

2017 No.

PENSIONS

**The Pension Schemes Act 2015 (Transitional Provisions and
Appropriate Independent Advice) (Amendment) Regulations
2017**

Made - - - - ***

Coming into force - - ***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1)(ca) and (d), (2)(a) and (e), (3) and (3A), 168(1), (4) and (11), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a) and sections 48(3)(b) and 86 of the Pension Schemes Act 2015(b).

In relation to regulation 6, the Secretary of State for Work and Pensions has, in accordance with section 185(1) of the Pension Schemes Act 1993(c), consulted such persons as he considers appropriate.

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) Regulations 2017 and come into force on [6th April 2017/1st October 2017].

Amendments to the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015

2.—(1) The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015(d) are amended as set out in regulations 3 to 7.

Amendment to regulation 1

3. In regulation 1(3) (interpretation), after the definition of “guarantee date” insert—

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- (a) 1993 c. 48. Paragraph (ca) of section 113(1) was inserted by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). There are amendments to section 181(1) not relevant to these Regulations. Section 181(1) is cited for the meaning it gives to “prescribed” and “regulations”. Section 183(1) was amended by paragraph 79 of Schedule 5 paragraph 15(a) of Schedule 6 and Parts III and IV of Schedule 7 to the Pensions Act 1995 (c. 26) (“the 1995 Act”).
- (b) 2015 c. 8.
- (c) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the 1995 Act.
- (d) S.I. 2015/742.

““pension credit rights” has the meaning given in section 101B of the 1993 Act;”.

Amendment to regulation 5

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

“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 if the transfer value of the member’s or survivor’s subsisting rights in respect of safeguarded benefits under the pension scheme is £30,000 or less on the valuation date.

(2) In this regulation “transfer value”, in relation to a member’s or survivor’s subsisting rights in respect of safeguarded benefits, means—

- (a) where those rights are—
 - (i) transferrable rights as defined in section 93(11) of the 1993 Act; or
 - (ii) pension credit rights,
the amount of the cash equivalent of those rights; and
- (b) otherwise, the amount which would be the cash equivalent of those rights if—
 - (i) the conditions specified in section 93 of the 1993 Act were met in relation to those rights and subsection (5) of that section was omitted;
 - (ii) in the case of a survivor, references in Chapter 1 of Part 4ZA of the 1993 Act to a member included a survivor of a member; and
 - (iii) the member or survivor had ceased to accrue rights to benefits on the valuation date,

disregarding any reduction permitted or required by regulation 7D of the Transfer Values Regulations (reductions to initial cash equivalents).”.

Amendment 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)”.

Insertion of new regulation 8A

6. After regulation 8 insert—

“Provision of risk warnings in relation to safeguarded-flexible benefits

8A.—(1) In this regulation and in regulation 8B—

“risk warning” means a written communication which satisfies the requirements specified in regulation 8B;

“safeguarded-flexible benefits” means benefits within paragraph (c) of the definition of flexible benefits in section 74 of the Act;

“subsisting right” has the meaning given in section 76(1) of the Act;

“survivor”, in relation to a member of a pension scheme, means a person who has survived the member and has a right to future benefits, or is entitled to benefits, under the scheme in respect of the member.

(2) Subject to paragraph (4), the trustees or managers of a pension scheme must provide a risk warning to a member of the scheme or a survivor of a member in accordance with this regulation if the member or survivor has subsisting rights in respect of safeguarded-flexible benefits under the scheme and—

- (a) the member or survivor makes an application or written request, or gives a notice in writing, referred to in regulation 8(2); or
 - (b) the trustees or managers provide to the member or survivor—
 - (i) a statement of entitlement or a written statement of the amount of the cash equivalent;
 - (ii) written confirmation of the trustees’ or managers’ agreement in principle to carry out a relevant transaction (subject to any relevant statutory requirements and the requirements of the scheme rules being met); or
 - (iii) a valuation, other than a statement of entitlement or a written statement of the amount of the cash equivalent, for the purposes of a relevant transaction,
- in respect of those safeguarded-flexible benefits.
- (3) The trustees or managers must provide any risk warning required by paragraph (2)—
- (a) where the member or survivor has made a request or application, or given a notice in writing, within paragraph (2)(a), before the expiry of one month beginning with the date of that request, application or notice; and
 - (b) where the trustees or managers provide a statement, confirmation or valuation to the member or survivor within paragraph (2)(b), on or before the day on which that statement, confirmation or valuation is provided.
- (4) Paragraph (2) does not require the trustees or managers to provide a risk warning (the “current risk warning”) to a member or survivor if the trustees or managers—
- (a) have previously provided a risk warning to that member or survivor in relation to safeguarded-flexible benefits in accordance with this regulation; and
 - (b) would, in the absence of this paragraph, be required to provide the current risk warning in relation to the same safeguarded-flexible benefits before the expiry of 12 months beginning with the date on which the previous risk warning was provided.
- (5) Where a trustee or manager of a pension scheme fails without reasonable excuse to comply with any requirement imposed by this regulation, the Pensions Regulator may, by notice in writing, require that trustee or manager to pay, within 28 days, a penalty that must not—
- (a) in the case of an individual, exceed £5,000, and
 - (b) in any other case exceed £50,000.

