

2018 No. 165

PENSIONS

**The Pension Protection Fund (Pensionable Service) and
Occupational Pension Schemes (Investment and Disclosure)
(Amendment and Modification) Regulations
(Northern Ireland) 2018**

Made - - - - *11th September 2018*

Coming into operation in accordance with regulation 1

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 109(1), (6) and (7), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(a), Articles 35(4), 36(1), (1A)(a) and (9) and 166(1) to (3) of the Pensions (Northern Ireland) Order 1995(b), and now vested in it(c), and Articles 280(1)(b) and 287(2) and (3) of, and paragraph 33(1) of Schedule 6 to, the Pensions (Northern Ireland) Order 2005(d).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations (Northern Ireland) 2018 and, except as provided for in paragraphs (2) and (3), shall come into operation on 1st October 2019.

(2) This regulation and regulations 2 and 3 shall come into operation on 2nd October 2018.

(3) The following regulations shall come into operation on 1st October 2020—

- (a) regulation 5(2);
- (b) regulation 5(4)(b) in so far as it relates to the insertion of paragraph (2A)(b) into regulation 29A of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(e), and
- (c) regulation 5(5)(c).

(a) 1993 c. 49; section 109(1) was amended by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); section 109(6) and (7) was inserted by section 43 of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)); section 178(1) was amended by Parts 3 and 4 of Schedule 5 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22))

(b) S.I. 1995/3213 (N.I. 22); Article 35 was substituted by Article 221 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); Article 36(1) and (1A) was substituted for Article 36(1) by Article 222(2) of that Order; Article 36(9) was added by Article 222(6) of that Order

(c) See Article 8(b) of S.R. 1999 No. 481 and section 1(7) of the Departments Act (Northern Ireland) 2016 (c. 5 (N.I.))

(d) S.I. 2005/255 (N.I. 1); paragraph 33 was amended by paragraph 15 of Schedule 6 to the Pensions (No. 2) Act (Northern Ireland) 2008 (c. 13 (N.I.))

(e) S.R. 2014 No. 79; regulation 29A was inserted by regulation 3(6) of S.R. 2018 No. 53

(4) The Interpretation Act (Northern Ireland) 1954(a) shall apply to these Regulations as it applies to an Act of the Assembly.

Amendment of the Pension Protection Fund (Compensation) Regulations

2.—(1) The Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005(b) are amended in accordance with paragraphs (2) and (3).

(2) In regulation 1(2) (interpretation) omit the definition of “pensionable service”.

(3) After Part 12(c) (variable-rate schemes) add—

“PART 13

Schemes which provide fixed pensions in respect of transfer payments

Schemes which provide fixed pensions in respect of transfer payments: modification of Schedule 6

28.—(1) Schedule 6 has effect with the modifications set out in paragraphs (3) to (5) in relation to a scheme if, immediately before the assessment date, under the admissible rules of the scheme a person is entitled or has rights to a relevant fixed pension.

(2) A pension to which a person is entitled or has rights under a scheme is a “relevant fixed pension” for the purposes of this regulation if—

- (a) that entitlement or those rights (as the case may be) arose by virtue of a transfer payment to the scheme in respect of the person’s rights under another occupational or personal pension scheme;
- (b) the initial annual amount of the pension was specified at the time the transfer payment was received (whether or not that amount was subject to revaluation in respect of the period until the pension was to come into payment), and
- (c) the pension is neither—
 - (i) attributable (directly or indirectly) to a pension credit, nor
 - (ii) payable as a result of a person’s death.

(3) Where compensation is payable under paragraph 15 of Schedule 6 (deferred members who have not attained normal pension age at assessment date) in respect of a relevant fixed pension—

- (a) paragraph 15 has effect in its application to that pension as if—
 - (i) in sub-paragraph (5) for “when the pensionable service relating to the pension ended” there were substituted “immediately after the relevant transfer payment was received”, and
 - (ii) after sub-paragraph (5) there were inserted—

“(5A) In sub-paragraph (5) “relevant transfer payment” means the transfer payment by virtue of which the deferred member’s rights to the pension were conferred under the scheme.”, and

(a) 1954 c. 33 (N.I.)

