



Department  
for Work &  
Pensions

## Consultation on valuing pensions for the advice requirement and introducing new consumer protections

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# Introduction

The pension freedoms introduced in April 2015 allowed individuals aged 55 and over greater choice in how, and when, they accessed their defined contribution pension savings. The types of pensions to which the freedoms apply are known as “flexible benefits”.

Individuals with other types of pension benefits (such as occupational pensions calculated by reference to salary and pensionable service) were still in most cases permitted to transfer or convert these benefits to a form that allowed them to exercise the freedoms. However, these benefits, and certain types of flexible benefits (such as those offering a guaranteed minimum annuity rate), contain potentially valuable guarantees which may not be available elsewhere. The Government therefore introduced a new safeguard, alongside the pension freedoms, so members were informed of the implication of giving up those guarantees.

Individuals assessed as having over £30,000 of these “safeguarded benefits” under a scheme are required to take independent financial advice before they can transfer, or convert them into flexible benefits (or access them directly from the scheme, in the case of safeguarded benefits which are also flexible benefits). Trustees or scheme managers are required to check advice has been taken from an independent financial adviser authorised by the Financial Conduct Authority (FCA).

The Government has been made aware that the calculation method has caused difficulties for members and schemes when valuing safeguarded benefits which are also flexible, such as those with a guaranteed annuity rate (GAR). A call for evidence was therefore launched in November 2015<sup>1</sup> and the Government’s response in March 2016<sup>2</sup> committed to simplify the valuation process for the purpose of determining who is required to take financial advice, and proposed to amend the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015<sup>3</sup>, so that, for the purposes of the advice requirement, providers should treat the value of safeguarded benefits, including those with a GAR, as equal to the actual transfer payment to which the member

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<sup>1</sup> Call for Evidence on the Valuation of Pensions with a Guaranteed Annuity Rate - <https://www.gov.uk/government/consultations/occupational-and-personal-pension-schemes-miscellaneous-amendments-regulations-2016>

<sup>2</sup> Call for Evidence on the Valuation of Pensions with a Guaranteed Annuity Rate: Government response - <https://www.gov.uk/government/consultations/occupational-and-personal-pension-schemes-miscellaneous-amendments-regulations-2016>

<sup>3</sup> SI 2015/742

would have a statutory right in respect of those benefits (subject to limited exceptions).

The call for evidence also found many members with GARs and other guarantees were not fully aware of the potential value conferred by these benefits. A new requirement that requires ceding schemes to inform members that they have potentially valuable guarantees, by sending them risk warnings, will therefore be introduced. These risk warnings will be tailored to the nature of the guarantees, and explain the likely impact of surrendering them by reference to the impact on the member's pension.

The purpose of this document is to consult on draft regulations which would amend existing legislation to simplify the valuation process for determining who is required to take financial advice, whilst putting in place new consumer protections. While the statutory duty to consult (under section 185(1) of the Pension Schemes Act 1993) only applies to regulation 6 of the draft regulations, we have determined it appropriate to consult on the draft regulations as a whole.

Views are sought as to the likely impact of the proposed changes, and whether the draft regulations achieve their intended purpose. The Government's intention is that the draft regulations will be laid before Parliament and, subject to Parliamentary approval, come into effect, at the earliest reasonable opportunity.

Chapter 1: sets out the context of the advice requirement and provides definitions of flexible and safeguarded benefits, and explains **safeguarded-flexible benefits**, the term used throughout this document to describe the type of pension guarantees which will be affected by the proposals in chapter 2 and 3.

Chapter 2: consults on the policy detail and regulations to deliver proposed changes to the valuation process for the purpose of the advice requirement and how it impacts on schemes and members.

Chapter 3: consults on proposed policy detail and regulations which will require ceding schemes to send risk warnings to members with safeguarded-flexible benefits, and details the content to be sent.

The Government recognises a responsibility to consider the impact, in terms of costs and benefits, of new regulatory proposals. An impact assessment has been produced setting out the expected impacts of these proposed regulations. The Impact Assessment has not been reviewed by the Regulatory Policy Committee (RPC), but a draft has been published alongside this consultation to support the scrutiny of the proposed regulations, and enable us to seek views on our assessment of the impacts. A final version of the Impact Assessment will be submitted to RPC in due course for an independent scrutiny.

