purposes of Article 112) is that at least one of paragraphs (3), (5) and (6) applies to the employer.

(3) This paragraph applies to an employer if it is not—

(a) an individual;

(a) Regulation 5A was inserted by regulation 2(2) of S.R. 2014 No. 195

(b) Regulation 7 was amended by regulation 2(5) of S.R. 2005 No. 364 and regulation 2(3) of S.R. 2009 No. 78

(c) 2006 c. 46

(d) S.I. 1989 /2405 (N.I. 19)

(e) Regulation 7A was inserted by regulation 2(6) of S.R. 2005 No. 364 and amended by regulation 2(4) of S.R. 2009 No. 78

(f) Paragraph (4) was substituted by the modifications in Parts 3 and 6 of S.R. 2005 No. 91 as substituted by regulation 3(3) and (4) of S.R. 2005 No. 357

- (b) a company as defined in section 1(1) of the Companies Act 2006;
- (c) a company which may be wound up under Part 6 of the Insolvency Order;
- (d) a partnership, or
- (e) a relevant body as defined in regulation 5(2).

(4) For the purposes of paragraph (3)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 6 of the Insolvency Order.

(5) This paragraph applies to an employer if it is an EEA insurer or EEA credit institution.

(6) This paragraph applies to an employer if—

- (a) the centre of the employer’s main interests is situated within the territory of a member State other than the United Kingdom;
- (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation, and
- (c) the employer does not have an establishment in the United Kingdom.

(7) In this regulation references to a member State do not include Denmark.”.

(6) In regulation 8 (applications and notifications to the Board – further provision)—

(a) for paragraph (1) substitute—

“(1) Except in a case to which regulation 8A applies, the prescribed period for making an application to the Board under Article 113(1) shall be the period of—

- (a) 28 days, or
- (b) such longer period of not more than three months as the Board may determine is reasonable in the circumstances of a particular case,

beginning with the date on which the trustees or managers of an eligible scheme become aware that the employer in relation to the scheme is unlikely to continue as a going concern.”, and

(b) in paragraph (2)—

- (i) at the end of sub-paragraph (e) omit “and”;
- (ii) at the end of sub-paragraph (f) insert “, and”, and
- (iii) after sub-paragraph (f) insert—

“(g) if the application was not sent to the Board within the period specified in paragraph (1)(a), the reasons for this.”.

(7) In regulation 9(a) (confirmation of scheme status by insolvency practitioner)—

(a) in paragraph (1)—

- (i) in the opening words of sub-paragraph (a) for “a company” substitute “not an individual or a partnership”;
- (ii) in the opening words of sub-paragraph (a)(i) for “the company” substitute “the employer”;

(b) in the opening words of paragraph (2)(a) for “a company” substitute “not an individual or a partnership”.

(8) In regulation 10(3)(b) (confirmation of scheme status by Board)—

(a) in the opening words of sub-paragraph (a) for “the employer is a company, an EEA credit institution or an EEA insurer” substitute “the employer is not an individual or a partnership”;

(a) Regulation 9 was amended by regulation 3(3) of S.R. 2005 No. 194
 (b) Regulation 10 was amended by regulation 2(5) of S.R. 2009 No. 78

- (b) in the opening words of sub-paragraph (c) omit “but is not an EEA credit institution or an EEA insurer”.
- (9) In regulation 16(a) (restrictions on winding up, discharge of liabilities etc.)—
- (a) before paragraph (1)(a) insert—
 - “(za) a right or entitlement to benefits that are not money purchase benefits may be converted into, or replaced with, a right or entitlement to money purchase benefits under an eligible scheme are where, before the beginning of the assessment period in relation to the scheme, a person has—
 - (i) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015(b)) that are not money purchase benefits;
 - (ii) notified the trustees or managers of the scheme that the person wishes to exercise an option under the scheme rules to convert those benefits (or a portion of them) into, or replace them (or a portion of them) with, money purchase benefits for the purpose of designating sums or assets as available for the payment of drawdown pension, dependants’ drawdown pension, nominees’ drawdown pension or successors’ drawdown pension (as defined by paragraphs 4, 18, 27B and 27G of Schedule 28(c) to the Finance Act 2004, respectively), and
 - (iii) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject;”;
 - (b) in paragraph (1)(a)—
 - (i) in head (i) for “(salary related schemes: right to a statement of entitlement);” substitute “(right to statement of entitlement: benefits other than money purchase), and”;
 - (ii) omit head (ii);
 - (c) in paragraph (2)—
 - (i) in the opening words for “A transfer” substitute “A conversion or replacement of benefits under an eligible scheme under paragraph (1)(za), a transfer”;
 - (ii) in sub-paragraph (b) after “reduce the” insert “value or”, and after “amount of” insert “the benefits (or the portion of them) to be converted or replaced.”.
- (10) After regulation 17(d) (payment of scheme benefits) insert—

