



Pension Schemes Act 2015

2015 CHAPTER 8

PART 4

PENSIONS FLEXIBILITIES

CHAPTER 2

INDEPENDENT ADVICE

Great Britain

48 Independent advice in respect of conversions and transfers: Great Britain

- (1) Where a member of a pension scheme has subsisting rights in respect of any safeguarded benefits, or a survivor of a member has subsisting rights in respect of any safeguarded benefits, the trustees or managers must check that the member or survivor has received appropriate independent advice before—
 - (a) converting any of the benefits into different benefits that are flexible benefits under the scheme;
 - (b) making a transfer payment in respect of any of the benefits with a view to acquiring a right or entitlement to flexible benefits for the member or survivor under another pension scheme;
 - (c) paying a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the benefits.
- (2) The Secretary of State may by regulations make provision about—
 - (a) what the trustees or managers must do to check that a member or survivor has received appropriate independent advice for the purposes of subsection (1), and
 - (b) when the check must be carried out for the purposes of that subsection.
- (3) The Secretary of State may by regulations—

Status: This is the original version (as it was originally enacted).

- (a) create an exception to subsection (1) in the case of a member or survivor whose subsisting rights in respect of safeguarded benefits under the scheme, or safeguarded benefits under the scheme and any other schemes, are worth less than a specified amount;
 - (b) create other exceptions to subsection (1).
- (4) Regulations under subsection (3)(a) may, in particular, make provision about—
- (a) the valuation of the subsisting rights;
 - (b) the process for determining whether the exception applies.
- (5) In subsection (1)(b) the reference to another pension scheme includes a scheme established in a country or territory outside Great Britain.
- (6) Where the trustees or managers fail to carry out a check required by this section, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who failed to take reasonable steps to ensure that the check was carried out.
- (7) Failure to carry out a check required by this section does not affect the validity of any transaction.
- (8) In this section—
- “appropriate independent advice” means advice that—
 - (a) is given by an authorised independent adviser, and
 - (b) meets any other requirements specified in regulations made by the Secretary of State;
 - “authorised independent adviser” means a person who—
 - (a) has permission under Part 4A of the Financial Services and Markets Act 2000, or resulting from any other provision of that Act, to carry on a regulated activity specified in regulations made by the Secretary of State, and
 - (b) meets such other requirements as may be specified in regulations made by the Secretary of State for the purpose of ensuring that the person is independent;
 - “safeguarded benefits” means benefits other than—
 - (a) money purchase benefits, and
 - (b) cash balance benefits.

49 Power to require employer to arrange advice for purposes of section 48

- (1) The Secretary of State may by regulations specify circumstances in which an employer must arrange or pay for a member of a pension scheme, or a survivor of a member of a pension scheme, to receive appropriate independent advice for the purpose of satisfying a requirement imposed by section 48.
- (2) Regulations under subsection (1) may, in particular—
- (a) impose limitations on the amount that an employer may be required to pay;
 - (b) prohibit an employer from seeking in any way to recover, from a member or survivor, costs incurred by the employer in complying with the regulations;
 - (c) provide for section 10 of the Pensions Act 1995 (civil penalties) to apply to a failure by an employer to comply with the regulations.

- (3) In this section “employer” has the meaning given by regulations made by the Secretary of State.

50 Independent advice: consequential amendments: Great Britain

- (1) The Pension Schemes Act 1993 is amended as follows.
- (2) In section 99 (trustees’ duties after exercise of option), after subsection (2) insert—
- “(2A) Subsection (2) does not apply if—
- (a) the trustees or managers have been unable to carry out the check required by section 48 of the Pension Schemes Act 2015 by reason of factors outside their control, or
 - (b) the trustees or managers have carried out the check required by section 48 of the Pension Schemes Act 2015 but the check did not confirm that the member had received appropriate independent advice.”
- (3) In section 101J (time for compliance with transfer notice in respect of pension credit benefits), after subsection (2A) (inserted by paragraph 18(3) of Schedule 4 to this Act) insert—
- “(2B) Subsection (1) does not apply if—
- (a) the trustees or managers have been unable to carry out the check required by section 48 of the Pension Schemes Act 2015 by reason of factors outside their control, or
 - (b) the trustees or managers have carried out the check required by section 48 of the Pension Schemes Act 2015 but the check did not confirm that the member had received appropriate independent advice.”