STATUTORY RULES OF NORTHERN IRELAND

2015 No. 165

PENSIONS

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

Made - - - -	*18th March 2015*
Coming into operation	*6th April 2015*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 51(2), (3)(a), (4) and (8), 52, 86 and 89(6) of the Pension Schemes Act 2015 [F1].

F1 2015 c. 8; *see* the definitions of "appropriate independent advice" and "authorised independent adviser" in section 51(8)

Citation, commencement and interpretation

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

(2) In these Regulations—

"the Act" means the Pension Schemes Act 2015;

"the 1993 Act" means the Pension Schemes (Northern Ireland) Act 1993 [F2];

"the 2000 Act" means the Financial Services and Markets Act 2000 [F3];

"active member" has the meaning given in section 78 of the Pensions (No. 2) Act (Northern Ireland) 2008 [F4];

"cash equivalent" means a cash equivalent mentioned in sections 89A [F5] (right to statement of entitlement – benefits others than money purchase) and 90 (right to cash equivalent) **[**[F6]or, as the case may be, a cash equivalent mentioned in sections 97F (power to give transfer notice) and 97H (benefits other than money purchase: statements of entitlement)**]** of the 1993 Act;

[[F7]"eligible member" has the meaning given by section 97P(1) of the 1993 Act (interpretation of Chapter II);**]**

"FCA" means the Financial Conduct Authority [F8];

"the guarantee date" has the meaning given in section 89A(4) of the 1993 Act;

"member" means a member of a pension scheme who has subsisting rights in respect of any safeguarded benefits;

[F9"pension credit rights" has the meaning given in section 97B of the 1993 Act;**]**

"the Regulated Activities Order" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 F10;

"relevant transaction" means a transfer payment, conversion of benefits or payment of a lump sum to which section 51(1) of the Act (independent advice in respect of conversions and transfers) applies **[**F11, or would apply but for the exception in regulation 5(1)**]** ;

"statement of entitlement" means a statement of entitlement within the meaning of section 89A of the 1993 Act;

"survivor" means a member's survivor who has subsisting rights in respect of any safeguarded benefits;

"the Transfer Values Regulations" means the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 F12;

"valuation date" means—

(a) where the member is exercising the member's right to take a cash equivalent under Chapter 1 of Part 4ZA F13 of the 1993 Act (transfers and contribution refunds), the guarantee **[**F14date;**]**

(aa) **[**F15where an eligible member is, under section 97F of the 1993 Act, exercising the right to take an amount equal to the cash equivalent of the eligible member's pension credit rights, the date determined in accordance with section 97H(2) of that Act, or**]**

(b) in any other case, the date chosen by the trustees or managers which must be a date within the period of 2 months which begins on the first day of the one month period which ends on the date the decision by the trustees or managers referred to in regulation 9(2)(b) is made;

"writing" includes electronic communication and "electronic communication" has the meaning given in section 4(1) of the Electronic Communications Act (Northern Ireland) 2001 F16.

[F17"written statement of the amount of the cash equivalent" has the meaning given in section 97H(1) of the 1993 Act.**]**

F2 1993 c. 49
F3 2000 c. 8
F4 2008 c. 13 (N.I.)
F5 Sections 89A and 90 are substituted by paragraph 54 of Schedule 4 to the Pension Schemes Act 2015
F6 Words in reg. 1(2) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(a)**
F7 Words in reg. 1(2) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(b)**
F8 The Financial Conduct Authority can be contacted at 25 The North Colonnade, London E14 5HS and at
www.fca.org.uk
F9 Words in reg. 1(2) inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2018 (S.R. 2018/46), regs. 1(1), 3 (with reg. 6). Regulation 3 of S.R. 2018/46 is revoked and re-enacted (4.10.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 3) Regulations (Northern Ireland) 2018 (S.R. 2018/170), regs. 1, 3. Reg. 3 of S.R. 2018/170 revoked and re-enacted (2.4.2019) by The Pension Schemes Act 2015 (Transitional

Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/55), regs. 1, **3**. Reg. 3 of S.R. 2019/55 revoked and re-enacted (30.9.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019/184), regs. 1, **3**

F10 S.I. 2001/544

F11 Words in reg. 1(2) inserted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2018 (S.R. 2018/40), regs. 1, **3**

F12 S.R. 1996 No. 619

F13 *See* paragraph 50 of Schedule 4 to the Pension Schemes Act 2015

F14 Words in reg. 1(2) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(c)(i)**

F15 Words in reg. 1(2) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(c)(ii)**

F16 2001 c. 9 (N.I.); the definition of "electronic communication" in section 4(1) was amended by paragraph 170 of Schedule 17 to the Communications Act 2003 (c. 21)

F17 Words in reg. 1(2) added (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(2)(d)**

Transitional provisions relating to the coming into force of section 51 of the Act

2. Section 51 of the Act (independent advice in respect of conversions and transfers: Northern Ireland) does not apply to—

(a) a transfer payment as described in section 51(1) of the Act which is made on or after 6th April 2015 where—

(i) the payment is a result of a member exercising that member's right to a cash equivalent under section 90 of the 1993 Act (right to cash equivalent), and where the member's application for a statement of entitlement which gave rise to that right was made before 6th April **[**F18**]**2015;**]**

[F19**]**(ia) an eligible member, before 6th April 2015 and in accordance with section 97F of the 1993 Act, required the trustees or managers to use an amount equal to the cash equivalent of the member's pension credit rights for an authorised purpose;

(ib) an eligible member made an application for a written statement of the amount of the cash equivalent before 6th April 2015, or**]**

(ii) before 6th April 2015—

(aa) the trustees or managers have confirmed in writing to the member that they agree in principle to carry out the transfer payment (subject to any relevant statutory requirements and the requirements of the scheme rules being met), or

(bb) the trustees or managers have made an offer in writing to the member of a transfer payment;

(b) a conversion of benefits as described in section 51(1) of the Act which takes place on or after 6th April 2015, where the trustees or managers have provided written confirmation to the member before 6th April 2015 that they will convert the benefits.

