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| **Title:** Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) 2015 (SI 2015/742)<br><br>**PIR No: DWP_PIR_002_23**<br><br>**Original IA/RPC No:** RPC14-HMT-2212<br><br>**Lead department or agency:** DWP<br><br>**Other departments or agencies:** N/A<br><br>**Contact for enquiries:** rizwana.shah1@dwp.gov.uk | Post Implementation Review<br>**Date: 04/04/2023**<br>**Type of regulation: Domestic**<br>**Type of review: Statutory**<br>**Date measure came into force: 06/04/2015**<br>**Recommendation: Amend**<br>**RPC Opinion: N/A** |

**Introduction**

This is the first statutory review of the provision introduced in 2015, in relation to the requirement in section 48 of the Pension Schemes Act 2015 (c.8) ("the Act"[1]), that trustees or managers of a pension scheme check that appropriate independent advice has been received by a member or survivor before the trustees or managers can carry out the transactions to transfer safeguarded benefits.

These Regulations also make provision under section 49 of the Act, specifying circumstances in which an employer must pay for the provision of appropriate independent advice to a member or survivor.

The requirement to conduct a review was included through Regulation 13 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) 2015 Regulations (SI 2015/742)[2] (the 2015 Regulations).

Regulation 13 specifies that:

1. the Secretary of State must from time to time:
    a) carry out a review of the regulatory provision contained in the 2015 Regulations;
    b) publish a report setting out the conclusions of the review;
2. the first report must be published before 6th April 2023; and,
3. subsequent reports must be published at intervals not exceeding five years[3].

The published report must, in particular[4]:

a) set out the objectives intended to be achieved by the regulations under review;
b) assess the extent to which those objectives are achieved;
c) assess whether those objectives remain appropriate; and,
d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

**Background**

[1] https://www.legislation.gov.uk/ukpga/2015/8/contents/enacted
[2] https://www.legislation.gov.uk/uksi/2015/742/contents
[3] https://www.legislation.gov.uk/uksi/2015/742/regulation/13
[4] https://www.legislation.gov.uk/uksi/2015/742/regulation/13

Reforms to private pensions in the 2014 Budget gave savers greater flexibility in how they access their pension savings. The Taxation of Pension Act 2014 ("the 2014 Act"), which received Royal Assent on 17 December 2014, amended, from 6 April 2015, the rules in Part 4 of the Finance Act 2004 in relation to the taxation of pension payments.

Then, in 2015, the Pension Schemes Act 2015 (the 2015 Act) introduced the concept of 'flexible benefits' which is commonly referred to as pension freedoms, including:

- the pension arrangements to which the new flexibilities will apply; and
- allowing pension scheme members with such benefits a statutory right to transfer categories of benefit between schemes up to and beyond their scheme's normal retirement age in circumstances where they are no longer accruing rights in that category.

The 2015 Act also introduced the concept of 'safeguarded benefits', which broadly cover pension arrangements that the new flexibilities do not apply to and created a requirement for scheme members with safeguarded benefits to take appropriate independent advice (the advice requirement) before trustees can process a transfer request. However, where the cash equivalent value of the safeguarded benefits in the scheme are equal to or less than £30,000 the member is exempt from the requirement. Trustees must notify members whether they fall into this exemption.

Following a 12-week consultation on freedom and choice in pensions the government confirmed that transfers of defined benefits to a defined contribution scheme would continue to be permitted. However, primary legislation would be introduced to create a new safeguard to ensure that members with safeguarded benefits take financial advice before proceeding with a decision to transfer or convert their safeguarded benefits. This was to ensure individuals understood the implications of such a decision.

