STATUTORY INSTRUMENTS

2017 No. 717

PENSIONS

The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017

Made - - - -	*4th July 2017*
Laid before Parliament	*6th July 2017*
Coming into force - -	*6th April 2018*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1)(ca) and (d) and (3), 168(1), (4) and (11), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993(**1**).

The Secretary of State for Work and Pensions has, in accordance with section 185(1) of the Pension Schemes Act 1993(**2**), consulted such persons as the Secretary of State considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017 and come into force on 6th April 2018.

Amendments to the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015

2. The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015(**3**) are amended as set out in regulations 3 to 5.

(**1**) 1993 c. 48. Paragraph (ca) of section 113(1) was inserted by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). Section 168 was substituted by section 155 of the Pensions Act 1995 (c. 26) ("the 1995 Act") and amended by paragraph 27 of Schedule 12 to the Pensions Act 2004 (c. 35). Section 181(1) is cited for the meaning it gives to "prescribe" and "regulations". There are amendments to section 181(1) not relevant to these Regulations. Section 183(1) was amended by Parts 3 and 4 of Schedule 7 to the 1995 Act.

(**2**) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the 1995 Act.

(**3**) S.I. 2015/742, amended by S.I. 2016/289.

Amendment to regulation 1

3. In regulation 1(3) (interpretation), at the end of the definition of "relevant transaction" insert ", or would apply but for the exception in regulation 5(1)".

Insertion of new regulations 8A, 8B and 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 in regulation 8C—

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

"safeguarded-flexible benefits" means benefits within paragraph (c) of the definition of flexible benefit in section 74 of the Act (meaning of "flexible benefit")(**4**);

"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); or

(b) the trustees or managers—

(i) provide a statement of entitlement or a written statement of the amount of the cash equivalent 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—

(**4**) *See* regulation 1(3) of S.I 2015/742 for the meaning of "the Act".

(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 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 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 2013(**5**);

(**5**) S.I. 2013/2734; relevant amending instruments are S.I.s 2015/482 and 2014/1711.