## **Who this consultation is aimed at**

We welcome comments on the detailed policy and draft regulations amending the appropriate independent advice regulations from trustees, pension providers, bodies representing consumers; pension experts and lawyers with experience or interest in safeguarded-flexible pension benefits.

## **Scope of the consultation**

This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding regulations.

## **Duration of consultation**

The consultation period begins on 26 September 2016 and runs until 7 November.

Please ensure your response reaches us by that date as any replies received after this may not be taken into account.

## **How to respond to this consultation**

Please send your consultation responses to:  
Department for Work and Pensions  
Decumulation and Transfers Team  
Level 1  
6-12 Caxton House  
Tothill Street  
London  
SW1H 9NA

or

[valuingpensionsfortheadvice.requirementconsultation@dwp.gsi.gov.uk](mailto:valuingpensionsfortheadvice.requirementconsultation@dwp.gsi.gov.uk)

## **Government response**

We will aim to publish the Government response to the consultation on the GOV.UK website. The Government's consultation principles encourage Departments to publish a response within 12 weeks. This response will summarise responses and outline next steps.

# How we consult

## Consultation principles

This consultation is being conducted in line with the [Cabinet Office consultation principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and use real discussion with affected parties and experts to make well informed decisions
- departments should explain what responses they have received and how these have been used in formulating policy
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy
- the principles of the [Compact: the agreement between Government and the voluntary/community sector](#) will continue to be respected

## Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator  
2nd Floor  
Caxton House  
Tothill Street  
London  
SW1H 9NA

Email: [caxtonhouse.legislation@dpw.gsi.gov.uk](mailto:caxtonhouse.legislation@dpw.gsi.gov.uk)

## **Freedom of information**

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:  
Email: [freedom-of-information-request@dpw.gsi.gov.uk](mailto:freedom-of-information-request@dpw.gsi.gov.uk)

The Central Fol team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the Freedom of Information Act.

# Chapter 1: Background to the advice requirement and safeguarded-flexible pension benefits

## Context

1. The pension freedoms have increased the ability for those members aged 55 and over, with flexible (defined contribution) pension benefits to take their pension savings when and how they wish. In addition to buying an annuity, options for using savings flexibly include arrangements that permit an adjustable income (such as Flexi-Access Drawdown) or cash withdrawals (e.g. Uncrystallised Funds Pension Lump Sum). Where a member's existing scheme does not offer their preferred option, the member can exercise their statutory right to transfer to another scheme or pension provider which does.
2. In order to exercise the same pension freedoms, members with other types of pension benefits (such as salary-related occupational pensions where the member accrues a rate of pension income rather than a 'pot'), must transfer or convert those benefits into a form which can be accessed flexibly.
3. There are also some types of flexible benefits which offer guarantees in relation to the pension income which the member will receive, or be able to secure, at retirement. For example, the member may have a contractual right to a minimum level of pension, or a minimum rate of conversion of their 'pot' into a pension or annuity. As with other flexible benefits, the member can access these benefits flexibly (for example, by taking payment of an UFPLS) if their scheme offers the option, or they may be able to transfer to another scheme to access other options. But they will forgo the potentially valuable guarantees by doing so.
4. Since April 2015 members with salary-related safeguarded pension benefits, or flexible benefits with the types of guarantees referred to above, have been legally required to take appropriate independent financial advice from an FCA authorised adviser, before transferring or converting their safeguarded benefits to acquire flexible benefits, or (where relevant) directly accessing their safeguarded benefits



flexibly<sup>4</sup>. The exception to this “advice requirement” is where the member’s safeguarded benefits under a scheme have a total value of £30,000 or less. Legislation requires the value of safeguarded benefits to be calculated in a particular way for this purpose.