“Exception to Article 122(2A)

17A.—(1) Subject to paragraph (3), during an assessment period in relation to an eligible scheme benefits in the form of a lump sum may be paid to a member under the scheme rules in the circumstances specified in paragraph (2).

(2) The circumstances specified for the purpose of paragraph (1) are that, before the beginning of the assessment period in relation to the scheme, the member has—

- (a) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015) that are not money purchase benefits;
- (b) notified the trustees or managers of the scheme that the member wishes to exercise an option under the scheme rules to be paid an uncrystallised funds pension lump

(a) Regulation 16 was amended by regulation 3(5) of S.R. 2005 No. 194 and regulation 5 of S.R. 2005 No. 387
 (b) 2015 c. 8
 (c) 2004 c. 12; paragraphs 4 and 18 were amended respectively by paragraphs 3 and 13 of Schedule 16 to the Finance Act 2011 (c. 11) and paragraphs 27B and 27G of Schedule 28 were inserted by paragraph 3 of Schedule 2 to the Taxation of Pensions Act 2014 (c. 30)
 (d) Regulation 17 was amended by regulation 2(6) of S.R. 2009 No. 78

sum (as defined by paragraph 4A of Schedule 29(a) to the Finance Act 2004) in respect of those benefits (or a portion of them), and

- (c) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject.

(3) A lump sum shall not be paid by virtue of this regulation unless the trustees or managers of the scheme—

- (a) are satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum, and
- (b) reduce the amount of the lump sum to the extent necessary to ensure that it does not exceed the actuarial equivalent of the compensation that would be payable to the member in respect of the benefits (or the portion of them) in respect of which the lump sum is paid in accordance with the pension compensation provisions, if the Board were to assume responsibility for the scheme in accordance with Chapter 3 of Part 3 of the Order.

(4) For the purpose of paragraph (3)(b) the actuarial equivalent of the compensation that would be payable is to be calculated from tables designated by the Board for the purpose of paragraph 24(4) (commutation of periodic compensation) of Schedule 6 to the Order.”.

Amendment of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations

6.—(1) The Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 8 (further provision for discharge of liabilities in respect of money purchase benefits) after paragraph (1) insert—

“(1A) Where, on the date that the Board assumed responsibility for the scheme, the money purchase beneficiary—

- (a) had attained normal minimum pension age, or was within six months of attaining that age, or
- (b) met the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act,

the notice sent by the Board under paragraph (1) shall also include the information listed in Part 1, and paragraph 12, of Schedule 9A to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(c) (information to be given on the Pensions Guidance).”.

(3) In regulation 9A(d) (PPF money purchase lump sums) for paragraph (2) substitute—

“(2) The first condition is that the member has attained normal minimum pension age or meets the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act.”.

(a) Paragraph 4A was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014

(b) S.R. 2006 No. 155; relevant amending Regulations are S.R. 2013 No. 95

(c) S.R. 2014 No. 79; Schedule 9A was inserted by the Schedule to S.R. 2015 No. 154

(d) Regulation 9A was inserted by regulation 9(5) of S.R. 2013 No. 95

PART 4

Disclosure of Information amendments

Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations

7. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014^(a) are amended in accordance with regulations 8 to 10.

