

2005 No. 110

PENSIONS

**The Stakeholder Pension Schemes (Amendment)
Regulations (Northern Ireland) 2005**

Made - - - - - *15th March 2005*

Coming into operation *6th April 2005*

The Department for Social Development, in exercise of the powers conferred by Articles 3(1)(b) and (5) and 73(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(a), and now vested in it(b), and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Stakeholder Pension Schemes (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 6th April 2005.

Amendment of the Stakeholder Pension Schemes Regulations

2.—(1) The Stakeholder Pension Schemes Regulations (Northern Ireland) 2000(c) shall be amended in accordance with paragraphs (2) to (12).

(2) In regulation 1 (citation, commencement and interpretation) –

(a) in paragraph (3) –

(i) for the definition of “the Authority” there shall be substituted the following definition –

“ “the Authority” means the Pensions Regulator;”;

(ii) for the definition of “dilution levy”(d) there shall be substituted the following definitions –

“ “dilution levy” has the meaning given by the FSA Handbook;

“the FSA Handbook” means the handbook published by the Financial Services Authority under section 153 of the 2000 Act(e);”;

(iii) after the definition of “insurer”(f) there shall be inserted the following definition –

“ “lifestyling” has the meaning given by regulation 10A(5);”;

(iv) the definition of “investment trust” shall be omitted, and

(a) S.I. 1999/3147 (N.I. 11)

(b) See Article 8(b) of S.R. 1999 No. 481

(c) S.R. 2000 No. 262; relevant amending regulations are S.R. 2001 No. 119, S.R. 2002 Nos. 216 and 268 and S.R. 2003 No. 256

(d) The definition of “dilution levy” was inserted by regulation 2(3)(a) of S.R. 2001 No. 119

(e) The definition of “the 2000 Act” was inserted by regulation 18(2)(a)(i) of S.R. 2003 No. 256

(f) The definition of “insurer” was substituted by regulation 18(2)(a)(ii) of S.R. 2003 No. 256

- (v) in the definition of “securities”(a) the words “, but does not include shares in an investment trust” shall be omitted;
- (b) paragraph (7A)(b) shall be omitted, and
- (c) for paragraph (8) there shall be substituted the following paragraphs –

“(8) Where these Regulations provide for the trustees or manager of a scheme to notify or give notice to a member of the scheme (including notice to be given in writing), or to provide, furnish or make available to a member any statement or declaration, the Regulations shall be taken to include provision for sending the notification, notice, statement or declaration electronically to an electronic address notified by the member for that purpose, and references to sending it by whatever means to a member’s last known address shall be taken to include sending it electronically to his last known electronic address.

(8A) In paragraph (8) “member” includes “beneficiary”.”.

(3) In regulation 3(4) (requirements applying to all stakeholder pension schemes as regards instruments establishing such schemes) for “and 14” there shall be substituted “, 14 and 14B”.

(4) In regulation 6 (procedure for discharging rights on winding-up) –

(a) in paragraph (5) –

- (i) for “paragraph (4)(a) or (b)” there shall be substituted “paragraph (4)”, and
- (ii) in sub-paragraph (a) at the beginning there shall be inserted “where paragraph (4)(a) or (b) applies,”, and

(b) in paragraph (6) –

- (i) sub-paragraph (b) shall be omitted, and
- (ii) in sub-paragraph (c) –
 - (aa) for “paragraph (4)(a) or (b)” there shall be substituted “paragraph (4)”, and
 - (bb) in head (i) for “in the terms set out in” there shall be substituted “in accordance with”.

(5) In regulation 8(4) and (5)(c) (requirement applying to all stakeholder pension schemes as regards investments) for “have scheme assets that are represented by” there shall be substituted “directly hold, for the purposes of the scheme,”.

