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STATUTORY RULES OF NORTHERN IRELAND

2022 No. 115

PENSIONS

The Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations (Northern Ireland) 2022

Made - - - -

16th March 2022

Coming into operation -

1st June 2022

The Department for Communities makes the following Regulations in exercise of the powers conferred by sections 109(1), 109B(1), (4) and (6) and 177(2) to (4) of the Pension Schemes (Northern Ireland) Act 1993(a) and now vested in it(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Disclosure of Information) (Requirements to Refer Members to Guidance etc.) (Amendment) Regulations (Northern Ireland) 2022 and shall come into operation on 1st June 2022.

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

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

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

(2) In regulation 2(1) (interpretation) for the definition of “pensions guidance”(e) substitute—

““pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018(f) (specific requirements as to the pensions guidance function);”.

(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 109B was inserted by section 19(7) of the Financial Guidance and Claims Act 2018 (c. 10)

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

(d) S.R. 2014 No. 79; relevant amending Regulations are S.R. 2015 No. 154

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

(f) 2018 c. 10

(3) In regulation 4(7)(a) (requirement of trustees or managers to provide postal and electronic address for request for further information or other enquiry) after “18B(3)” insert “or 18C(4) or (7)”.

(4) In regulation 18A(2)(b)(b) (information to be given on request and on a member providing certain information) after “Schedule 7 and” insert “, subject to regulation 18C,”.

(5) In regulation 18B(1) (information to be given on communicating with a member about what the member may do with flexible benefits) after “paragraph (5)” insert “and regulation 18C”.

(6) After regulation 18B insert—

“Requirement to refer members and survivors to guidance etc.

18C.—(1) Where this regulation applies, the requirements in the following regulations to provide the information on pensions guidance in Part 1 of Schedule 9A(c) do not apply—

- (a) regulation 18A(1) and (2)(b), and
- (b) regulation 18B(1) and (2).

(2) Subject to paragraph (3), this regulation applies where the trustees or managers of an occupational pension scheme receive on or after 1st June 2022 from any person an application, or communication made in relation to an application, from a relevant beneficiary (“B”)—

- (a) to transfer any rights to flexible benefits accrued by B under the scheme, or
- (b) to start receiving flexible benefits provided by the scheme.

(3) This regulation does not apply where the trustees or managers of an occupational pension scheme receive on or after 1st June 2022 from any person an application, or communication made in relation to an application, from B to transfer rights in accordance with paragraph (2)(a) if—

- (a) B is under the age of 50;
- (b) receiving flexible benefits is not the purpose, or one of the purposes, of the application, or
- (c) the trustees or managers have received from B or a person authorised to act on behalf of B confirmation (given verbally or in writing) in relation to the application that—
 - (i) B—
 - (aa) has been referred by the trustees or managers of a different pension scheme to appropriate pensions guidance, and
 - (bb) has received or opted out of receiving that guidance, in accordance with the requirements of this regulation, or
 - (ii) B is transferring rights to flexible benefits into a relevant pension scheme in respect of which the trustees or managers are required to comply with rules made under section 137FB of the Financial Services and Markets Act 2000(d) (FCA general rules: disclosure of information about the availability of pensions guidance).

(4) As part of the application process, the trustees or managers—

- (a) must offer to book a pensions guidance appointment on behalf of B on a date, at a time and of a kind suitable for B;

(a) Regulation 4(7) was amended by regulation 4(4) of S.R. 2015 No. 154
(b) Regulations 18A and 18B were inserted by regulation 6 of S.R. 2015 No. 154
(c) Schedule 9A was inserted by regulation 13 of S.R. 2015 No. 154
(d) Section 137FB was inserted by paragraph 6 of Schedule 3 to the Pension Schemes Act 2015 (c. 8) and amended by section 18 of the Financial Guidance and Claims Act 2018