Amendment of regulation 2

- 8.—(1) In regulation 2(1) (interpretation) after the definition of “transferrable rights”^(b) insert—
““unfunded public service defined benefits scheme” has the meaning given in section 91(2C) of the 1993 Act^(c)”.
- (2) In regulation 2(1A)^(d) (interpretation) for sub-paragraph (a) substitute—
“(a) a member has an opportunity to transfer flexible benefits where—
(i) the member—
(aa) has transferrable rights in relation to flexible benefits, or
(bb) would have transferrable rights in relation to flexible benefits if the member stopped accruing rights to some or all of the flexible benefits (see sub-paragraph (b)),
and the making of a transfer or transfer payment in respect of the flexible benefits is not prohibited by Article 119(4)(a) of the 2005 Order^(e), or
(ii) the member has an opportunity to transfer accrued rights to flexible benefits out of the scheme under the scheme rules;”.

Insertion of regulation 19A

9. After regulation 19 (first information on accessing benefits) insert—

“Retirement risk warnings

19A.—(1) Subject to paragraphs (5) and (7), the trustees or managers of the scheme must give a retirement risk warning to a member in accordance with this regulation where they are giving a member—

- (a) information in accordance with regulation 18A, 18B^(f) or 19 or the member has been given such information previously, and
(b) an application form, online access, information about access or any other method of access that enables the member to require the trustees or managers of the scheme to take any of the actions in paragraph (2).
- (2) The actions referred to in paragraph 1(b) are—
(a) the application of sums or assets held for the purpose of providing flexible benefits for purchasing an annuity;
(b) the payment of a lump sum in respect of flexible benefits, or

(a) S.R. 2014 No. 79; relevant amending Regulations are S.R. 2015 No. 154

(b) The definition of “transferrable rights” was inserted by regulation 3(1)(i) of S.R. 2015 No. 154

(c) 1993 c.48; section 91(2C) was inserted by section 71(3) of the Pension Schemes Act 2015 (c. 8)

(d) Paragraph (1A) was inserted by regulation 3(2) of S.R. 2015 No. 154

(e) S.I. 2005/255 (N.I. 1)

(f) Regulations 18A and 18B were inserted by regulation 6 of S.R. 2015 No. 154

- (c) the designation of sums or assets held for the purpose of providing flexible benefits as available for the payment of drawdown pension.

(3) A retirement risk warning under paragraph (1) must be given at the same time as the method of access in paragraph (1)(b) and before any of the actions set out in paragraph (2) are concluded.

(4) When giving a retirement risk warning to a member, the trustees or managers of the scheme must also give the member a statement that asks the member to note the importance of—

- (a) reading the retirement risk warning, and
- (b) accessing pensions guidance or independent advice.

(5) A retirement risk warning for any specific action in paragraph (2) need not be given to a member within 12 months of a retirement risk warning for that action having been given in accordance with this regulation to that member.

(6) For the purpose of—

- (a) this regulation, “retirement risk warning” means a statement that sets out the characteristic attributes and features of an annuity, lump sum and drawdown pension referred to in paragraph (2) and the factors in sub-paragraph (b)(iv), and
- (b) sub-paragraph (a)—
 - (i) the statement must be generic in nature and not tailored to or based on the personal circumstances of any individual member;
 - (ii) the statement may be limited to the characteristic attributes and features of an annuity, lump sum or drawdown pension referred to in paragraph (2) in respect of which the trustees or scheme managers are giving the member a method of access in paragraph (1)(b);
 - (iii) characteristic attributes and features are those that have the potential to adversely affect the retirement income of any member or their widow, widower, surviving civil partner, nominee, successor or other dependant, and
 - (iv) the factors are those that have the potential to affect the appropriateness of an annuity, lump sum and drawdown pension for a member such as: the impact of health status and lifestyle choices; whether a member has dependants, is in debt or in receipt of means tested benefits; and any other relevant factors.

(7) Subject to paragraph (8)—

- (a) a retirement risk warning under paragraph (1) need not be given where the trustees or managers of the scheme give the member an appropriate risk warning before any of the actions listed in paragraph (2) are concluded;
- (b) an appropriate risk warning must be given either verbally or in writing;
- (c) for the purposes of sub-paragraphs (a) and (b), an appropriate risk warning is a statement—
 - (i) that sets out the risks associated with any of the actions listed in paragraph (2) that the member is proposing to require the trustees or managers of the scheme to take and that have the potential to adversely affect the retirement income of that member or their widow, widower, surviving civil partner, nominee, successor or other dependant, and
 - (ii) that is based on the characteristic attributes and features of an annuity, lump sum or drawdown pension referred to in paragraph (2) and answers to questions the trustees or managers of the scheme have asked the member in order to identify any factors or other variables that increase the risks referred to in head (i).

