

**2018 No. 40**

**PENSIONS**

**The Pension Schemes Act 2015  
(Transitional Provisions and Appropriate Independent Advice)  
(Amendment) Regulations (Northern Ireland) 2018**

*Made* - - - -

*8th March 2018*

*Coming into operation* -

*6th April 2018*

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 109(1)(ca) and (d), (2)(e) and (3), 164(1) and (4), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(a) and now vested in it(b).

**Citation and commencement**

1. These Regulations may be cited as the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018 and shall come into operation on 6th April 2018.

**Amendment of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations**

2. The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations (Northern Ireland) 2015(c) are amended in accordance with regulations 3 and 4.

**Amendment of regulation 1**

3. In regulation 1(2) (interpretation) in the definition of “relevant transaction” after “applies” insert “, or would apply but for the exception in regulation 5(1)”.

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(a) 1993 c. 49; section 109(1)(ca) was inserted by section 48(1) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4 (N.I.)); section 109(2)(e) was added by paragraph 13 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); section 164 was substituted by Article 151(1) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and subsection (4) was amended by paragraph 22 of Schedule 10 to the Pensions (Northern Ireland) Order 2005; section 178(1) was amended by Parts 3 and 4 of Schedule 5 to the Pensions (Northern Ireland) Order 1995

(b) 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.))

(c) S.R. 2015 No. 165 as amended by S.R. 2016 No. 172

## Insertion of regulations 8A to 8C

4. After regulation 8 (information to be provided on initial enquiry) insert—

### “Requirement to provide risk warnings in relation to safeguarded-flexible benefits

**8A.**—(1) In this regulation and regulation 8C—

“risk warning” means a written communication which satisfies the requirements specified in regulation 8C(2) to (5);

“safeguarded-flexible benefits” means benefits within paragraph (c) of the definition of “flexible benefit” in section 74 of the Act;

“subsisting right” and “survivor” have the meanings given in section 76(1) of the Act (interpretation of Part 4).

(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)(a), or
- (b) the trustees or managers—
  - (i) provide a statement of entitlement or a written statement of the amount of the cash equivalent(b) to the member or survivor, or
  - (ii) communicate their intention or agreement in principle to carry out a relevant transaction requested by the member or survivor, or make an offer of a relevant transaction,

in respect of those safeguarded-flexible benefits.

(3) The trustees or managers must provide any risk warning required by paragraph (2)—

- (a) where the member or survivor has made an application or written request or given a notice in writing within paragraph (2)(a), before the expiry of one month beginning with the date of that application, request or notice;
- (b) where the trustees or managers provide a statement to the member or survivor within paragraph (2)(b)(i), on or before the day on which that statement is provided;
- (c) where the trustees or managers communicate their intention or agreement or make an offer within paragraph (2)(b)(ii), on or before the day on which they provide written confirmation of that intention, agreement or offer to the member or survivor,

and in any event no later than two weeks before the date on which the trustees or managers carry out the relevant transaction in relation to the member’s or survivor’s safeguarded-flexible benefits.

(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

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(a) Regulation 8(2) was amended by regulation 8(5)(a) of S.R. 2016 No. 172

(b) The definition of “written statement of the amount of the cash equivalent” was added by regulation 8(2)(d) of S.R. 2016 No. 172

12 months beginning with the date on which the previous risk warning was provided.

(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<sup>(a)</sup> 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.

### **Meaning of “relevant guarantee”**

**8B.**—(1) In regulation 8C “relevant guarantee”, in relation to a member’s or survivor’s subsisting rights in respect of safeguarded-flexible benefits, 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 benefits.

(2) The definition in paragraph (1) includes, in particular—

- (a) a promise or guarantee that the pension will not be less than a particular amount (a “guaranteed amount”);
- (b) a promise or guarantee that the pension will not be less than a particular proportion of the amount available for the provision of benefits to the member or survivor (a “guaranteed conversion rate”).

(3) A promise or guarantee is not excluded from the definition in paragraph (1) merely because—

- (a) the member’s or survivor’s opportunity to take or secure a pension—
  - (i) of the guaranteed amount, or
  - (ii) calculated by reference to the guaranteed conversion rate,(to “take up” the relevant guarantee) is subject to conditions or restrictions, or
- (b) 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.

(4) The definition in paragraph (1) does not include a promise or guarantee which only relates to the amount available for the provision of benefits to the member or survivor (unless it is a promise or guarantee referred to in paragraph (2)(b)).

(5) In this regulation “safeguarded-flexible benefits”, “subsisting right” and “survivor” have the meanings given in regulation 8A(1).