1. **What were the original assumptions on how onerous the provision would be?**

The original detailed assumptions relating to the 2015 Regulations (SI 2015/742) can be found in the Regulatory Impact Assessment. Below are some of the key assumptions used to form the cost benefit analysis (which was below the de minimus):

- **Cost of providing additional financial advice:** We estimated the average unit cost of professional financial advice of £1,170 per member transferring. We also assumed a central estimate that 90% of transfers will have received financial advice and therefore only an additional 10% of transfers will require additional advice. Finally, the total number of transfers that would require additional advice/admin once mandated was estimated at 2,900 per annum. The annual cost to individuals from additional financial advice when an employee transfers out was estimated at **£1.73m**. The annual cost to business from additional financial advice due to intra-employer transfers, transfer exercises and administrative costs was estimated at **£2.11m**.
- **Benefits to financial advisors:** The benefits to advisors will amount to the additional number of people that will require advice as a result of the new statutory requirement

(2,900 p.a.) and the estimated value of advice (£1,170 as above). This generates benefits to advisers of **£3.39m per annum.**

- **Administrative cost of verifying financial advice** We estimated an hourly wage of £18.91 for a pensions administrator to verify that the advice has taken place, with the assumption that a check would take the total of 1 hour. This resulted in an ongoing cost of **£0.44m per annum.**

- **Familiarisation costs:** There were minor costs in relation to familiarisation with the changes. This was estimated at **£0.29m for scheme administrators.**

**2. What evidence has informed the PIR?**

The Department posed a series of questions, regarding the measures set out in section 48 of the Pension Schemes Act 2015, including if the policy intent was still valid, the effectiveness of the regulations, and any unintended consequences of the policy. Those questions were posed to private pension industry organisations , who we believe had an interest in this topic. The responses from those organisations have formed the basis for the post implementation review.

DWP also used evidence from:

- the Defined Benefit pension transfers market data published by the FCA. The FCA published two sets of ad hoc data. The first, published in June 2019, covered the period of April 2015 to September 2018. The second data set covers the period of October 2018 to March 2020.

- a Freedom of Information (FOI) request submitted to the FCA on the total number of customers advised to transfer out of DB pension schemes in the 18 months to September 2021.

- A consultation paper published by the FCA in 2019 titled ‘Pension transfer advice: contingent charging and other proposed changes’

- a joint paper titled ‘Mind the transfer advice gap?’ from LCP and Aviva on the current state of DB transfer market published in September 2021.

Direct correspondence from pension savers to DWP regarding their experiences of the regulations has also been taken into consideration.

**Review of assumptions**

It would be disproportionate to gather all the information about the actual cost and cost savings of the regulations given the estimated cost to business. Instead, the Department set out a series of questions to pension industry organisations to review the regulations and further focused on two key elements of the initial impact assessment: the number of transfers and the cost of advice.

The outcome of the surveys is discussed in detail in section 4. There has however been no response which provides evidence of the costs being disproportionate and the responses suggest that additional administration costs have been built into business-as-usual practices.

Further analysis on the number of transfers and cost of advice:

- **Number of transfers:** Our initial impact assessment estimated a total of 29,000 transfers per annum post pension freedoms, 10% of which would then require additional advice (2,900). Although not directly comparable to the methodology used in the impact assessment, the FCA defined benefit market transfers data shows an increase in the number of DB pensions advised to transfer from 22,000 between Oct-15 to Sep-16 to a peak at over 70,000 between Oct-17 and Sep-18. Although the figures are not directly comparable, between Oct-18 and Sep-19, the number of transfers then decreased to approximately 32,000. An FOI request shows a further fall to 20,000 between Oct-20 and Sep-21, meaning the latest data on the number of transfers shows they are currently in line with levels observed in 2015. Overall, the number of transfers per annum have increased above our initial estimates since 2015, which may have increased the total cost to individuals.

- **Cost of advice:** In 2019, the FCA found that consumers who take advice from firms that charge non-contingently typically pay £2,500-£3,500. More recent analysis conducted by LCP (Lane Clark & Peacock) and Aviva found that transfer advice fees can be higher than the original non contingent advice estimates by the FCA and therefore also higher than our initial impact assessment estimate. All other things equal, the costs to individuals and benefits to advisors are therefore likely to have more than doubled since our initial estimate of £1,170.