(6) After regulation 10 (requirement for manager of schemes not established under a trust to have regard to certain matters, and to take advice, relating to investment) there shall be inserted the following regulations –

“Requirement as regards the investment strategy for members nearing retirement

10A.—(1) Subject to regulation 10B, for the purposes of Article 3(1)(b) it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) Except in so far as paragraph (3) and regulation 10C provide otherwise, the trustees or manager of a scheme shall make the rights of a member under the scheme subject to lifestyling if the member has made no choice as regards any investment made under the scheme on his behalf.

(3) Paragraph (2) does not apply in relation to the rights of a person who became a member of the scheme before 6th April 2005 unless he requests that his rights should be made subject to lifestyling, in response to the notification provided for in regulation 10D(3).

(4) Where the amount representing the value of a member’s rights is divided into different tranches, in respect of which different retirement dates are specified, paragraph (2) applies separately in relation to the member’s rights regarding each tranche.

(a) The definition of “securities” was substituted by regulation 18(2)(a)(iii) of S.R. 2003 No. 256
(b) Paragraph (7A) was inserted as paragraph (8) by regulation 2(4) of S.R. 2001 No. 119 and was renumbered as paragraph (7A) by regulation 2(2) of S.R. 2002 No. 216
(c) Regulation 8(4) and (5) was amended by regulation 18(3) of S.R. 2003 No. 256

(5) In these Regulations, “lifestyling” means the process, applied from the relevant date and continuing until the member’s retirement date, by which an investment strategy is adopted by the trustees or manager which aims progressively to reduce the potential for significant variation in the value of the member’s rights caused by market conditions from time to time.

(6) In paragraph (5), “the relevant date” means a date chosen by the trustees or manager, which is at least 5 years before the member’s retirement date, or which is –

- (a) in the case of a member who joins the scheme less than 5 years before his retirement date, as soon as is reasonably practicable after he becomes a member, and
- (b) in the case of a member whose retirement date is varied so as to become a date less than 5 years before the date of the variation, as soon as is reasonably practicable after the date of the variation.

Exclusion of regulation 10A in relation to a scheme

10B.—(1) If, before 6th April 2005, the trustees or manager of a scheme resolved that no new member should be admitted to the scheme on or after that date –

- (a) regulation 10A shall not apply to the scheme, and
- (b) it shall be a condition of the scheme being a stakeholder pension scheme that no new member is admitted.

(2) Sub-paragraphs (a) and (b) of paragraph (1) shall cease to apply to a scheme if a resolution of the kind specified in that paragraph is revoked by a further resolution of the trustees or manager of the scheme on or after 6th April 2005.

Transitional provisions relating to regulation 10A

10C. If, before 6th April 2005, the Occupational Pensions Regulatory Authority received a letter from the trustees or manager of a scheme stating the intention –

- (a) to establish, by 6th April 2006, arrangements to make the rights of any person who –
 - (i) becomes a member of the scheme on or after 6th April 2005 and before 6th April 2006, and
 - (ii) has made no choice as regards any investment made under the scheme on his behalf,subject to lifestyling, and
- (b) to establish, by 6th October 2007, arrangements to make the rights of any person who –
 - (i) became a member of the scheme before 6th April 2005, and
 - (ii) has requested that his rights should be made subject to lifestyling, in response to the notification provided for in regulation 10D(3),subject to lifestyling,

regulation 10A(2) does not apply in relation to the rights of a person of the kind described in paragraph (a) until 6th April 2006, or in relation to the rights of a person of the kind described in paragraph (b) until 6th October 2007.

Notification requirements connected with regulations 10A and 10B

10D.—(1) For the purposes of Article 3(1)(b) it shall be a condition of a scheme being a stakeholder pension scheme that the requirements of this regulation are complied with.

(2) The trustees or manager of the scheme shall notify the Authority of any resolution of the kind specified in regulation 10B(1) by 4th July 2005, and of any resolution of the kind specified in regulation 10B(2) within 3 months after the date of the resolution.

(3) If regulation 10A applies to the scheme, the trustees or manager shall notify every member of the scheme –

- (a) who became a member before 6th April 2005;

- (b) who has made no choice as regards any investment made under the scheme on his behalf, and
- (c) whose rights are not already subject to lifestyling,

in accordance with paragraph (4).