### **Content of risk warnings in relation to safeguarded-flexible benefits**

**8C.**—(1) In this regulation—

“the Disclosure Regulations” means the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014<sup>(b)</sup>;

“pension illustration”, in relation to a member’s or survivor’s subsisting rights to benefits under a pension scheme, means an estimate of 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 benefits;

“relevant guarantee” has the meaning given in regulation 8B;

“retirement date” has the same meaning as in regulation 19(5) of the Disclosure Regulations (first information on accessing benefits);

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<sup>(a)</sup> The Pensions Regulator can be contacted at Napier House, Trafalgar Place, Brighton BN1 4DW and at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

<sup>(b)</sup> S.R. 2014 No. 79

“statutory money purchase illustration” means a pension illustration provided in accordance with regulation 17 of, and Part 2(a) of Schedule 6 to, the Disclosure Regulations (pension illustration).

(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 the member’s or survivor’s benefits under the scheme include a potentially valuable guarantee (or, where relevant, more than one such guarantee) which will be lost if the member or survivor proceeds with the proposed relevant transaction;
- (b) where the proposed relevant transaction will proceed to completion without further action by the member or survivor, a warning that the member or survivor must inform the trustees or managers if the member or survivor does not wish the transaction to proceed;
- (c) for each relevant guarantee in relation to those benefits, a clear and intelligible explanation of—
  - (i) its key features;
  - (ii) the circumstances in which the member or survivor will have an opportunity to take up the relevant guarantee;
  - (iii) any circumstances in which the member or survivor will lose the opportunity to take up the relevant guarantee under the scheme (whether in relation to all of the member’s or survivor’s subsisting rights in respect of safeguarded-flexible benefits, or part only), and
  - (iv) any other material restrictions or conditions to which the member’s or survivor’s opportunity to take up the relevant guarantee is subject under the scheme;
- (d) two pension illustrations (“the first illustration” and “the second illustration”) in relation to those benefits, calculated in accordance with paragraphs (3) and (5), respectively;
- (e) a statement that, depending on the member’s or survivor’s age, pensions guidance (as defined in regulation 2(1)(b) of the Disclosure Regulations) may be available to help the member or survivor to understand the options in relation to what the member or survivor can do with the member’s or survivor’s safeguarded-flexible benefits, and
- (f) the information listed in paragraphs 2 to 4 of Schedule 9A(c) to the Disclosure Regulations (information on the pensions guidance).

(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 commences payment (“the pension commencement date”) will be the date closest to the member’s or survivor’s retirement date which satisfies both of the following conditions—
  - (i) the member or survivor has an opportunity to take up any relevant guarantee on the date, and
  - (ii) the date is after the risk warning is provided;
- (b) the member or survivor will take up any relevant guarantee in relation to the pension, and

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(a) Part 2 was amended by regulation 73(8)(a) and (b) of S.R. 2014 No. 204

(b) The definition of “pensions guidance” was inserted by regulation 3(1)(g) of S.R. 2015 No. 154

(c) Schedule 9A was inserted by regulation 13 of S.R. 2015 No. 154

- (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<sup>(a)</sup>, 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 statutory money purchase illustration, except to the extent that paragraph (4) permits the use of different assumptions.
- (4) The assumptions used may differ from those specified in paragraph (3)(c)(ii) to the extent that—
  - (a) where it requires an annual rate of return of greater than 5 per cent. to be assumed, a rate of 5 per cent. may be assumed instead, and
  - (b) where it requires an annual rate of increase in earnings of less than 4 per cent. to be assumed, a rate of 4 per cent. may be assumed instead.
- (5) 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 and the amount available for the provision of those benefits to the member or survivor will be the same as those assumed for the first illustration, and
  - (b) the amount referred to in sub-paragraph (a) will be converted into a pension at a rate determined using assumptions which are—
    - (i) so far as possible, consistent with those used for the first illustration in respect of—
      - (aa) any lump sum payable in connection with the commencement of the pension;
      - (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, the same as those that would be used if the second illustration were a statutory money purchase illustration.”.

Sealed with the Official Seal of the Department for Communities on 8th March 2018

(L.S.)

*Anne McCleary*  
A senior officer of the Department for Communities

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

## 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 (c. 8) (“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).

Regulation 4 inserts regulations 8A, 8B and 8C into the Advice Regulations, to require the trustees or managers of a pension scheme to provide specified information in writing (known as a “risk warning”) to members and survivors in certain circumstances. The requirement applies if the member or survivor has “safeguarded-flexible benefits” (safeguarded benefits which are also flexible benefits, as defined in section 74 of the 2015 Act) and takes certain actions, such as asking the scheme for information about how to transfer their benefits to a different scheme. Paragraph (5) of regulation 8A provides the Pensions Regulator with a power to impose financial penalties in respect of a failure by a trustee or manager to comply with that regulation.

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>

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