STATUTORY RULES OF NORTHERN IRELAND

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(**1**) and now vested in it(**2**).

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(**3**) 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)".

(**1**) 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

(**2**) *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.))

(**3**) 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)(**4**), or

(b) the trustees or managers—

(i) provide a statement of entitlement or a written statement of the amount of the cash equivalent(**5**) 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

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

(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(**6**) 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(**7**);

(**6**) The Pensions Regulator can be contacted at Napier House, Trafalgar Place, Brighton BN1 4DW and at www.thepensionsregulator.gov.uk

(**7**) S.R. 2014 No. 79