5. This consultation is concerned specifically with the type of benefit described by section 74(c) of the Pension Schemes Act 2015, which falls within the definitions of both flexible and safeguarded benefits. These are pension benefits which are defined contribution in nature, but offer some form of guarantee in relation to the pension income that will be available to the member.
6. The call for evidence and Government response that preceded this document used the term guaranteed annuity rates (GARs) as a broad umbrella term to capture all benefits falling within section 74(c). It was appropriate to use a term industry was familiar with because the evidence being sought was broad (the valuation methodology used by both flexible and non-flexible safeguarded benefits).
7. In contrast, the term GAR is used within this document to describe a particular type of guarantee, where the member accumulates a pot but has an option to purchase an annuity at a contractually guaranteed rate at retirement, or on reaching a particular age. A more precise term based on a legal definition that captures all benefits with the characteristics of both safeguarded and flexible benefits, is preferred in this document to avoid confusion. The term used throughout this document for relevant pension benefits affected by the proposed amendments to existing regulations is therefore “safeguarded-flexible benefits.” This includes both GARs, and any other benefits which are calculated by reference to an amount available for their provision, but which offer some sort of guarantee regarding the pension income that they will, or may, provide.
8. Further information on safeguarded benefits can be found in the DWP factsheet<sup>5</sup>. Scheme managers and trustees are responsible for determining whether the pension benefits they provide to their members are safeguarded-flexible benefits, and whether the amending regulations consulted on in Chapter 2 and 3 within this document apply.

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<sup>4</sup> As set out under Section 48 of Pension Scheme Act 2015

[http://www.legislation.gov.uk/ukpga/2015/8/pdfs/ukpga\\_20150008\\_en.pdf](http://www.legislation.gov.uk/ukpga/2015/8/pdfs/ukpga_20150008_en.pdf)

<sup>5</sup> Pension benefits with a guarantee and the advice requirement

<https://www.gov.uk/government/publications/pension-benefits-with-a-guarantee-and-the-advice-requirement>

# Chapter 2: Simplification of the valuation process for the purpose of the advice requirement

## Summary

1. In November 2015 the Government published a call for evidence on the application of the advice requirement to safeguarded-flexible benefits, and in particular the calculation of the value of such benefits when determining whether the exception applied. This followed reports that providers and consumers were experiencing problems and confusion in relation to the application of the specified valuation method for safeguarded-flexible benefits.
2. The Government announced in its March 2016 consultation response its intention to amend secondary legislation to address the issues identified concerning the valuation method, to make it simpler for providers and members to identify when members with safeguarded-flexible benefits are required to take advice.
3. These draft regulations are intended to replace the existing valuation method with a requirement that schemes must, when determining whether the member is required to take financial advice, and treat the value of the member's safeguarded benefits as equal to the transfer value of the member's benefits.

## Call for Evidence and Consultation Response

4. The existing legislation requires pension scheme trustees and managers to value the member's safeguarded pension benefits using the method for calculating the cash equivalent of salary-related defined benefits under occupational pension schemes.
5. This often resulted in members with safeguarded-flexible benefits receiving two values for their benefits, one for the purpose of the advice requirement (representing the estimated present value of the pension the member could secure by exercising their guarantee at a future point), and a generally lower transfer value that usually represents the realisable cash (or fund) value of the

member's pension pot. This caused particular confusion where the value for the purpose of the advice requirement was above £30,000 but the realisable cash value the member would be entitled to on a transfer, or the fund available to be paid as a lump sum, was less than £30,000.

6. In addition, a large proportion of safeguarded-flexible benefits, such as GARs, exist within personal pension schemes and other contract-based arrangements. Providers of those schemes were not familiar with the methodology and did not have the necessary systems and processes in place to estimate the present value of the pension the member could secure by exercising their guarantee at a future point. Schemes reported that applying the specified calculation method in relation to benefits such as GARs for the purpose of the advice requirement gave rise to significant practical and financial burdens.
7. Consultation responses were in favour of a more straightforward methodology. Having considered other options, the Government decided to simplify the valuation process by amending the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 ("the 2015 Regulations") such that, for the purposes of the advice requirement, providers would be required to treat the value of safeguarded benefits, including safeguarded-flexible benefits, as equal to the actual transfer payment to which the member would have a statutory right in respect of those benefits (disregarding any potential reduction for scheme underfunding).