- (b) where B accepts the offer mentioned in sub-paragraph (a), must take reasonable steps to book that appointment;
 - (c) where B does not accept that offer, or where the trustees or managers are unable to book such an appointment on a date, at a time and of a kind suitable for B despite having taken reasonable steps, must provide B with details of how to book a pensions guidance appointment;
 - (d) must explain to B that they cannot, proceed with the application unless—
 - (i) B has received, and notified them of receipt of, appropriate pensions guidance, or
 - (ii) B opts out of receiving such guidance by giving them an opt-out notification, and
 - (e) must explain to B that B can only opt out of receiving appropriate pensions guidance by giving them an opt-out notification.
- (5) Where the trustees or managers receive an application, or communication made in relation to an application, as mentioned in paragraph (2), B may give an opt-out notification—
- (a) in a communication made solely for the purpose of opting out of receiving appropriate pensions guidance, or
 - (b) where paragraph (9) applies.
- (6) Paragraph (7) applies to any interaction subsequent to the interaction mentioned in paragraph (4) where B contacts the trustees or managers in connection with B’s application unless—
- (a) B has confirmed to the trustees or managers that B has received appropriate pensions guidance in connection with the application, or
 - (b) B has provided to the trustees or managers an opt-out notification in a communication made solely for the purpose of opting out of receiving appropriate pensions guidance.
- (7) Where this paragraph applies, the trustees or managers must repeat the steps required by paragraph (4).
- (8) If, at any point while the trustees or managers are repeating the steps required by paragraph (4) by virtue of paragraph (7), B confirms to them that B has received appropriate pensions guidance in connection with the application, the trustees or managers may treat the requirements of paragraph (4) as having been satisfied.
- (9) This paragraph applies where the trustees or managers have received from B or a person authorised to act on behalf of B confirmation (given verbally or in writing) that—
- (a) B has received—
 - (i) appropriate pensions guidance, or
 - (ii) regulated financial advice in connection with the application, provided by a financial adviser regulated and authorised by the Financial Conduct Authority to provide such advice,
 in the 12-month period (excluding the date of receipt) before the trustees or managers received an application, or communication made in relation to an application, as mentioned in paragraph (2);
 - (b) B qualifies for a serious ill-health lump sum within the meaning of paragraph 4(1) of Schedule 29 to the Finance Act 2004(a), or
 - (c) B’s application is solely to transfer any of their rights to flexible benefits accrued under the scheme.

(a) 2004 c. 12; paragraph 4 was amended by paragraph 28 of Schedule 16 to the Finance Act 2011 (c. 11) and paragraph 1(4) and (5) of Schedule 5 to the Finance Act 2016 (c. 24)

(10) In this regulation—

“appropriate pensions guidance” means pensions guidance^(a) accessible by B during a pensions guidance appointment which includes the facility for real-time human interaction between the parties during the appointment (whether face to face, by telephone or through another electronic medium);

“opt-out notification” means a notification (given verbally or in writing) given to the trustees or managers of an occupational pension scheme for the purpose of confirming that B is opting out of receiving appropriate pensions guidance in connection with an application or communication made in relation to an application;

“pensions guidance appointment” means an appointment of B with the provider of appropriate pensions guidance;

“regulated financial advice” means advice of a kind mentioned in Article 53 of the Financial Services and Markets Act (Regulated Activities) Order 2001^(b) (advising on investments);

“relevant beneficiary” has the meaning given by the definition in section 109B(6) of the 1993 Act and for the purposes of paragraph (b) of that definition another person of a prescribed description is a survivor of a member.

Consequential modifications of sections 95 and 97J of the 1993 Act

18D.—(1) The 1993 Act has effect subject to the following modifications.

(2) Where regulation 18C of these Regulations applies in relation to an application under section 91(1)^(c) of the 1993 Act (ways of taking right to cash equivalent), section 95(2)(b)^(d) of the 1993 Act (trustees’ duties after exercise of option) has effect as if the duty it imposes only applies if, within the 6-month period to which it refers, the requirements under that regulation for proceeding with the application have been satisfied.

(3) Where regulation 18C of these Regulations applies in relation to the requirement under section 97G(4)^(e) of the 1993 Act (restrictions on power to give transfer notice) for a member to make an application under section 91(1) of the 1993 Act in addition to giving a transfer notice, section 97J(1)(b)^(f) of the 1993 Act (time for compliance with transfer notice) has effect as if the duty it imposes only applies if, within the 6-month period to which it refers, the requirements under that regulation for proceeding with the application have been satisfied.

Record-keeping requirements of trustees and managers

18E.—(1) The trustees or managers of an occupational pension scheme must, in respect of a relevant beneficiary (“B”), keep a record of—

- (a) the receipt by B of appropriate pensions guidance in connection with an application, or communication made in relation to an application, from B under regulation 18C(2);
- (b) the provision to them by B of an opt-out notification in connection with an application, or communication made in relation to an application, from B under regulation 18C(2), or
- (c) the receipt of a confirmation referred to in regulation 18C(9).

