

Regulations made by the Department for Communities and laid before the Assembly under section 85(2)(a) and (3) of the Pension Schemes Act 2015 for approval of the Assembly before the expiration of 6 months from the date of their coming into operation

STATUTORY RULES OF NORTHERN IRELAND

2018 No. 46

PENSIONS

The Pension Schemes Act 2015
(Transitional Provisions and Appropriate Independent Advice)
(Amendment No. 2) Regulations (Northern Ireland) 2018

Made - - - - *9th March 2018*
Coming into operation *6th April 2018*

The Department for Communities⁽¹⁾ makes the following Regulations in exercise of the powers conferred by sections 51(3) and 86 of the Pension Schemes Act 2015⁽²⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2018 and shall come into operation on 6th April 2018 immediately after the coming into operation of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018⁽³⁾.

(2) In these Regulations “the Advice Regulations” means the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations (Northern Ireland) 2015⁽⁴⁾.

Amendment of the Advice Regulations

2. The Advice Regulations are amended in accordance with regulations 3 to 5.

Amendment of regulation 1

3. In regulation 1(2) (interpretation) after the definition of “member” insert—

(1) See section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))
(2) 2015 c. 8
(3) S.R. 2018 No. 40
(4) S.R. 2015 No. 165 as amended by S.R. 2016 No. 172 and S.R. 2018 No. 40

““pension credit rights” has the meaning given in section 97B(5) of the 1993 Act;”.

Substitution of regulation 5

4. For regulation 5 (exception to section 51(1) of the Act) substitute—

“Exception to section 51(1) of the Act

5.—(1) The trustees or managers are not required to carry out the check in section 51(1) of the Act (independent advice in respect of conversions and transfers) if the transfer value of the member’s or survivor’s subsisting rights in respect of safeguarded benefits(6) under the pension scheme is £30,000 or less on the valuation date(7).

(2) In this regulation “transfer value” means—

- (a) where the rights referred to in paragraph (1) are transferrable rights as defined in section 89(11)(8) of the 1993 Act (scope of Chapter 1), the amount of the cash equivalent(9) of those rights calculated in accordance with section 93(10) of that Act (calculation of cash equivalents) and regulations made under it;
- (b) where the rights referred to in paragraph (1) are pension credit rights, the amount of the cash equivalent of those rights calculated in accordance with regulations made under section 97I(11) of the 1993 Act (calculation of cash equivalents);
- (c) in any other case, the amount which would be the cash equivalent of the rights referred to in paragraph (1), calculated in accordance with section 93 of the 1993 Act and regulations made under it, as if—
 - (i) Chapter 1 of Part 4ZA(12) of the 1993 Act (transfer rights: general) applied to the member or survivor by virtue of those rights;
 - (ii) references to a member in that Chapter and regulations made under it included a survivor of a member, and
 - (iii) in the case of an active member, the member had ceased to accrue rights to benefits on the valuation date,

but, in each case, disregarding regulations 7D and 7E(13) of the Transfer Values Regulations (reductions to initial cash equivalents and alternative manner of calculating and verifying cash equivalents).”.

Amendment of 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))”;
- (b) omit “in accordance with regulation 5(2)”.

(5) Section 97B was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(6) See section 51(8) of the Pension Schemes Act 2015 for the meaning of “safeguarded benefits”

(7) The definition of “valuation date” was amended by regulation 8(2)(c) of S.R. 2016 No. 172

(8) Section 89 was substituted by paragraph 54 of Schedule 4 to the Pension Schemes Act 2015

(9) The definition of “cash equivalent” was amended by regulation 8(2)(a) of S.R. 2016 No. 172

(10) Section 93 was amended by paragraph 5(1) of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)) and section 72(2) of, and paragraph 57 of Schedule 4 to, the Pension Schemes Act 2015

(11) Section 97I was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

(12) See paragraph 50 of Schedule 4 to the Pension Schemes Act 2015

(13) Regulations 7 to 7E were substituted for regulations 7 and 8 by regulation 4 of S.R. 2008 No. 370 and regulation 7D was amended by regulation 31(7) of S.R. 2014 No. 204 and regulation 4(6) of S.R. 2015 No. 164

Transitional provision

6.—(1) In this regulation “relevant transaction” has the meaning given in regulation 1(2)(14) of the Advice 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) on or after 1st October 2017 but before 6th April 2018, the trustees or managers provided to the member or survivor an explanation in accordance with regulation 6(15) of the Advice Regulations (information to be provided to the member or survivor);
- (c) the trustees or managers have not, since providing the explanation referred to in subparagraph (b)—
 - (i) provided written confirmation to the member or survivor in accordance with regulation 9(1)(b)(ii) of the Advice Regulations (determination of whether exception applies and check that advice received);
 - (ii) received confirmation in the form required by regulation 7 of the Advice Regulations (form of confirmation of appropriate independent advice) that the member or survivor has received appropriate independent advice, or
 - (iii) provided information to the member in accordance with regulation 10(3) of the Advice 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 required to carry out the check in section 51(1) of the Pension Schemes Act 2015 (independent advice in respect of conversions and transfers) in relation to the member or survivor.

(3) Where paragraph (2) applies, the information—

- (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 on or before 26th April 2018.

(4) This regulation does not require information to be provided to a member or survivor if, on or after 1st October 2017 but before 6th April 2018, the trustees or managers informed the member or survivor in writing that—

- (a) the exception in regulation 5 of the Advice Regulations (as amended by these Regulations) may or will apply in relation to the member or survivor from 6th April 2018, and
- (b) the member or survivor may contact the trustees or managers on or after 6th April 2018 for further information.

(14) The definition of “relevant transaction” is amended by regulation 3 of S.R. 2018 No. 40

(15) Regulation 6 was amended by regulation 8(4) of S.R. 2016 No. 172

Sealed with the Official Seal of the Department for Communities on 9th March 2018

(L.S.)

Anne McCleary
A senior officer of the Department for
Communities

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 (Northern Ireland) 2015 (“the Advice Regulations”), which relate to the requirement in section 51 of the Pension Schemes Act 2015 (“the 2015 Act”) that the trustees or managers of a pension scheme must check that a member or survivor has received appropriate independent advice before carrying out certain transactions. The requirement applies to a member’s or survivor’s “safeguarded benefits”, meaning benefits which are neither money purchase benefits nor cash balance benefits (as defined in sections 51(8), 75 and 76(3) of the 2015 Act). The Regulations also make transitional provision in connection with the coming into operation of those amendments.

Regulation 4 substitutes regulation 5 of the Advice Regulations, which provides an exception to the requirement to obtain advice. The effect of regulation 5 as substituted is 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 makes transitional provision in relation to cases where the exception in regulation 5 of the Advice Regulations did not apply to a member or survivor prior to these Regulations coming into operation, but does apply as a result of the amendment made by regulation 4. If, between 1st October 2017 and 6th April 2018, the trustees or managers informed the member or survivor about the requirement to obtain appropriate independent advice, then within 20 days after the coming into operation of these Regulations they must inform the person that the requirement no longer applies. However, there is an exception if the trustees or managers provided specified information to the member or survivor in advance of the amendment coming into operation.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which is laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Communities, Social Security Policy and Legislation Division, Level 8, Causeway Exchange, 1-7 Bedford Street, Belfast BT2 7EG or from the website: <https://www.communities-ni.gov.uk/articles/pension-information>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>