## **Existing Regulations**

8. Regulation 5 of the 2015 Regulations provides an exception to the advice requirement (under section 48 of the Pension Schemes Act 2015) where the total value of the member's safeguarded benefits under the scheme is £30,000 or less. Regulation 5(2) prescribes the valuation method to be used for that purpose.
9. Regulation 5(2) provides that the value of the benefits must be calculated using the method for the calculation of cash equivalents specified in regulations 7 to 7C and 7E of the Occupational Pension Schemes (Transfer Values) Regulations 1996. This means the value of the member's benefits has to be calculated on an actuarial basis, in terms of the amount required within the scheme to make provision for the member's accrued benefits and options.

## Draft Regulations

10. Regulation 4 of the draft regulations substitutes a new version of regulation 5 of the 2015 Regulations. Paragraph (1) of new regulation 5 provides that, where the “transfer value” of the safeguarded benefits is £30,000 or less, the advice requirement does not apply. Paragraph (2) defines “transfer value” for this purpose as the amount of the cash equivalent the member would be entitled to take in respect of the benefits, if he or she were exercising a statutory transfer right in accordance with the provisions of the Pension Schemes Act 1993 and regulations made under it, whether the member in fact had a statutory transfer right (as set out in (2)(a)) or whether they did not (covered in (b)).
11. In the case of safeguarded benefits under a personal pension scheme, the transfer value of the benefits will be calculated by reference to the Personal Pension Schemes (Transfer Values) Regulations 1987<sup>6</sup>.
12. The changes to regulation 5 are not intended to affect the valuation of safeguarded benefits which are non-flexible, for instance, salary related defined benefits under occupational schemes. New regulation 5 will continue to require the value of such benefits to be calculated in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>7</sup>, but (as currently) without taking account of any reduction which is permitted under regulation 7D of those Regulations.

### **Box 1: 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

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<sup>6</sup> SI 1987/1112

<sup>7</sup> SI 1995/1847

(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).

## Transitional provisions

13. Regulation 8 makes transitional provisions in relation to the changes to regulation 5 and the valuation process for the purpose of determining who is required to take advice. It applies to members with safeguarded-flexible benefits who have already been told in the 6 months prior to the date on which the amendments come into force that they must take advice before a relevant transaction, but have not concluded that transaction, and the time limit for completing it has not expired. Where those members would now not be required to take advice once the amendments come into force, they must be informed by their scheme in writing within 20 days<sup>8</sup> that they can proceed with the transaction without obtaining advice.
14. This requirement applies unless the scheme has already informed the member on or after the date that the amending regulations are laid before Parliament in draft that they may not need to obtain advice, and inviting the member to contact them after the date on which the regulations come into force for confirmation.

### **Box 2: 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

<sup>8</sup> That is, within 20 days of the proposed coming into force date of these regulations. Subject to parliamentary approval, this is expected to be either 6 April or the following common commencement date, 1 October 2017.

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.

***Q1. Do you agree that the proposed amendments achieve the policy intention outlined above?***

***Q2. Are you aware of any unintended consequences which might occur as a result of amending the valuation process as set out in the draft regulations?***

# Chapter 3: Introduction of Risk Warnings for members with safeguarded-flexible benefits

1. The introduction of a simplified valuation will make the process of accessing pension savings clearer and simpler for members with safeguarded-flexible benefits, such as a guaranteed annuity rate.
2. However, it remains equally important that members with safeguarded-flexible benefits are also aware of their value. These benefits often contain potentially valuable guarantees not available on the open market and, even if members do not take financial advice, it is important they consider the implications of surrendering them.

## Call for Evidence and Consultation Response

3. A key principle in the call for evidence was to simplify the way benefits are valued for the purposes of obtaining appropriate independent advice but not to reduce consumer protections in place. The decision to base the new valuation methodology on the transfer value of the member's safeguarded-flexible benefits and not the estimated value of the pension income they could secure in respect of those benefits will reduce the numbers of members required to take financial advice. The new valuation method will therefore increase the risk that more members will surrender them without being informed of their value.
4. Responses to the call for evidence on the valuation of safeguarded-flexible benefits recognised the fact members previously receiving advice would no longer receive the same protection, and also highlighted a general lack of awareness of the existence and the value of guarantees amongst members with safeguarded-flexible benefits.
5. The Government acknowledges that many schemes provide members with information about the value of guarantees. However there is no requirement to specifically highlight the terms to members, or communicate their potential value to them at the optimal time; when the member first contacts their provider and

carries out an initial query about accessing those safeguarded-flexible benefits flexibly.