Content of risk warnings in relation to safeguarded-flexible benefits

8B.—(1) In this regulation—

“the Disclosure Regulations” means the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013;

“relevant guarantee”, in relation to a member’s or survivor’s subsisting rights in respect of safeguarded-flexible benefits—

- (a) means a promise or guarantee in relation to the amount of a pension which may accrue to the member or survivor, or be capable of being secured by the member or survivor, in respect of those safeguarded-flexible benefits;
- (b) includes, in particular, a promise or guarantee—
 - (i) that the pension will be equal to or more than a particular amount (“a guaranteed amount”); or
 - (ii) that the pension will be equal to or more than a particular proportion of the amount available for the provision of benefits to the member or survivor (“a guaranteed conversion rate”),

and such a promise or guarantee is not excluded from being a relevant guarantee merely because—

- (iii) the member's or survivor's opportunity to take or secure a pension equal to the guaranteed amount, or calculated by reference to the guaranteed conversion rate, (to "take up" the relevant guarantee) is subject to conditions or restrictions; or
- (iv) the member or survivor has an option to take or secure a pension without taking up the relevant guarantee, or to take the safeguarded-flexible benefits in another form;
- (c) does not include a promise or guarantee in relation to the amount available for the provision of benefits to the member or survivor (apart from a promise or guarantee referred to in sub-paragraph (b)(ii));

"risk warning pension illustration" means an estimate of the amount of a pension which may accrue to a member or survivor, or be capable of being secured by the member or survivor, in respect of his or her rights to safeguarded-flexible benefits;

"retirement date" has the same meaning as in the Disclosure Regulations.

(2) A risk warning required by regulation 8A in relation to a member's or survivor's safeguarded-flexible benefits must include—

- (a) a prominent statement that his or her benefits under the scheme include a potentially valuable guarantee (or, where relevant, more than one such guarantee) which will be lost if he or she proceeds with the proposed relevant transaction;
- (b) for each relevant guarantee in relation to those benefits, a clear and intelligible explanation of—
 - (i) the key features of the relevant guarantee;
 - (ii) the circumstances in which the member or survivor will have an opportunity to take up the relevant guarantee, and any circumstances in which they will lose that opportunity under the scheme (whether in relation to all of their subsisting rights in respect of safeguarded-flexible benefits, or part only); and
 - (iii) any material restrictions or conditions to which the member's or survivor's opportunity to take up the relevant guarantee is subject under the scheme; and
- (c) two risk warning pension illustrations ("the first illustration" and "the second illustration") in relation to those benefits, calculated in accordance with paragraphs (3) and (4), respectively.

(3) The first illustration in relation to the member's or survivor's safeguarded-flexible benefits must be calculated using the following assumptions—

- (a) the date on which the pension will commence payment ("the pension commencement date") will be—
 - (i) where the member or survivor will have an opportunity to take up a relevant guarantee in relation to those benefits on his or her retirement date, that date; or
 - (ii) otherwise, the closest date to the member's or survivor's retirement date on which he or she will have an opportunity to take up a relevant guarantee in relation to those benefits;
- (b) the member or survivor will take up a relevant guarantee in relation to those benefits, being a relevant guarantee that he or she will have an opportunity to take up on the pension commencement date; and
- (c) the amount available for the provision of the safeguarded-flexible benefits to the member or survivor will be an amount determined—
 - (i) having regard to the value of the member's or survivor's subsisting rights in respect of those benefits on—
 - (aa) where there is a valuation date, that date; or