F18 Word in reg. 2(a)(i) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(3)(a)**

F19 Reg. 2(a)(ia)(ib) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(3)(b)**

Appropriate independent advice – further requirements

3. For the purposes of the definition of "appropriate independent advice" in section 51(8) of the Act (independent advice in respect of conversions and transfers), the advice must be specific to the type of relevant transaction proposed by the member or survivor.

Meaning of authorised independent adviser

4. For the purposes of the definition of "authorised independent adviser" in section 51(8) of the Act (independent advice in respect of conversions and transfers), the specified regulated activity is the activity described in article 53E [F20] of the Regulated Activities Order (advising on conversion or transfer of pension benefits).

F20 Article 53E is inserted by article 2(2) of S.I. 2015/731

[F21Exception to section 51(1) of the Act

5.—(1) The trustees or managers are not required to carry out the check in section 51(1) of the Act (independent advice in respect of conversions and transfers) if the transfer value of the member's or survivor's subsisting rights in respect of safeguarded benefits under the pension scheme is £30,000 or less on the valuation date.

(2) In this regulation "transfer value" means—

(a) where the rights referred to in paragraph (1) are transferrable rights as defined in section 89(11) of the 1993 Act (scope of Chapter 1), the amount of the cash equivalent of those rights calculated in accordance with section 93 of that Act (calculation of cash equivalents) and regulations made under it;

(b) where the rights referred to in paragraph (1) are pension credit rights, the amount of the cash equivalent of those rights calculated in accordance with regulations made under section 97I of the 1993 Act (calculation of cash equivalents);

(c) in any other case, the amount which would be the cash equivalent of the rights referred to in paragraph (1), calculated in accordance with section 93 of the 1993 Act and regulations made under it, as if—

(i) Chapter 1 of Part 4ZA of the 1993 Act (transfer rights: general) applied to the member or survivor by virtue of those rights;

(ii) references to a member in that Chapter and regulations made under it included a survivor of a member, and

(iii) in the case of an active member, the member had ceased to accrue rights to benefits on the valuation date,

but, in each case, disregarding regulations 7D and 7E of the Transfer Values Regulations (reductions to initial cash equivalents and alternative manner of calculating and verifying cash equivalents).**]**

F21 Reg. 5 substituted (6.4.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2018 (S.R. 2018/46), regs. 1(1), 4 (with reg. 6). Regulation 4 of S.R 2018/46 is revoked and re-enacted (4.10.2018) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 3) Regulations (Northern Ireland) 2018 (S.R. 2018/170), regs. 1, 4. Reg. 4 of S.R. 2018/170 revoked and re-enacted (2.4.2019) by The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations (Northern Ireland) 2019 (S.R. 2019/55), regs. 1, **4**. Reg. 4 of S.R. 2019/55 revoked and re-enacted (30.9.2019) by The Pension

Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment No. 2) Regulations (Northern Ireland) 2019 (S.R. 2019/184), regs. 1, **4**

Information to be provided to the member or survivor

6. The information to be provided to the member or survivor in accordance with regulations 8, 9 and 10(2) is a written explanation that—

(a) unless the exception in regulation 5(1) applies, the trustees or managers are required to check that appropriate independent advice has been received by the member or survivor, before the trustees or managers are able to carry out a relevant transaction;

(b) confirmation that appropriate independent advice has been received by the member or survivor should be in the form set out in regulation 7, and be provided to the trustees or managers before the end of a period of 3 months beginning with—

(i) the day on which a statement of entitlement is **[**F22provided;**]**

[F23(ia) in the case of a pension credit member, the day on which a written statement of the amount of the cash equivalent is provided, or**]**

(ii) where a statement of entitlement is not provided, the day—

(aa) on which the trustees or managers provide written confirmation that they agree in principle to carry out the relevant transaction requested, or, if later,

(bb) on which the trustees or managers provide the member or survivor with a valuation of the member's or survivor's, as the case may be, safeguarded benefits for the purposes of the relevant transaction requested, and

(c) unless the member or survivor confirms otherwise, the trustees or managers will assume that the purpose of any transfer of the member's or survivor's subsisting rights in respect of safeguarded benefits under the scheme is to provide flexible benefits under another pension scheme.

F22 Words in reg. 6(b)(i) substituted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(4)(a)**

F23 Reg. 6(b)(ia) inserted (6.4.2016) by The Pension Sharing (Miscellaneous Amendments) Regulations (NorthernIreland) 2016 (S.R. 2016/172), regs. 1, **8(4)(b)**

Form of confirmation of appropriate independent advice

7. Confirmation from the member or survivor that appropriate independent advice has been received must be in the form of a statement in writing from the authorised independent adviser providing the advice confirming—

(a) that advice has been provided which is specific to the type of transaction proposed by the member or survivor;

(b) that the adviser has permission under Part 4A **F24** of the 2000 Act (permission to carry on regulated activities), or resulting from any other provision of that Act, to carry on the regulated activity in article 53E of the Regulated Activities Order (advising on conversion or transfer of pension benefits);

(c) the firm reference number of the company or business in which the adviser works for the purposes of authorisation from the FCA to carry on the regulated activity in article 53E of the Regulated Activities Order, and