We understand that the increase in the cost of advice is being primarily driven by the increase in the costs of indemnity insurance for advisors. This is unrelated to these regulations. Advisors are passing on this increase to their clients resulting in the increased cost explained above. This results in a net zero difference to businesses. We estimate the overall cost is broadly similar to estimates in our original impact assessment – which considers costs to businesses only.

### 3. To what extent have the policy objectives been achieved?

DWP conducted a survey of pension providers on the impact the structure of 2015 Regulations was having on pension transfers. Although survey responses were low[5], feedback from providers and correspondence received suggests that the policy intent is still relevant but there are some suggested amendments to the policy.

When asked ‘The regulations successfully meet its aim of making customers informed of the risks of transferring from safeguarded benefits’ all respondents either strongly agreed or agreed, thus suggesting, the policy intent is successful. This feedback is also representative of the direct feedback from pension savers.

When asked if the policy was well developed and did not need amending or changed, most answered strongly agree to neutral.

[5] The survey was sent out to private pension industry organisations, with a response received from 12 schemes.

When providing written feedback to questions about possible amendments to the policy, one key issue came up, the £30,000 benchmark[6].

Feedback from providers suggests advisers are increasingly reluctant to recommend giving up safeguarded benefits, following communications issued by the FCA and the concerns raised by bad advice being given in certain circumstances.

Two main concerns were raised:

1. The £30,000 limit – reflecting rising costs of providing advice, advisor availability, and Cash Equivalent Transfer Values increasing.

2. Advisor costs and direct feedback DWP have received, through correspondence, from pension savers. Most have stated that the relative cost of advice almost makes a transfer prohibitive.

**4. Were there any unintended consequences?**

Although there haven't been any unintended consequences of the policy aim, feedback from providers suggests that due to the cost and availability of advice many people are being 'locked into' DB pension schemes.

**5. Has the evidence identified any opportunities for reducing the burden on business?**

No opportunities to reduce the burden on business have been identified as there are limited impacts on business, with the exception of checking that advice had been taken.

**Conclusions:**

Publishing the PIR report fulfils the Secretary of State's statutory obligation as specifically set out in Regulation 13 of The 2015 Regulations.

In reaching the following conclusions consideration has been given to:

1. What the objectives intended to be achieved by the regulatory provision;

   To ensure that pension trustees were aware of the meaning of independent advice, how they check that individuals have taken such advice before transacting their transfer request, understanding exceptions to the requirement to take advice and what information they are required to provide individuals.

[6] In certain circumstances the member's rights under a pension scheme may be commuted and paid as a one-off authorised lump sum. This will be a trivial commutation lump sum. To be a trivial commutation lump sum the value of the member's pension rights under all registered pension schemes that they belong to must not be more than £30,000. https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual/ptm063500

The underpinning policy intent behind these regulations and objectives was to ensure members with safeguarded benefits understood the level of security in retirement provided by such benefits and what the member would lose if they were to exchange them for benefits that can be accessed flexibly.

**2.** The extent to which those objectives are achieved;

It is considered that the objectives have been met because the number of members receiving advice has risen, and therefore the number of informed transfers has risen.

**3.** Whether those objectives remain appropriate;

There is a consensus from the responses to the survey DWP carried out and from the correspondence received directly from pension savers that the original objectives (the policy intent) remains appropriate.

**4.** If those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

Whilst business impact has not exceeded the assumption there is some evidence it may be a disproportionate response to low risk transfers some members wish to make. DWP will therefore conduct further work with the Pensions Regulator, the FCA, His Majesty's Treasury and industry representatives to consider if changes could be implemented to improve the pension saver experience, without undermining the policy intent.

Sign-off for Post Implementation Review: Laura Trott MBE MP Minister for Pensions

**I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.**

Signed: Date: 04/04/2023