6. The Government reviewed the call for evidence responses and various options for consumer protection and concluded that members with safeguarded-flexible benefits should be informed of their guarantees and their value before potentially proceeding to give them up by carrying out a relevant transaction (a transfer payment, conversion of benefits or payment of a lump sum). Government therefore committed to introducing a new requirement for ceding schemes to send 'risk-warnings' to members with safeguarded-flexible pension benefits before they undertake such a transaction.
7. These risk warnings will be tailored to the nature of the guarantees, and explain the likely impact of surrendering them by reference to the impact on the member's pension. The requirement to send them will apply to both occupational and personal pension schemes. These "risk warnings" are separate from the requirements introduced by the 2016 amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013<sup>9</sup> (the "Disclosure Regulations") and FCA rules<sup>10</sup>.

## Risk warnings

8. Risk warnings will be required through insertion of proposed regulations 8A and 8B into the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 ("the 2015 Regulations").
9. The Government has considered how this new consumer protection should be applied and believes it is most effective where the member is sent tailored information at the point the member is considering, but has not yet instructed their provider to proceed with, a transaction. Members will at this point, be engaged with their retirement options but will not yet have decided to surrender their safeguarded-flexible benefits. The risk warnings should -
  - **communicate** to the member that they have valuable guarantees, along with any terms or conditions that apply to those guarantees.
  - **include illustrations (estimates) of the rate of secure pension income** the member would receive on exercising those guarantees compared with what the same size pot could buy on the open market.

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<sup>9</sup> SI 2013/2734

<sup>10</sup> COBS 19.7



- **ensure both illustrations use the same parameters and assumptions** to allow the member to make a like-for-like comparison and interpret the guarantees available to them in a monetised format.
10. To reduce the administrative burdens and provide clarity for schemes, the assumptions and caveats to be used for the purpose of producing illustrations are the same as those used in relation to pension illustrations required under the Disclosure Regulations (Statutory Money Purchase Illustrations<sup>11</sup>), insofar as they are compatible with the terms and conditions applying to the guarantee. In this document we are also consulting on whether schemes could be permitted to use the assumptions set out in Annex 2 to Chapter 13 of FCA's CoB Rules<sup>12</sup> (which apply to projections other than SMPs, in relation to contract-based pension products). See Question 9.
  11. The distribution, design and content of the risk warnings, and the draft regulations providing for this new legislative requirement are explained below.
  12. Government welcomes comments on the practical implications for schemes in delivering the requirement and how it can be improved, so all members with safeguarded-flexible benefits receive a communication explaining the guarantees, from which they can assess those guarantees' value.

## Who receives a “risk warning”?

13. Irrespective of pot size, it helps members to be made aware of valuable guarantees associated with their pension benefits. Where members have safeguarded-flexible benefits with a transfer value of £30,000 or more, they may re-consider whether to proceed to obtain (and pay for) independent financial advice. Where the cash value is less than £30,000, members may not otherwise become aware of the presence of guarantees at all. We therefore wish to see risk warnings sent to all members whether they are subsequently required to obtain appropriate independent advice or not.
14. Risk warnings should be sent to all members with safeguarded benefits that are also flexible benefits. Ceding schemes are not required to send them to members with non-flexible benefits, such as final salary (DB) benefits. The very different characteristics of final salary and average salary benefits mean that these are less easily conflated with flexible non-safeguarded benefits. This is in contrast to

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<sup>11</sup> <https://www.frc.org.uk/Our-Work/Publications/Actuarial-Policy-Team/AS-TM1-Statutory-Money-Purchase-Illustrations-Vers.pdf>

<sup>12</sup> <https://www.handbook.fca.org.uk/handbook/COBS/13/Annex2.html>

flexible safeguarded benefits, the potential value of which our call for evidence showed that many members were not fully aware.

15. The Government wishes to see this new consumer protection apply to all members with safeguarded-flexible benefits, including those aged below 55 years old who wish to transfer their pension to another scheme.