- (4) The notification provided for in paragraph (3) must –
 - (a) inform the member –
 - (i) of the purpose of lifestyling, and the manner in which it is provided for under the scheme;
 - (ii) of the potential advantages and disadvantages to the member of applying lifestyling to his rights, and
 - (iii) that his rights will be made subject to lifestyling if he so requests, and
 - (b) be given before 6th April 2007, or, in a case where regulation 10A applies to the scheme by virtue of a resolution under regulation 10B(2), within 2 years of the date of that resolution.

(5) If, by virtue of a resolution of the kind specified in regulation 10B(1), regulation 10A does not apply to the scheme, the trustees or manager shall notify every member of the scheme who has made no choice as regards any investment made under the scheme on his behalf in accordance with paragraph (6).

- (6) The notification provided for in paragraph (5) must –
 - (a) inform the member –
 - (i) of the purpose of lifestyling, and the fact that it is not provided for under the scheme, and
 - (ii) that, if he so requests, his rights under the scheme can be transferred to another stakeholder pension scheme of his choice under which lifestyling is provided for, and
 - (b) be given before 6th April 2007.

(7) At least 4 months, but no more than 2 years, before applying lifestyling to the rights of a member whose rights are subject to lifestyling (or, where this is not reasonably practicable, as soon before applying lifestyling as is reasonably practicable) the trustees or manager shall notify the member of the fact that his rights are subject to lifestyling and of the date from which lifestyling will be applied.

Changes notified by members

- 10E.**—(1) Where –
- (a) the rights of a member of a scheme have been made subject to lifestyling;
 - (b) the application of lifestyling to those rights has not begun, and
 - (c) the member either –
 - (i) makes a choice as regards any investment made under the scheme on his behalf, or
 - (ii) notifies the trustees or manager of the scheme that he does not wish his rights to be subject to lifestyling,

the rights of the member shall cease to be subject to lifestyling.

- (2) Where –
 - (a) the application of lifestyling to the rights of a member of a scheme has begun, and
 - (b) the member notifies the trustees or manager of the scheme that he wishes to specify a different retirement date,

the trustees or manager may opt to continue the application of lifestyling as if the member’s retirement date were unchanged.”.

(7) In regulation 12(5)(a)(i) and (d)(i)(a) (requirement for declaration by trustees or manager) for “and 14” there shall be substituted “, 14 and 14B”.

(a) Regulation 12 was substituted by regulation 4 of S.R. 2002 No. 268

- (8) In regulation 13 (expenses, commission etc. – principles) –
 - (a) in paragraph (1) after “regulation 14” there shall be inserted “or 14B”;
 - (b) in paragraph (2)(b) for the words from “their obligations under” to the end there shall be substituted “an order of the court”, and
 - (c) in paragraph (3) for “regulation 14” there shall be substituted “regulations 14 and 14B”.
- (9) For regulation 14 (charges, etc. – permitted reductions in members’ rights) there shall be substituted the following regulations –

“Charges etc. – permitted reductions in members’ rights

14.—(1) The value of a member’s rights under the scheme may be reduced in the circumstances, and to the extent, set out in paragraphs (2) to (5).

(2) To the extent that a member’s rights are represented by a fund allocated to him to the exclusion of other members, the value of those rights may be reduced by the making of deductions from that fund which, when added to the amount of any indirect charges attributable to the member’s rights, are no greater than, at the choice of the trustees or manager –

- (a) the relevant percentage of its value for each day on which it is held for the purposes of the scheme, or
- (b) the proportion attributable to that fund of the relevant percentage of the value of all members’ funds held for the purposes of the scheme for each day on which the fund is so held.

(3) To the extent that a member’s rights are represented by a share of funds held for the purposes of the scheme, the amount of that share not being determined by reference to a discretion exercisable by any person, the value of those rights may be reduced by the making of deductions from that share which, when added to the amount of any indirect charges attributable to the member’s share, are no greater than, at the choice of the trustees or manager –

- (a) the relevant percentage of its value for each day on which it is held for the purposes of the scheme, or
- (b) the proportion attributable to the member’s share of the relevant percentage of the value of the funds for each day on which the share is held.