(b) S.R. 2005 No. 149; relevant amending Regulations are S.R. 2009 No. 78 and S.R. 2018 No. 26

(c) Part 12 was added by regulation 2(6) of S.R. 2018 No. 26

(b) except in a case to which regulation 13A(4)(a) (modification of Schedule 6 for schemes with no revaluation) applies, paragraph 16 has effect in its application to that pension as if—

(i) in sub-paragraph (2)(a) for “deferred member’s pensionable service in respect of the pension ended” there were substituted “relevant transfer payment was received”, and

(ii) after sub-paragraph (2) there were inserted—

“(2A) In sub-paragraph (2)(a) “relevant transfer payment” means the transfer payment by virtue of which the deferred member’s rights to the pension were conferred under the scheme.”.

(4) Sub-paragraph (14) of paragraph 26A(b) of Schedule 6 (meaning of the compensation cap) does not apply in so far as it relates to the meaning of “pensionable service”.

(5) Except for the purposes of sub-paragraphs (1) and (2) of paragraph 26(c) of Schedule 6 (compensation cap), paragraph 36 of Schedule 6 (accrual rate, pensionable service and pensionable earnings) has effect as if—

(a) in sub-paragraph (4) for “sub-paragraph (5)” there were substituted “sub-paragraphs (5) and (6)”, and

(b) after sub-paragraph (5) there were added—

“(6) For the purposes of this Schedule, where a person is entitled or has rights under a scheme to a pension and—

(a) that entitlement or those rights (as the case may be) arose by virtue of a transfer payment to the scheme in respect of the person’s rights under another occupational or personal pension scheme,

(b) the initial annual amount of the pension was specified at the time the transfer payment was received (whether or not that amount was subject to revaluation in respect of the period until the pension was to come into payment), and

(c) the pension is neither—

(i) attributable (directly or indirectly) to a pension credit, nor

(ii) payable as a result of a person’s death,

the person is to be treated as having pensionable service within sub-paragraph (4)(b) to which that pension is attributable.”.

Amendment of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations

3. In regulation 1(2) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005(d) (interpretation) for the definition of “pensionable service” substitute—

““pensionable service” has the meaning given by paragraph 36(4) of Schedule 6 to the Order (accrual rate, pensionable service and pensionable earnings);”.

Amendment of the Occupational Pension Schemes (Investment) Regulations

4.—(1) The Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005(e) are amended in accordance with paragraphs (2) and (3).

(a) Regulation 13A was inserted by regulation 4 of S.R. 2009 No. 78

(b) Paragraph 26A was inserted by paragraph 3 of Schedule 20 to the Pensions Act (Northern Ireland) 2015

(c) Paragraphs 26(1) and (2) was amended by section 49(2) to (5) of the Pensions Act (Northern Ireland) 2015

(d) S.R. 2005 No. 91 to which there are amendments not relevant to these Regulations

(e) S.R. 2005 No. 569; relevant amending Regulations are S.R. 2015 No. 309

(2) In regulation 2 (statement of investment principles)—

(a) in paragraph (3)—

(i) in sub-paragraph (b)(v) for “investments, and” substitute “investments;”;

(ii) for sub-paragraph (b)(vi) substitute—

“(vi) financially material considerations over the appropriate time horizon of the investments, including how those considerations are taken into account in the selection, retention and realisation of investments, and”;

(iii) after sub-paragraph (b)(vi) add—

“(vii) the extent (if at all) to which non-financial matters are taken into account in the selection, retention and realisation of investments, and”;

(iv) for sub-paragraph (c) substitute—

“(c) their policy in relation to—

(i) the exercise of the rights (including voting rights) attaching to the investments, and

(ii) undertaking engagement activities in respect of the investments (including the methods by which, and the circumstances under which, trustees would monitor and engage with relevant persons about relevant matters).”;

(b) after paragraph (3) add—

“(4) For the purposes of this regulation—

“appropriate time horizon” means the length of time that the trustees of a trust scheme consider is needed for the funding of future benefits by the investments of the scheme;

“beneficiaries” means a person, other than a member of the trust scheme, who is entitled to the payment of benefits under the scheme;

“financially material considerations” includes (but is not limited to) environmental, social and governance considerations (including but not limited to climate change), which the trustees of the trust scheme consider financially material;

“non-financial matters” means the views of the members and beneficiaries including (but not limited to) their ethical views and their views in relation to social and environmental impact and present and future quality of life of the members and beneficiaries of the trust scheme;

“relevant matters” includes (but is not limited to) matters concerning an issuer of debt or equity, including their performance, strategy, risks, social and environmental impact and corporate governance, and

“relevant persons” includes (but is not limited to) an issuer of debt or equity, an investment manager or another holder of debt or equity.”.

(3) In regulation 2A(1)(b)(a) (additional requirements in relation to default arrangement) after “regulation 2(3)(b)” insert “and, if that scheme has 100 or more members, regulation 2(3)(c)”.

Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations

5.—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 are amended in accordance with paragraphs (2) to (6).

(2) In regulation 12 (annual report)—

(a) in paragraph (1) after “year and” insert “(subject to paragraph (5))”;

(a) Regulation 2A was inserted by regulation 20(3) of S.R. 2015 No. 309

(b) after paragraph (4) add—

“(5) Where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997^(a) that falls within Article 35 of the 1995 Order (investment principles), the information listed in paragraph 30(f)^(b) of Schedule 3 must be made publicly available free of charge in accordance with regulation 29A.”.

(3) In the heading to regulation 29A (publishing charges and transaction costs) after “transaction costs” insert “and other relevant information”.

(4) In regulation 29A—

(a) in paragraph (1) after “paragraph (2)” insert “and, where that scheme falls within Article 35 of the 1995 Order (investment principles), paragraph (2A)”;

(b) after paragraph (2) insert—

“(2A) The specified information is—

(a) the latest statement of investment principles governing decisions about investments prepared for the scheme under Article 35 of the 1995 Order, and

(b) the information which must be included in the most recent document prepared under regulation 12 in accordance with paragraph 30(f) of Schedule 3.”;

(c) in paragraph (4) after “paragraph (2)” insert “or (2A)”.

(5) In paragraph 30 of Schedule 3 (information to be given on request)—

(a) for sub-paragraph (d) substitute—

“(d) the policies specified in the following paragraphs of regulation 2 of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 (statement of investment principles) (“the Investment Regulations”)—

(i) paragraph (3)(b)(vi)^(c);

(ii) paragraph (3)(b)(vii)^(d), and

(iii) paragraph (3)(c)^(e), and”;

(b) omit sub-paragraph (e);

(c) after sub-paragraph (e) add—

“(f) where the scheme is a relevant scheme within the meaning of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997, a statement which must—

(i) set out how, and the extent to which, in the opinion of the trustees, the statement of investment principles required under Article 35 of the 1995 Order has been followed during the year;

(ii) describe any review of the statement of investment principles undertaken during the year in accordance with regulation 2(1) of the Investment Regulations and any other review of how the statement of investment principles has been met;

(iii) explain any change made to the statement of investment principles during the year and the reason for the change, and

(iv) where no such review was undertaken during the year in accordance with regulation 2(1) of the Investment Regulations, give the date of the last review.”.

(a) S.R. 1997 No. 94; the definition of “relevant scheme” was inserted by regulation 14 of S.R. 2015 No. 309

(b) Paragraph 30(f) is inserted by regulation 5(5)(c) of these Regulations

(c) Sub-paragraph (b)(vi) is substituted by regulation 4(2)(a)(ii) of these Regulations

(d) Sub-paragraph (b)(vii) is added by regulation 4(2)(a)(iii) of these Regulations

(e) Sub-paragraph (c) is substituted by regulation 4(2)(a)(iv) of these Regulations

(6) In paragraph 5B(a) of Schedule 6(b) (statements of benefits: money purchase benefits and cash balance benefits) after “29A(2)” insert “and (2A)(c)”.

Sealed with the Official Seal of the Department for Communities on 11th September 2018

(L.S.)

Colum Boyle

A senior officer of the Department for Communities

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- (a) Paragraph 5B was inserted by regulation 3(8) of S.R. 2018 No. 53
 - (b) The heading to Schedule 6 was amended by regulation 73(7) of S.R. 2014 No. 204
 - (c) Paragraph (2A) is inserted by regulation 5(4)(b) of these Regulations

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Board of the Pension Protection Fund (“the Board”) is established by section 107 of the Pensions Act 2004 (c. 35) to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer, where the pension scheme is underfunded below a certain level. The compensation payable to individual members is determined in accordance with Schedule 6 to the Pensions (Northern Ireland) Order 2005 (“the 2005 Order”) and regulations made under it, including the Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005 (“the Compensation Regulations”).

These Regulations make amendments to the Compensation Regulations to insert provisions modifying the effect of Schedule 6 to the 2005 Order in relation to certain schemes. They also amend the definition of “pensionable service” in the Compensation Regulations and in the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005 (“the Multi-employer Regulations”). The Regulations additionally impose requirements on occupational pension schemes in relation to the statement of investment principles required under Article 35 of the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”) and the disclosure of information in relation to the statement of investment principles.

Regulation 2(2) omits the definition of “pensionable service” from regulation 1(2) of the Compensation Regulations, so that the definition of that term in paragraph 36 of Schedule 6 to the 2005 Order applies for the purposes of the Compensation Regulations.

