

Draft Regulations laid before Parliament under section 84(2)(b) of the Pension Schemes Act 2015, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2017 No.

PENSIONS

**The Pension Schemes Act 2015 (Transitional Provisions and
Appropriate Independent Advice) (Amendment No. 2)
Regulations 2017**

Made - - - -

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 48(3)(b) and 86 of the Pension Schemes Act 2015(a).

A draft of this instrument has been laid before Parliament in accordance with section 84(2)(b) of the Pension Schemes Act 2015 and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) 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(b) are amended as set out in regulations 3 to 5.

Amendment to regulation 1

3. In regulation 1(3) (interpretation), after the definition of “guarantee date” insert—
““pension credit rights” has the meaning given in section 101B of the 1993 Act (interpretation)(c);”.

Amendment to regulation 5

4. For regulation 5 (exception to section 48(1)) substitute—

(a) 2015 c. 8.

(b) S.I. 2015/742, amended by S.I.s 2016/289 and 2017/717.

(c) Section 101B of the Pension Schemes Act 1993 (c. 48) (“the 1993 Act”) was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30).

“Exception to section 48(1)

5.—(1) The trustees or managers are not required to carry out the check in section 48(1) of the Act(a) if the transfer value of the member’s or survivor’s subsisting rights in respect of safeguarded benefits(b) under the pension scheme is £30,000 or less on the valuation date.

(2) In this regulation “transfer value” means—

- (a) where the rights referred to in paragraph (1) are transferrable rights as defined in section 93(11) of the 1993 Act (scope of Chapter 1)(c), the amount of the cash equivalent of those rights calculated in accordance with section 97 of that Act (calculation of cash equivalents)(d) and regulations made under it;
- (b) where the rights referred to in paragraph (1) are pension credit rights, the amount of the cash equivalent of those rights calculated in accordance with regulations made under section 101I of the 1993 Act (pension credit rights: calculation of cash equivalents)(e);
- (c) in any other case, the amount which would be the cash equivalent of the rights referred to in paragraph (1), calculated in accordance with section 97 of the 1993 Act and regulations made under it, as if—
 - (i) Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general) applied to the member or survivor by virtue of those rights;
 - (ii) references to a member in that Chapter and regulations made under it included a survivor of a member; and
 - (iii) in the case of an active member, the member had ceased to accrue rights to benefits on the valuation date,

but, in each case, disregarding regulations 7D (reductions to initial cash equivalents) and 7E (alternative manner of calculating and verifying cash equivalents) of the Transfer Values Regulations(f).”.

Amendments to regulation 8

5. In regulation 8(6) (information to be provided on initial enquiry)—

- (a) for “value” substitute “transfer value (as defined in regulation 5(2))”; and
- (b) omit “in accordance with regulation 5(2)”.

Transitional provision

6.—(1) In this regulation—

“the Advice Regulations” means the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015;

“relevant transaction” has the meaning given in regulation 1(3) (interpretation) of the Advice Regulations(g).

(2) Subject to paragraph (4), the trustees or managers of a pension scheme must provide information to a member of the scheme or a survivor of a member in accordance with paragraph (3) where—

(a) See regulation 1(3) of S.I. 2015/742 for the meaning of “the Act”.
(b) See section 48(8) of the Pension Schemes Act 2015 for the meaning of “safeguarded benefits”.
(c) Section 93 of the 1993 Act was substituted by paragraph 8 of Schedule 4 to the Pension Schemes Act 2015.
(d) Section 97 of the 1993 Act was amended by section 96(2) of the Pension Schemes Act 2015 and paragraph 11 of Schedule 4 to that Act.
(e) Section 101I of the 1993 Act was inserted by section 37 of the Welfare Reform and Pensions Act 1999.
(f) S.I. 1996/1847; relevant amending instruments are S.I.s 2008/1050, 2014/1711 and 2015/498.
(g) The definition of “relevant transaction” is amended by S.I. 2017/717.

- (a) the member or survivor has subsisting rights in respect of safeguarded benefits under the scheme;
 - (b) on or after 1st October 2017 but before 6th April 2018, the trustees or managers provided to the member or survivor an explanation in accordance with regulation 6 of the Advice Regulations (information to be provided to the member or survivor);
 - (c) the trustees or managers have not, since providing the explanation referred to in sub-paragraph (b)—
 - (i) provided written confirmation to the member or survivor in accordance with regulation 9(1)(b)(ii) of the Advice Regulations (determination of whether exception applies and check that advice received);
 - (ii) received confirmation in the form required by regulation 7 of the Advice Regulations (form of confirmation of appropriate independent advice) that the member or survivor has received appropriate independent advice; or
 - (iii) provided information to the member in accordance with regulation 10(3) of the Advice Regulations (information to be provided where the value of cash equivalent is reduced); and
 - (d) as a result of the amendment made by regulation 4 of these Regulations, the trustees or managers are not required to carry out the check in section 48(1) of the Pension Schemes Act 2015 in relation to the member or survivor.
- (3) Where paragraph (2) applies, the information—
- (a) is a written explanation that there is now no requirement for the trustees or managers to check that the member or survivor has received appropriate independent advice before they are able to carry out a relevant transaction; and
 - (b) must be provided on or before 26th April 2018.
- (4) This regulation does not require information to be provided to a member or survivor if, on or after 1st October 2017 but before 6th April 2018, the trustees or managers informed the member or survivor in writing that—
- (a) the exception in regulation 5 of the Advice Regulations (as amended by these Regulations) may or will apply in relation to the member or survivor from 6th April 2018; and
 - (b) the member or survivor may contact the trustees or managers on or after 6th April 2018 for further information.

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

Date

Name
Parliamentary Under Secretary of State
Department for Work and Pensions

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^(a). These Regulations also make transitional provision in connection with the coming into force of those amendments.

Regulation 4 substitutes regulation 5 of the Advice Regulations, which provides an exception to the requirement to obtain advice. The effect of regulation 5 as substituted is that the exception applies where the "transfer value" (as defined in paragraph (2) of regulation 5) of the member's or survivor's safeguarded benefits under the scheme is £30,000 or less.

Regulation 6 makes transitional provision in relation to cases where the exception in regulation 5 of the Advice Regulations did not apply to a member or survivor prior to these Regulations coming into force, but does apply as a result of the amendment made by regulation 4. If, between 1st October 2017 and 6th April 2018, the trustees or managers informed the member or survivor about the requirement to obtain appropriate independent advice, then within 20 days after the coming into force of these Regulations they must inform the person that the requirement no longer applies. However there is an exception if the trustees or managers provided specified information to the member or survivor in advance of the amendment coming into force.

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.

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

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