16. We propose that risk warnings will be sent to both members and survivors with safeguarded-flexible benefits. Unless otherwise stated, the term member, used in this document, refers to both members and survivors. However, we would welcome information from respondents as to whether in practice it is possible for a situation to arise where a survivor has rights to safeguarded-flexible benefits; for example, whether a survivor would ever have the option to exercise a GAR.

**Q3. Should risk warnings cover survivors or does this impose unnecessary burdens on schemes?**

## **When must ceding schemes send a “risk warning”?**

17. Risk warnings ensure that those with potentially valuable guarantees are informed that they have them, and an illustration of their value is provided before they surrender them, or seek financial advice to understand their options further. The risk warnings should therefore be sent to the member with safeguarded-flexible benefits, when they undertake one of the actions that would have triggered a notification to take advice, if the transfer value of the member’s pot were above £30,000. These ‘trigger actions’ are:

- where the member with a safeguarded-flexible benefit makes a written request for information from the trustees or managers about how to carry out a relevant transaction<sup>13</sup> or
- the member makes an application (which may be by phone or in writing) for a statement of entitlement, or a written statement of the amount of the cash equivalent (or requests information about how to make such an application); or
- the member makes an application for a valuation other than a statement of entitlement;

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<sup>13</sup> Defined in The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 as a transfer payment, conversion of benefits or payment of a lump sum to which s48(1) of the Pension Schemes Act 2015 applies.

- the member requests that a cash equivalent of their pension credit rights is used for an authorised purpose<sup>14</sup>;
- the scheme sends a statement of entitlement, a statement of the cash equivalent or written confirmation of agreement in principle to carry out a relevant transaction or provide the member with a valuation of their safeguarded benefits for the purposes of a relevant transaction.

**Box 3: Regulation 8A – 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.

18. The provider is required to send the risk warning to the member not more than 1 month after the member’s action that triggered the requirement, even if this means the scheme must send this as a separate communication to other

<sup>14</sup> These authorised purposes are set out in section 101F of the Pension Schemes Act 1993.

retirement or other pension communication material (for example, a wake-up pack or a statement of entitlement). However, if a statement of entitlement or valuation is sent earlier than one month after the triggering action by the member, the risk warning must be sent at the same time.

19. Requiring schemes to send the warning at the earliest opportunity, even as a stand-alone communication, gives the member the greatest opportunity to consider the value of their guarantee in advance of any retirement decision. It allows members time to choose whether to access Pension Wise or obtain appropriate independent advice and offers providers administrative simplicity because they already send members (with safeguarded benefits over £30,000) information within a month of triggering the requirement to take financial advice.

**Box 4: Regulation 8A – Timing of the risk warning**

(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.

***Q4. Do you think that the proposal for schemes to issue risk warnings within 1 month of any member request, or with the statement of entitlement if earlier, is workable?***

***Q5. We welcome information on the likely costs of the provision to issue risk warnings, both the initial transition and on-going costs.***

## **Exceptions to the requirement to send a risk warning**

20. Where a trigger occurs that would require a risk warning to be sent within 12 months of a previous risk warning being sent, the scheme does not need to issue a new risk warning (specifically, it does not need to send a second risk warning to

the same member in respect of the same flexible benefits). This reduces the burden on schemes to produce and send repeated risk warnings, and confusion for members who may receive multiple illustrations in a short period.

**Box 5: Regulation 8A – Exceptions to the Risk Warning**

(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.

## Content of risk warning

21. Government is aware that the guarantees associated with safeguarded-flexible benefits can vary greatly between schemes and it is not practical to set out in legislation the precise way that such a guarantee should be described. Schemes are better placed to design their own communications, which are tailored to reflect the nature of the guarantee and the circumstances in which it can be exercised. However, there is certain core information that every risk warning should feature –

**a) A narrative section, which –**

- informs the member that their pension benefits contain a guarantee (including what type of guarantee it is) and that it will provide them with a secure rate of income in retirement should they wish to exercise this guarantee.
- explains to them what guarantees apply to their pension benefits, including the date and form in which they will be paid to the member if taken, and any other terms or conditions that affect how they can be exercised by the member.
- includes a statement to warn the member that these guarantees will be lost should certain actions be taken, for example, if the member –
  - transfers their pension savings to another provider;
  - converts their pension savings into different flexible benefits within their scheme; or
  - takes an UFPLS payment from the scheme

**Box 6: Regulation 8B – 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; [...]

**b) Two comparative income illustrations –**

- the first illustration (the guarantee illustration) estimating the annual income the member would be entitled to should they take up their guarantees.
- The second illustration (the comparison illustration) estimating the income the same size pension pot would purchase on the open market.