(a) “Pensions guidance” is defined in section 109B(6) of the Pension Schemes (Northern Ireland) Act 1993
(b) S.I. 2001/544; Article 53 was amended by Article 9(1) of S.I. 2003/1476, Article 2(6) of S.I. 2016/392, Article 4(4) of S.I. 2017/488, Article 2 of S.I. 2017/500 and paragraph 2 of Schedule 3 to S.I. 2017/701
(c) Section 91(1) was substituted by paragraph 55(2) of Schedule 4 to the Pension Schemes Act 2015
(d) Section 95(2) was substituted by paragraph 59(2) of Schedule 4 to the Pension Schemes Act 2015
(e) Section 97G was substituted by paragraph 62 of Schedule 4 to the Pension Schemes Act 2015
(f) Section 97J was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and subsection (1)(b) was substituted by paragraph 64(2) of Schedule 4 to the Pension Schemes Act 2015

(2) For the purposes of paragraph (1), “relevant beneficiary”, “appropriate pensions guidance” and “opt-out notification” have the meanings given in regulation 18C(10).”.

Sealed with the Official Seal of the Department for Communities on 16th March 2022

(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 Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (“the 2014 Regulations”) and in so doing consequentially modify the effect of related provisions of the Pension Schemes (Northern Ireland) Act 1993 (“the 1993 Act”) as follows.

Regulation 2(2) corrects, by updating, the definition of “pensions guidance” in the 2014 Regulations. Regulation 2(6) inserts regulations 18C to 18E into the 2014 Regulations.

Regulation 18C sets out the procedures which the trustees or managers of an occupational pension scheme must follow to ensure that a “relevant beneficiary” (“B”) has received “appropriate pensions guidance” (both terms as defined in paragraph (10) of that regulation) and the conditions that must be satisfied after they receive an application, or a communication made in relation to an application, from B on or after 1st June 2022 to transfer rights to flexible benefits accrued under the scheme or to start receiving flexible benefits provided by the scheme. Regulation 18C(3) sets out the circumstances in which these requirements do not apply to applications for a transfer of rights to flexible benefits (as defined in regulation 2 of the 2014 Regulations). Regulation 18C also sets out the circumstances in which B may opt out of receiving appropriate pensions guidance.

Regulation 18D makes consequential modifications to the effect of sections 95 and 97J of the 1993 Act. These modifications modify the effect of the requirements imposed on trustees or managers of occupational pension schemes that provide money purchase benefits to carry out a qualifying member or their survivor’s request to transfer their pension benefits within 6 months of the date of their application or giving of a transfer notice. The effect of these modifications is to disapply those requirements where the trustees or managers are unable to proceed with an application under section 91(1), or a transfer notice under section 97G(4), of the 1993 Act within that 6-month period because the requirements set out in regulations made under section 109B of the 1993 Act relating to the receipt of appropriate pensions guidance, or the opting out of receiving such guidance, have not been satisfied (see further above in relation to regulation 18C made under section 109B of the 1993 Act).

Regulation 18E sets out the related record-keeping requirements of the trustees or managers.

Regulation 2(3) to (5) makes consequential amendments to the 2014 Regulations. Paragraph (3) amends regulation 4(7) so that the requirement in that regulation (for trustees or managers to provide a postal and electronic address for any request for further information or other enquiry from a member) does not apply where information is given verbally by trustees or managers in accordance with regulation 18C(4) or (7). Paragraphs (4) and (5) consequentially amend regulations 18A and 18B to disapply the requirements in those regulations to provide information on pensions guidance where regulation 18C applies.

The Financial Guidance and Claims Act 2018 (Commencement No. 1) Order (Northern Ireland) 2022 (S.R. 2022 No. 107 (C. 12)) provides for the coming into operation of section 19(7) of the Financial Guidance and Claims Act 2018, which inserts section 109B into the 1993 Act, one of the enabling provisions under which these Regulations are made, for the purpose only of authorising the making of regulations on 15th March 2022.

An assessment of the cost to business of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been 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, Legislation and Decision Making Services, Level 6, 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>.

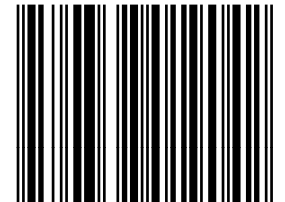
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