(8) Paragraph (7) only applies where trustees or managers of the scheme have—

- (a) asked the member whether the member has received pensions guidance or independent advice, and

- (b) if the member has not received such guidance or advice, or is unsure, encouraged the member to use pensions guidance or to take independent advice to understand the options available to that member at retirement.”.

Amendment of Schedule 2

10.—(1) Schedule 2 (basic information) is amended in accordance with paragraphs (2) to (5).

(2) In paragraph 4B(a) at the beginning insert “Subject to paragraph 4C”.

(3) After paragraph 4B insert—

“**4C.** Paragraph 4B does not apply to a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, unless it is a scheme in relation to which section 91(2A)(a)(i)(b) of the 1993 Act has been disappplied, pursuant to section 91(2B) of the 1993 Act.”.

(4) In paragraph 22B(c) at the beginning insert “Subject to paragraph 22C”.

(5) After paragraph 22B insert—

“**22C.** Paragraph 22B does not apply to a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, unless it is a scheme in relation to which section 91(2A)(a)(i) of the 1993 Act has been disappplied, pursuant to section 91(2B) of the 1993 Act.”.

PART 5

Consequential revocations

Revocations

11. The following regulations are revoked—

- (a) regulation 2(5) of the Pension Protection Fund (Entry Rules) (Amendment) Regulations (Northern Ireland) 2005(d);
- (b) regulation 2(3) of the Pension Protection Fund (Miscellaneous Amendments) Regulations (Northern Ireland) 2009(e);
- (c) regulation 4(2)(a) of the Pension Protection Fund (Miscellaneous Amendments) Regulations (Northern Ireland) 2010(f).

Sealed with the Official Seal of the Department for Social Development on 15th March 2016

(L.S.)

Anne McCleary

A senior officer of the Department for Social Development

(a) Paragraph 4B was inserted by regulation 10(3) of S.R. 2015 No. 154
(b) Subsections (2A) and (2B) of section 91 were inserted by section 71(3) of the Pension Schemes Act 2015
(c) Paragraph 22B was inserted by regulation 10(8) of S.R. 2015 No. 154
(d) S.R. 2005 No. 364
(e) S.R. 2009 No. 78
(f) S.R. 2010 No. 80

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments in relation to payment of pension lump sums by occupational pension schemes (Part 2), the Pension Protection Fund (Part 3), and the provision of information by occupational and personal pension schemes (Part 4). Some of these amendments are consequential on changes introduced by the Taxation of Pensions Act 2014 (“the 2014 Act”) and the Pension Schemes Act 2015 (“the 2015 Act”).

Regulation 2 amends the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996. The amendment is consequential on the changes made by the 2014 Act, which introduced new types of authorised payments by registered pension schemes. The amendment allows 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.

Regulation 3 amends the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997 to allow a pension under an occupational pension scheme to be commuted for a lump sum, subject to conditions set out in tax legislation, where the member has not yet retired but is no longer employed by the scheme’s sponsoring employer.

Regulation 4 amends the Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005. Paragraph (3) amends regulation 2(2), which specifies the minimum age at which compensation can be paid, to refer to “normal minimum pension age” as defined in the Finance Act 2004, rather than age 55. This means that any future changes to the minimum age in tax legislation will automatically apply. Paragraph (4) is consequential on changes introduced by the 2014 Act and the Finance Act 2011 (c. 11), and removes specific restrictions on the age at which a person can be paid periodic compensation by the Pension Protection Fund (“the PPF”) as a “trivial commutation lump sum” (an option where the total value of a person’s PPF compensation and pension rights under all schemes is less than £30,000). Paragraph (5) clarifies the application to cash balance benefits of references in Schedule 6 to the Pensions (Northern Ireland) Order 2005 to lump sums received as a result of commuting a pension, or part of a pension.

