



# 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—

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- (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.”

### *Northern Ireland*

## **51 Independent advice in respect of conversions and transfers: Northern Ireland**

- (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 Department for Social Development in Northern Ireland 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

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- (b) when the check must be carried out for the purposes of that subsection.
- (3) The Department for Social Development in Northern Ireland may by regulations—
  - (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 Northern Ireland.
- (6) Where the trustees or managers fail to carry out a check required by this section, Article 10 of the Pensions (Northern Ireland) Order 1995 ([S.I. 1995/3213 \(N.I. 22\)](#)) (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 Department for Social Development in Northern Ireland;
  - “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 Department for Social Development in Northern Ireland, and
    - (b) meets such other requirements as may be specified in regulations made by the Department for Social Development in Northern Ireland 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.

## **52 Power to require employer to arrange advice for purposes of section 51**

- (1) The Department for Social Development in Northern Ireland 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 51.
- (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;

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- (c) provide for Article 10 of the Pensions (Northern Ireland) Order 1995 ([S.I. 1995/3213 \(N.I. 22\)](#)) (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 Department for Social Development in Northern Ireland.

### **53 Independent advice: consequential amendments: Northern Ireland**

- (1) The Pension Schemes (Northern Ireland) Act 1993 is amended as follows.
- (2) In section 95 (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 51 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 51 of the Pension Schemes Act 2015 but the check did not confirm that the member had received appropriate independent advice.”
- (3) In section 97J (time for compliance with transfer notice in respect of pension credit benefits), after subsection (2A) (inserted by paragraph 64(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 51 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 51 of the Pension Schemes Act 2015 but the check did not confirm that the member had received appropriate independent advice.”

#### *Income tax exemption*

### **54 Independent advice: income tax exemption**

- (1) In Part 4 of the Income Tax (Earnings and Pensions) Act 2003 (employment income: exemptions), in Chapter 9 (exemptions: pension provision), after section 308A insert—

#### **“308B Independent advice in respect of conversions and transfers of pension scheme benefits**

- (1) No liability to income tax arises in respect of—
- (a) the provision to an employee or former employee of appropriate independent advice, or
  - (b) the payment or reimbursement, to or in respect of an employee or former employee, of the cost of such advice,
- if conditions A to C are met.

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- (2) Condition A is that the provision, payment or reimbursement is required by regulations under section 49 or 52 of the Pension Schemes Act 2015 (power to require employer to arrange independent advice in respect of conversions and transfers).
- (3) If condition A is met only as respects part of the payment or reimbursement because the amount of the payment or reimbursement exceeds the amount required to be paid or reimbursed, subsection (1) applies in respect of that part.
- (4) Condition B is that the provision, payment or reimbursement is not pursuant to relevant salary sacrifice arrangements.
- (5) Condition C is that such other requirements as may be specified in regulations made by the Treasury are satisfied in relation to the provision, payment or reimbursement.
- (6) In this section—
- “appropriate independent advice”—
- (a) in relation to England and Wales and Scotland, has the meaning given by regulations under section 48 of the Pension Schemes Act 2015;
- (b) in relation to Northern Ireland, has the meaning given by regulations under section 51 of that Act;
- “relevant salary sacrifice arrangements” means arrangements (whenever made, whether before or after the employment began) under which an employee gives up the right to receive an amount of general earnings or specific employment income in return for the provision of appropriate independent advice or the payment or reimbursement of the cost of such advice.”
- (2) In that Part of that Act, in section 228 (effect of exemptions on liability under provisions outside Part 2), in subsection (2), after paragraph (d) insert—
- “(da) section 308B (independent advice in respect of conversions and transfers of pension scheme benefits),”.
- (3) The amendments made by this section have effect for the tax year 2015-16 and subsequent tax years.