22. The comparison illustration should replicate the assumptions and parameters of the guarantee illustration. The aim is that these two illustrations are “like for like” measures and illustrate the different value the guarantee can purchase compared to an equivalent product using the member's pension savings. As a minimum the scheme should seek to ensure both illustrations use the same -

- pot size on which to base the illustrations, taking account of same future contribution pattern and same growth rate in accumulation, where relevant.
- type of annuity (single or joint life);
- age the annuity is purchased.

23. Tailoring the illustration to the member's pot size, expected contributions and anticipated investment growth, will provide the member with a more accurate explanation of the likely impact of surrendering the guarantee on the member's pension. For this purpose, both illustrations should use the same assumptions for estimating the future value of the member's pot: those required to be used when producing Statutory Money Purchase Illustrations under regulation 17 of, and Schedule 6 to, the Disclosure Regulations<sup>15</sup>. Similarly, the comparison projection should estimate the “open market annuity” rate, using the methodology that is set for Statutory Money Purchase Illustrations<sup>16</sup>.

24. We are aware that in some circumstances schemes are required to produce projections on the basis of different assumptions, for example those set out in Annex 2 to Chapter 13 of the FCA's Conduct of Business Sourcebook (CoBS).

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<sup>15</sup> The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734)

<sup>16</sup> Both sets of assumptions are contained in the Financial Reporting Council's document entitled “AS TM1: Statutory Money Purchase Illustrations”

Therefore some schemes may find it helpful to have the flexibility of using an alternative set of assumptions, such as those in CoBS, to generate both the guarantee and the comparison illustration.

25. We would welcome views on whether schemes would find it helpful, subject to our having the necessary legal powers, to have the flexibility to use an alternative set of assumptions whilst maintaining like-for-like comparison of the member outcomes which result from retaining and surrendering the guarantees.
26. If we were to permit illustrations in line with the CoBS assumptions, we propose to limit these to include only the intermediate rate of return (which is subject to a maximum nominal rate, currently 5%, reviewed from time to time), for each of the two illustrations. This limits the complexity and confusion which would otherwise arise if members were to be offered three possible outcomes on each of two different illustrations.
27. We would also welcome views as to whether there are any other similar requirements which ought to be set out in regulations.

**Box 7: Regulation 8B continued – Risk warning pension illustrations**

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

[...]

(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).

## Miscellaneous Provisions

28. Regulation 8A (5) provides the Pension Regulator with enforcement powers in relation to non-compliance by trustees or managers with the requirements of these regulations. Penalties for non-compliance proposed are £5,000 in the case of an individual and £50,000 for all others, consistent with the enforcement for other disclosure of information requirements.

### **Box 8: Compliance provisions**

(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.

29. Regulation 7 inserts a regulation that requires the Secretary of State to review the regulatory provisions under the 2015 Regulations no later than the fifth anniversary of the amendments coming into force.

### **Box 9: Review**

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.”.

### **Questions**

***Q6. Do you agree that the proposed amendments will provide an appropriate level of protection for pension scheme members and ensure they understand the value of their safeguarded-flexible benefits?***

***Q7. Are you aware of any unintended consequences which might occur as a result of applying the risk warnings, as set out in draft regulations?***

***Q8. Will applying the risk warnings to all pension scheme members with safeguarded-flexible benefits place unnecessary burdens on providers?***

***Q9. Should we also seek to offer schemes the alternative of generating the comparative income illustrations using other assumptions, such as those in***

***Chapter 13 Annex 2 of FCA's CoBS rules? Would this offer greater flexibility for schemes and be helpful to members by ensuring consistency with other FCA mandated projections? Or could it add complexity, lead to member detriment, or have any other unintended consequences?***

***Q10. Are there any circumstances where members with potentially valuable guarantees would not be covered by the proposed risk-warnings? If so do you think that the existing information provided by schemes is sufficient to ensure that these members understand the implications of giving up their guarantees?***