(4) To the extent that a member’s rights are represented by rights in a with-profits fund, the value of those rights may be reduced by the making of deductions from the with-profits fund which, when added to the amount of any indirect charges attributable to the member’s rights, are no greater than, at the choice of the trustees or manager –

- (a) the relevant percentage of the value of the member’s rights in the fund for each day on which it is held for the purposes of the scheme, or
- (b) the proportion attributable to the member’s rights of the relevant percentage of the value of such part of the fund as is allocated to the rights of members for each day on which the member has rights in the fund.

(5) The value of a member’s rights under the scheme may be reduced –

- (a) where administrative expenses are incurred by the trustees or manager in –
 - (i) the purchase or provision of an annuity for the member in accordance with the scheme, or
 - (ii) the making of payments of income (otherwise than by way of an annuity) to a member under arrangements made in accordance with the scheme,
 by the amount of those expenses;
- (b) by such amount, and in such manner, as is permitted by regulations under Article 22 (charges by pension arrangements in relation to earmarking orders) or 38 (charges in respect of pension sharing costs);
- (c) where an order of the court provides for the recovery by the trustees or manager of costs incurred in complying with the order, by the amount of those costs;

- (d) where any charges are incurred by the trustees or manager, directly or indirectly, in connection with the sale or purchase of investments held for the purposes of the scheme, by the amount of such of those charges as –
 - (i) are attributable to the member’s rights, and
 - (ii) are not the subject of an election by the trustees or manager under regulation 14B(1)(b);
 - (e) where any charges or expenses are incurred by the trustees or manager directly or indirectly in maintaining or repairing any land or buildings in which the fund is invested, or in connection with the collection of rent, service charge or other sums due under the terms of a lease from occupiers of any such land or buildings, by the amount of such of those charges or expenses as –
 - (i) are attributable to the member’s rights, and
 - (ii) are not the subject of an election by the trustees or manager under regulation 14B(1)(b);
 - (f) by the amount of any dilution levy charged, or, in the case of rights represented by rights in a with-profits fund, by the amount of any market value adjustment occurring in relation to the fund;
 - (g) where the member is the transferor for the purposes of Article 26 (pension sharing: creation of pension debits and credits), by the amount of any payment made to discharge the liability of the trustees or manager in respect of a credit within the meaning of that Article, and
 - (h) by the amount of any payment made for the purpose of returning excessive contributions made in respect of the member, in accordance with the arrangements that the scheme must have in order to be approved under Chapter IV of Part XIV of the Taxes Act (pension schemes, social security benefits, life annuities, etc.).
- (6) In paragraphs (2) to (4), “indirect charges” means management charges deducted from a fund in which a fund held for the purposes of the scheme is invested, directly or indirectly.
- (7) For the purposes of paragraphs (2) to (4), “the relevant percentage” means –
- (a) in the case of an established member, 1/365 per cent.;
 - (b) in the case of a new member –
 - (i) during the period of 10 years beginning with the day on which the first payment is made to the scheme by or on behalf of the member, or, in a case where an amount is credited to the member’s account in respect of a credit within the meaning of Article 26 before any payment is made, the day on which that amount is credited, 3/730 per cent.,
 - (ii) otherwise 1/365 per cent.
- (8) In this regulation and regulation 14A –
- “an established member” means a person who first acquired rights under the scheme before 6th April 2005 and has maintained rights under it since that date, and
- “a new member” means a person who first acquired rights under the scheme on or after 6th April 2005, or who reacquired such rights after that date having previously transferred all of his accrued rights under the scheme to another pension scheme or arrangement.
- (9) Where the value of any member’s rights is reduced by reference to an amount of charges or expenses of a kind referred to in paragraph (5)(d) or (e), then, for the purposes of calculating any reduction under paragraph (2), (3) or (4), the funds held by the scheme are to be calculated after the deduction of any such amount.