Regulation 2(3) inserts regulation 28 into the Compensation Regulations. Paragraph (1) of regulation 28 provides that Schedule 6 to the 2005 Order has effect with the modifications set out in regulation 28(3) to (5) in relation to a scheme if, immediately before the assessment date, under the admissible rules of the scheme a person is entitled or has rights to a “relevant fixed pension” as defined in paragraph (2) of regulation 28. A relevant fixed pension is defined as a pension which arose by virtue of a transfer payment to the scheme, where the initial amount of the pension was determined at the time the transfer payment was received. In addition, the pension must not be attributable to a pension credit, or payable as a result of a person’s death.

Paragraph (3) of regulation 28 provides that, in relevant cases, paragraphs 15 and 16 of Schedule 6 to the 2005 Order have effect as if references to the time at which the member’s pensionable service in respect of the pension ended, were instead to the time at which the transfer payment which gave rise to the relevant fixed pension was received by the scheme.

Paragraph (4) of regulation 28 provides that paragraph 26A(14) of Schedule 6 to the 2005 Order, which provides for expressions used in paragraph 26A to have the same meaning as in paragraph 26 of Schedule 6, does not apply in so far as it relates to the meaning of “pensionable service”.

Paragraph (5) of regulation 28 provides that, in cases to which the modifications apply, paragraph 36 of Schedule 6 to the 2005 Order has effect as if it included sub-paragraph (6) (except for the purposes of paragraph 26(1) and (2) of Schedule 6, which relates to the application of the compensation cap). Sub-paragraph (6) provides that a person with a right or entitlement to a relevant fixed pension (defined in the same terms as in regulation 28(2)) is to be treated, for the purposes of Schedule 6, as having pensionable service within paragraph 36(4)(b) (notional pensionable service), to which the relevant fixed pension is attributable.

Regulation 3 substitutes the definition of “pensionable service” in regulation 1(2) of the Multi-employer Regulations, so that the definition of that term in paragraph 36 of Schedule 6 to the 2005 Order applies for the purposes of the Multi-employer Regulations.

Regulation 4 amends regulations 2 and 2A of the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005 (“the Investment Regulations”), which relate to the statement of investment principles (“the SIP”) required under Article 35 of the 1995 Order and, amongst other things, the default SIP required under regulation 2A of the Investment Regulations. The amendment provides for trustees to include a policy on how they will take account of financially material considerations in relation to investments in the SIP and default SIP. It also requires

trustees of schemes (except schemes with fewer than 100 members) to include a policy on when they will undertake engagement activities in relation to investments (including monitoring and engaging with relevant persons such as an investment manager) in the SIP and default SIP.

Regulation 5 amends the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (“the Disclosure Regulations”) to require the trustees of a relevant scheme to include in the annual report under regulation 12 of the Disclosure Regulations a statement on the extent to which the SIP has been followed during the scheme year and an explanation of any changes made to the SIP during that year (“the implementation statement”). It obliges trustees to make available free of charge the SIP and the implementation statement on a website, or where appropriate, in hard copy form to the public as a whole to enable people to compare costs and charges of different occupational pension schemes. In addition, the trustees must include details about the availability of these publications in the annual benefit statement issued to members with money purchase benefits.

The Pensions (2008 No. 2 Act) (Commencement No. 12) Order (Northern Ireland) 2018 (S.R. 2018 No. 23 (C. 2)) provides for the coming into operation of paragraph 15 of Schedule 6 to the Pensions (No. 2) Act (Northern Ireland) 2008, which amends paragraph 33 of Schedule 6 to the 2005 Order, one of the enabling provisions under which these Regulations are made, on 2nd February 2018.

The Pensions (2015 Act) (Commencement No. 6) Order (Northern Ireland) 2018 (S.R. 2018 No. 41 (C. 4)) provides for the coming into operation of section 43 of the Pensions Act (Northern Ireland) 2015, which inserts section 109(6) and (7) into the Pension Schemes (Northern Ireland) Act 1993, some of the enabling provisions under which these Regulations are made, on 9th March 2018.

As these Regulations, in so far as they are made under the 1995 Order and the 2005 Order, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of Article 117(2)(e) of the 1995 Order and Article 289(2)(e) of the 2005 Order.

An assessment of the impact of regulations 4 and 5 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 and is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>. Copies of the Assessment and the Guidance “Reporting of costs, charges and other information: guidance for trustees and managers of relevant occupational schemes” 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>.

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