- (bb) otherwise, a date chosen by the trustees or managers, which must be within one month of the date on which the risk warning is provided; and
 - (ii) using the same assumptions that would be used if the first illustration were a pension illustration required to be given under regulation 17 of, and paragraph 6 of Schedule 6 to, the Disclosure Regulations.
- (4) The second illustration in relation to the member’s or survivor’s safeguarded-flexible benefits must be calculated using the following assumptions—
 - (a) the pension commencement date will be the same as that used for the purpose of calculating the first illustration in accordance with paragraph (3);
 - (b) the rate at which the available amount will be converted into a pension will be determined—
 - (i) so far as possible, using assumptions which are consistent with the assumptions used in calculating the first illustration in respect of—
 - (aa) the payment of any lump sum in connection with the pension commencing payment to the member or survivor;
 - (bb) any entitlement to increases in payment in relation to the pension, and the rate of any such increases;
 - (cc) the potential for payment of any benefits in respect of the pension on the death of the member or survivor after the pension commencement date, and the amount of any such benefits; and
 - (dd) the payment frequency of the pension; and
 - (ii) otherwise, using the same assumptions that would be used if the second illustration were a pension illustration required to be given under regulation 17 of, and paragraph 6 of Schedule 6 to, the Disclosure Regulations; and
 - (c) the amount available for the provision of the safeguarded-flexible benefits to the member or survivor will be the same as that used for the purpose of calculating the first illustration in accordance with paragraph (3).”.

Insertion of new regulation 13

7. After regulation 12 insert—

“Review

- 13.—**(1) The Secretary of State must from time to time—
- (a) carry out a review of these Regulations; and
 - (b) publish a report setting out the conclusions of the review.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, assess the extent to which they could be achieved in another way which imposes less regulation.
- (3) The first report must be published before [6th April/ 1st October] 2022.
- (4) Subsequent reports must be published at intervals not exceeding five years.”.

Transitional provision in relation to amendment to regulation 5 of the principal Regulations

8.—(1) In this regulation—

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

“the commencement date” means the date on which these Regulations come into force, in accordance with regulation 1;

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

(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) the member or survivor has subsisting rights in respect of safeguarded benefits under the scheme;
- (b) within the period of six months ending on the commencement date the trustees or managers provided to the member or survivor the explanation referred to in regulation 6 of the principal 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 under regulation 9(1)(b)(ii) of the principal Regulations (determination of whether exception applies and check that advice received);
 - (ii) received confirmation that the member or survivor has received appropriate independent advice; or
 - (iii) provided information to the member under regulation 10(3) of the principal Regulations (information to be provided where the value of cash equivalent is increased or reduced); and
- (d) as a result of the amendment made by regulation 4 of these Regulations, the trustees or managers are not now 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 to be provided—

- (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 before the expiry of 20 days beginning on the commencement date.

(4) This regulation does not require information to be provided to a member or survivor if, on or after the date on which a draft of these Regulations was laid before Parliament, the trustees or managers informed the member or survivor that—

- (a) the exception in regulation 5 of the principal Regulations might apply in relation to the member or survivor from the commencement date; and
- (b) the member or survivor could contact the scheme on or after the commencement date 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 make provision in relation to section 48 of the Pension Schemes Act 2015 (c. 8) (“the 2015 Act”). Section 48(1) requires the trustees or managers of a pension scheme to check that a member or survivor has received appropriate independent advice before carrying out a transaction specified in that section (a “relevant transaction”) in relation to the member’s or survivor’s “safeguarded benefits” (as defined in section 48(8)). These Regulations also make transitional provision in connection with the amendment made by regulation 4.

Regulation 4 amends regulation 5 of the Advice Regulations, which provides an exception to the requirement in section 48(1) of the 2015 Act. Paragraph (1) of regulation 5, as amended, provides 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 inserts new regulations 8A and 8B into the Advice Regulations, to require the trustees or managers of a pension scheme to provide certain information to a member or survivor with “safeguarded-flexible benefits” (as defined in paragraph (1) of new regulation 8A), where the member or survivor indicates that they are considering a relevant transaction in relation to those benefits. New regulation 8A requires that, following the occurrence of any of the events specified in paragraph (2) of the regulation, the trustees or managers must provide a written communication (a “risk warning”) which includes the information specified in new regulation 8B to the member or survivor. Paragraph (5) of regulation 8A provides the Pensions Regulator with a power to impose financial penalties in respect of a failure by a trustee or manager to comply with regulation 8A.

Regulation 7 inserts new regulation 13 into the Advice Regulations. This requires the Secretary of State to review the operation of the Advice Regulations and publish a report setting out the conclusions of the review, no later than five years after these Regulations come into force, and subsequently at intervals of not more than five years.

Regulation 8 makes transitional provision in connection with the amendment made by regulation 4 of these Regulations to regulation 5 of the Advice Regulations. It relates to cases where the exception in regulation 5 did not apply to a member or survivor prior to these Regulations coming into force, but does apply to him or her as a result of the amendment made by regulation 4. If the trustees or managers informed the member or survivor, within six months before these Regulations come into force, that he or she was required to obtain appropriate independent advice, then they must inform him or her within 20 days after these Regulations come into force that the requirement no longer applies. However the trustees or managers are not required to do so if they had already provided specified information to the member or survivor in advance of the amendment coming into force, on or after the date on which these Regulations were laid in draft before Parliament.