Valuations for the purposes of regulation 14

14A.—(1) For the purposes of paragraphs (2)(a), (3)(a) and (4)(a) of regulation 14, the rights of members must be valued daily, weekly or monthly, but the frequency with which

the rights of established members are valued may be different from that with which the rights of new members are valued.

(2) For the purposes of paragraphs (2)(b), (3)(b) and (4)(b) of regulation 14, the funds of the scheme must be valued daily.

(3) Both –

(a) the frequency, or different frequencies, with which rights are to be valued for the purposes of paragraphs (2)(a), (3)(a) and (4)(a) of regulation 14, and

(b) where valuation is to take place weekly or monthly, the day of the week or, as the case may be, the date in the month on which it is to take place,

must be specified in writing by the trustees or manager of the scheme; and the specification may not be amended during the period of 12 months after the date on which it is made.

(4) When calculating the value of a member's rights for the purposes of paragraph (2)(a), (3)(a) or (4)(a) of regulation 14, where it has been specified under paragraph (3) that such rights are to be valued weekly or monthly –

(a) where the rights are to be valued weekly, they are to be valued on such day of the week ("the specified day") as has been so specified by the trustees or manager (except that, where that day is not a working day, the rights are to be valued on the next working day), and the value of the rights on each subsequent day prior to the next specified day is to be taken to be the value of the rights on the previous specified day, and

(b) where the rights are to be valued monthly, they are to be valued on such date in each month ("the specified date") as has been so specified by the trustees or manager (except that, where that date is not a working day, the rights are to be valued on the next working day), and the value of the rights on each subsequent day prior to the next specified date is to be taken to be the value of the rights on the previous specified date.

Charges etc. – permitted reductions in funds

14B.—(1) The value of a fund held for the purposes of the scheme may be reduced where any charges or expenses are incurred in the circumstances specified in regulation 14(5)(d) or (e) and are either –

(a) not attributable to the rights of a member under the scheme, or

(b) attributable to such rights but the subject of an election by the trustees or manager to recover charges or expenses by way of a reduction of the value of the fund rather than by way of a reduction of the value of the member's rights,

by the amount of those charges or expenses.

(2) Where the value of a fund is reduced by reference to an amount referred to in paragraph (1), then, for the purposes of calculating any reduction in the member's rights under paragraph (2), (3) or (4) of regulation 14, the value of those rights is to be calculated after the deduction of that amount.

Rounding of fractional amounts

14C. For the purposes of any calculation under regulation 14 or 14B, values and amounts may be determined, at the option of the trustees or manager, by rounding down any fraction of a penny less than one half and rounding up any other such fraction."

(10) In regulation 15 (requirement for trustees or manager to satisfy certain conditions in relation to with-profits funds) –

(a) in paragraph (3)(c)(a) for "company" there shall be substituted "insurer";

(b) in paragraph (4)(b) the word "appointed" shall be omitted;

(c) in paragraph (4)(a) for "and 14" there shall be substituted ", 14 and 14B";

(a) Paragraph (3)(c) was amended by regulation 11(2) of S.R. 2001 No. 119 and regulation 5 of S.R. 2002 No. 268

(b) Paragraph (4) was amended by regulation 11(3) of S.R. 2001 No. 119 and regulation 5 of S.R. 2002 No. 268

(d) for paragraph (6) there shall be substituted the following paragraph –

“(6) In this regulation the “actuary to the insurer” means a person appointed to perform, in relation to the insurer, either or both of the functions specified in paragraph 4.3.1. of the Supervision Manual which is part of the FSA Handbook.”.

(11) In regulation 16(a)(i) (requirements as regards the provision of other services), for “and 14” there shall be substituted “, 14 and 14B”.

(12) In regulation 18(6) for “and 14” there shall be substituted “, 14 and 14B”.

Revocations

3. Regulations 2(3)(a) and (4) and 10 of the Stakeholder Pension Schemes (Amendment No. 2) Regulations (Northern Ireland) 2001(a) and the Stakeholder Pension Schemes (Amendment) Regulations (Northern Ireland) 2002(b) are hereby revoked.

