

# Draft Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2018

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STATUTORY INSTRUMENTS

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**2018 No.**

## **PENSIONS**

### Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
*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 73(4), 181(1) and 182(2) of the Pension Schemes Act 1993<sup>(1)</sup> and sections 43 and 54(5) and (6) of, and paragraph 1(1), (2)(a), (3) and (5) of Schedule 18 to, the Pensions Act 2014<sup>(2)</sup>.

In accordance with section 185(1) of the Pension Schemes Act 1993<sup>(3)</sup> and paragraph 8 of Schedule 18 to the Pensions Act 2014, the Secretary of State has consulted such persons as he considers appropriate.

#### **Citation, commencement and extent**

1. These Regulations may be cited as the Occupational Pension Schemes (Preservation of Benefit and Charges and Governance) (Amendment) Regulations 2018, and come into force on 6th April 2018.

#### **Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991**

2.—(1) Regulation 12 (transfer of members' accrued rights without consent) of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991<sup>(4)</sup> is amended as follows.

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(1) 1993 c. 48; section 181(1) is cited for the meaning it gives to "prescribe" and "regulations".

(2) 2014 c. 19.

(3) Section 185(1); relevant amendments were made by paragraph 80(a) of Schedule 5 to the Pensions Act 1995.

(4) S.I. 1991/167, as amended by S.I. 2000/1403; there are other amending instruments but none is relevant.

(2) After paragraph (1A) insert—

“(1B) (a) For the purposes of section 73(4) of the Act, a scheme may provide for the member’s accrued rights to which this paragraph applies to be transferred to another occupational pension scheme (as described in section 73(2)(a)(i) of the Act) without the member’s consent where the conditions in paragraph (7) or (8) of this regulation are satisfied.

(b) This paragraph applies to accrued rights to money purchase benefits, except those which would be safeguarded benefits or cash balance benefits (as defined in sections 48 and 75 respectively of the Pension Schemes Act 2015<sup>(5)</sup>) if they were not secured by an insurance policy or annuity contract.”.

(3) After paragraph (6) insert—

“(7) The condition set out in this paragraph is that the receiving scheme is authorised under the Pension Schemes Act 2017<sup>(6)</sup>.

(8) The conditions set out in this paragraph are that—

(a) the trustees of the transferring scheme have obtained and considered the written advice of a suitably qualified professional;

(b) the suitably qualified professional is a person who is reasonably believed by the trustees to be qualified by his or her ability in, and practical experience of, financial matters, and to have the appropriate knowledge and experience of the management of the investments of schemes such as the transferring and receiving schemes;

(c) the trustees have determined that the suitably qualified professional is independent of the receiving scheme after taking account of the following matters—

(i) whether the person is, or during the period of five years ending with the date on which the advice was provided has been, a director, manager, partner or employee of an undertaking which provides advisory, administration, investment or other services in respect of the receiving scheme (a “service provider”) or an undertaking which is connected to a service provider; and

(ii) whether the person receives any payment or other benefit from a service provider.

(9) For the purposes of paragraph 8(c)(i), two undertakings are “connected” if they are—

(a) part of a group of companies consisting of a holding company and one or more subsidiaries within the meaning of section 1159(1) of the Companies Act 2006<sup>(7)</sup>; or

(b) partnerships, each having the same persons as at least half of its partners.”.

### **Amendment of the Occupational Pension Schemes (Charges and Governance) Regulations 2015**

**3.—**(1) Regulation 4 (restrictions on charges) of the Occupational Pension Schemes (Charges and Governance) Regulations 2015<sup>(8)</sup> is amended as follows.

(2) After paragraph (2) insert—

“(3) The application of this regulation and regulations 5 to 9 in respect of a member’s accrued rights is not affected by any transfer of such rights from one occupational pension scheme to another which is made without the member’s express consent.

(4) The application of this Chapter in respect of a member’s accrued rights is not affected by any transfer of such rights from one fund or arrangement to another which is made without the member’s express consent.”.

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

*Guy Opperman*

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<sup>(5)</sup> 2015 c. 8.

<sup>(6)</sup> 2017 c. 17.

<sup>(7)</sup> 2006 c. 46.

<sup>(8)</sup> S.I. 2015/879, as amended by S.I. 2017/774.

[•] March 2018

Parliamentary Under Secretary of State  
Department for Work and Pensions

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (S.I. 1991/167) (“the Preservation Regulations”) and the Occupational Pension Schemes (Charges and Governance) Regulations 2015 (S.I. 2015/879) (“the Charges and Governance Regulations”).

Regulation 2 amends the Preservation Regulations to provide that where a member of an occupational pension scheme has accrued rights to money purchase benefits without guarantees in the scheme, those rights can be transferred to another occupational pension scheme without the member’s consent. If the receiving scheme is not a master trust scheme, or otherwise authorised under the Pension Schemes Act 2017, the trustees of the transferring scheme must obtain and consider the written advice of a suitably qualified, independent professional before making the transfer.

Regulation 3 amends the Charges and Governance Regulations to provide that restrictions on the charges that may be imposed on members continue to apply where members’ rights have been transferred from one occupational pension scheme to another, or from one fund or arrangement to another, without their consent.