EXPLANATORY MEMORANDUM TO

THE UNFUNDED PUBLIC SERVICE DEFINED BENEFITS SCHEMES (TRANSFERS) REGULATIONS 2015

2015 No. 1614

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations prevent transfers under section 95 of the Pension Schemes Act 1993 ('the 1993 Act') from an unfunded public service defined benefits scheme to a qualifying recognised overseas pension scheme which can provide flexible benefits as a result of the transfer. They will come into force on 7 September 2015.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 68 of the Pension Schemes Act 2015 ('the 2015 Act') restricted, by means of amendments to section 95 of the 1993 Act, transfers out of unfunded public service defined benefits schemes. The restriction does not apply if the scheme to which the transfer is to be made satisfies requirements prescribed in regulations.

4.2 Section 68(9) of the 2015 Act provides that regulations made under section 95(2)(d) and 95(5)(a) of the 1993 Act apply for the purposes of section 95(2A)(d) and 95(5A) of the 1993 Act respectively, until the coming into force of the first regulations made under the latter provisions.

4.3 With the coming into force of these Regulations, the first made under section 95(2A)(d) and 95(5A) of the 1993 Act, regulation 12(4) and 12(5) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) will no longer apply for the purposes of those provisions.

5. Territorial Extent and Application

5.1 These Regulations apply to England, Wales and Scotland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The context of these Regulations is the government's major reforms of pensions (from 6 April 2015) which enable every member of a money purchase pension scheme to access their pension pot flexibly, so that they can draw down their pension pot as a lump sum rather than having to use it to buy an annuity.

7.2 As part of these reforms the government decided to ban transfers from unfunded public service defined benefit schemes to schemes from which members could draw down their pension pot flexibly, in order to protect the Exchequer and taxpayers. This policy was announced in July 2014 in *Freedom and choice in pensions: government response to the consultation*.[1]

7.3 In the unfunded public service pension schemes, the contributions of current members and employers are used to pay for the pensions of current pensioners, with any shortfall being met by taxpayers through payments from the Exchequer. As such, where a member chooses to transfer, there is a direct upfront cost to the Exchequer, which must both provide the cash equivalent transfer value and cover the cost of any foregone contributions which would have been used to pay for pensions in payment. Initial government estimates suggested that the net cost of 1% of public service workers transferring out of public service schemes each year would be £200 million.

7.4 This policy was given effect by section 68 of the 2015 Act which restricted, by means of amendments to section 95 of the 1993 Act, transfers out of unfunded public service defined benefits schemes. Section 95(2B) enables the Treasury to make exceptions to the restriction on transfers from unfunded public service defined benefits schemes to schemes in which the member could access flexible benefits as a result of the transfer. The government has decided not to make any exceptions.

7.5 However, as a result of section 68(9) of the 2015 Act the regulations already made by the Secretary of State under section 95(2)(d) and 95(5)(a) of the 1993 Act continue to apply for the purposes of section 95(2A)(d) and 95(5A) of the 1993 Act respectively, until the coming into force of the

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[1] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332714/pensions_response_online.pdf

first regulations made by the Treasury under section 95(2A)(d) and 95(5A). As a result there is in effect a loophole in the restriction on transfers from unfunded public service defined benefit schemes. This is because regulation 12(4) and (5) of the Occupational Pension Schemes (Transfer Value) Regulations 1996 permit transfers to qualifying recognised overseas pension schemes. These Regulations close that loophole by preventing transfers under section 95 of the Pension Schemes Act 1993 from an unfunded public service defined benefits scheme to a qualifying recognised overseas pension scheme which can provide flexible benefits as a result of the transfer.

8. Consultation outcome

8.1 These Regulations follow from the broad policy principles which were set out as part of the Government's 'Freedom and Choice in Pensions' consultation in summer 2014. Of those respondents who commented on the then proposed transfer restriction for members of unfunded public service defined benefits schemes, the overwhelming majority agreed that it was a good idea. One respondent suggested that there should be an exception for members who choose to emigrate permanently to another country.

8.2 In its response to the consultation, the Government stated that "members of unfunded public service defined benefit schemes will be prevented from transferring to defined contribution schemes in order to protect the Exchequer and taxpayers" (page 25).

8.3 The broad policy principles that these Regulations implement have already been subject to consultation. These Regulations are a technical amendment to close the loophole outlined above – which is a legacy of the application of the Occupational Pension Schemes (Transfer Value) Regulations 1996 – in order to address the risk to the Exchequer and the taxpayer outlined above. They impose restrictions on public service pension scheme members from transferring their pension to a qualifying recognised overseas pension scheme which can provide flexible benefits as a result of the transfer. In this context, the government did not consider it appropriate to consult members of the public. Rather the government considered it appropriate to consult policy officials representing each of the public service pension schemes as well as their respective pension scheme administrators, and it undertook a two week technical consultation with them to ensure that the Regulations are effective in delivering the policy.

8.4 The Treasury received no substantive responses to its consultation.

9. Guidance

9.1 No specific guidance has been produced to accompany this instrument.

10. Impact

10.1 This instrument imposes no costs on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been produced for this instrument.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring and review

12.1 The Treasury will continue to work with relevant Departments to review the impact of the transfer restrictions and the appropriateness of these Regulations. There is no requirement to review these on a fixed basis.

13. Contact

13.1 Tanya Kempe-Tummon at the Treasury (telephone 0207 270 1639 or email tanya.kempe-tummon@hmtreasury.gsi.gov.uk) can answer any queries regarding the Regulations.