Regulation 5 amends the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005. Paragraphs (4) and (5) amend the conditions which an eligible scheme’s sponsoring employer must satisfy in order for an application to be made to the PPF for it to assume responsibility for the scheme. The amended regulations require one or more of three conditions to be satisfied: first, the employer is not any of a specified list of types of employers (those generally able to have a qualifying insolvency event); second, the employer is an EEA insurer or EEA credit institution; or third, specific circumstances have arisen in relation to an employer with business operations in one or more EU Member States other than the UK, which prevent a qualifying insolvency event from occurring. Paragraph (6) permits the time limit for applying to the PPF to be extended by up to two months in a particular case if the PPF considers it reasonable in the circumstances. Paragraphs (7) and (8) make technical amendments to the circumstances in which certain notices must be issued by an insolvency practitioner or by the PPF in relation to the status of a scheme. Paragraphs (9) and (10) make amendments, in consequence of changes introduced by the 2015 Act, permitting non-money purchase benefits to be paid as an uncrystallised funds pension lump sum, or converted into money purchase benefits, during a PPF assessment period in limited circumstances.

Regulation 6 amends provisions of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006 regarding the discharge of money purchase benefits which transfer into the PPF. Paragraph (2) requires the PPF to provide information to relevant individuals about the availability of guidance from Pension Wise. Paragraph (3) replaces the requirement to have reached the age of 60 before being paid a lump sum by the PPF in respect of money purchase benefits with a requirement to have reached normal minimum pension age (or for the ill-health condition specified in tax legislation to be met), reflecting changes to tax legislation made by the 2014 Act.

Regulations 7 to 10 amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (“the 2014 Regulations”).

Regulation 8 amends the circumstances in which a member is treated as having an “opportunity to transfer flexible benefits” for the purposes of the 2014 Regulations. It provides that a member is not treated as having such an opportunity if they are prevented from transferring their benefits as a result of their scheme being in a PPF assessment period.

Regulation 9 inserts regulation 19A into the 2014 Regulations.

Regulation 19A(1) and (3) requires trustees or managers of the scheme to give a member a retirement risk warning when they give a member the means to require the trustees to take any of the actions set out in regulation 19A(2), if they have already given, or are giving, the member information in accordance with regulation 18A, 18B or 19 of the 2014 Regulations. The actions in regulation 19A(2) are the application of sums held for the purpose of providing flexible benefits for the purchase of an annuity, the payment of a lump sum in respect of flexible benefits and the designation of sums or assets held for the purpose of providing flexible benefits as available for the payment of drawdown pension. At the same time, regulation 19A(4) requires trustees to give members a statement noting the importance of reading the risk warning and accessing pensions guidance or independent advice. Regulation 19A(5) removes the statutory obligation to give retirement risk warnings where the warnings have already been given in the previous 12 months. Regulation 19A(6) defines retirement risk warning. Regulation 19A(7) provides an exemption from the requirement to send a retirement risk warning where trustees or managers of the scheme do not conclude any of the actions in regulation 19A(2) before asking the member questions and providing an appropriate risk warning based on the answers to those questions and the characteristic features and attributes of an annuity, lump sum or drawdown pension. Regulation 19A(8) provides that the exemption under regulation 19A(7) only applies where trustees or managers of the scheme have asked the member whether the member has received pensions guidance or independent advice and encouraged this if the member has not done so or is unsure as to this fact.

Regulation 10 amends Schedule 2 to the 2014 Regulations so that there is no requirement to give information regarding flexible benefits under Part 1 of Schedule 2 where flexible benefits are not available to members of an occupational pension scheme that is an unfunded public service defined benefits scheme unless it is a scheme in relation to which section 91(2)(a)(i) of the 1993 Act has been disapplied.

Regulation 11 makes consequential revocations.

As these Regulations, in so far as they are made under the Pensions (Northern Ireland) Order 1995 and the Pensions (Northern Ireland) Order 2005, 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 Article 117(2)(e) of the Pensions (Northern Ireland) Order 1995 and Article 289(2)(e) of the Pensions (Northern Ireland) Order 2005.

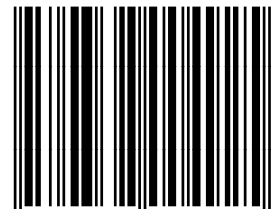
An assessment of the impact of Part 4 of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <https://www.dsdni.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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