Sealed with the Official Seal of the Department for Social Development on 15th March 2005.

(L.S.)

John O'Neill

A senior officer of the Department for Social Development

(a) S.R. 2001 No. 119
(b) S.R. 2002 No. 216

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations amend the Stakeholder Pension Schemes Regulations (Northern Ireland) 2000 (“the principal Regulations”).

Regulation 1 provides for citation and commencement.

Regulation 2(2) amends regulation 1 of the principal Regulations. The definition of “securities” is amended so as to include shares in an investment trust, and the definition of the “dilution levy” is amended by reference to the Financial Services Authority (“the FSA”) Handbook. The provision in regulation 1(8) of the principal Regulations for references to notice in writing to be taken to include notice sent to a member of a scheme electronically is replaced by a provision to allow all of the communications to members provided for in the Regulations to be sent electronically.

Regulation 2(4) amends regulation 6 of the principal Regulations, which provides for the trustees or manager of a scheme which is in the course of winding up to transfer the rights of members to another scheme. The effect of the amendment is that a member who withdraws an application for a transfer to a scheme of his choice must be given a month’s notice before the trustees or manager of the scheme may transfer his rights to a scheme of their choice.

Regulation 2(5) amends regulation 8 of the principal Regulations which prohibits the trustees or manager of a scheme from holding units or shares in a collective investment scheme or an insurance-linked fund which are not “single-priced”. The amendment is intended to make it clear that this prohibition only applies in relation to investments held directly by the trustees or manager and not to investments held by the collective investment scheme or fund.

Regulation 2(6) inserts regulations 10A to 10E into the principal Regulations to provide for the rights of a member of a stakeholder pension scheme who has made no choice as to how his contributions should be invested to be subject to “lifestyling”, from at least five years before his retirement date. “Lifestyling” is defined in regulation 10A(5) as a process aimed at reducing the potential for variations in the value of a member’s rights caused by market conditions. Regulation 10B excludes the obligation to provide for lifestyling in the case of a scheme which is closed to new members, and regulation 10E allows individual members to opt out of the lifestyling process before it has begun. Lifestyling is to be provided automatically in the case of eligible members joining a scheme after these Regulations come into operation, but only on request (following a notification procedure provided for in regulation 10D) in the case of existing members.

Regulation 2(8) and (9) concerns the deductions that the trustees or manager of a scheme may make to sums attributable to the rights of members. Regulation 13(2) of the principal Regulations, which provides for deductions to be made in order to comply with orders made in matrimonial proceedings, is extended to cover compliance with court orders generally. Regulation 14 of the principal Regulations is replaced by regulations 14 to 14C, which incorporate a number of changes. The cap on charges deducted from the value of a member’s rights is raised, in respect of the first 10 years of membership for individuals joining a scheme on or after 6th April 2005, from 1 per cent. to 1.5 per cent. per year; the cap is also expressly applied in relation to indirect as well as direct management costs. The range of permitted deductions is extended to include costs incurred in complying with a court order, indirect as well as direct dealing costs, charges connected with property holdings and market value adjustments. Regulation 14B gives the trustees or manager of a scheme the option of deducting dealing costs and charges connected with property holdings from the value of funds held for the purposes of the scheme rather than the value of members’ rights.

Regulation 2(10) amends regulation 15 of the principal Regulations under which the trustees or manager of a scheme invested in a with-profits fund must obtain actuarial certificates from

the insurer maintaining the fund. The effect of the amendments is that certificates relating to the insurer's supervisory systems and controls and certificates needed in order to allow the trustees or manager to make declarations about systems and controls relating to the scheme may be given by the same person. The amendments are made to take account of changes to rules of the FSA concerning actuarial functions.

The regulations also make consequential amendments and revocations.

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, copies of which have been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Room 5, Block 5, Stormont Estate, Upper Newtownards Road, Belfast BT4 3SJ.

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