

This Statutory Instrument supersedes in part the draft of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 which was laid before Parliament on 6th May 2014 and published on 9th May 2014 (ISBN 978-0-11-111456-8). It is being issued free of charge to all known recipients of that draft Statutory Instrument.

S T A T U T O R Y I N S T R U M E N T S

2014 No. 1711

PENSIONS

**The Pensions Act 2011 (Transitional, Consequential and
Supplementary Provisions) Regulations 2014**

Made - - - - *1st July 2014*
Laid before Parliament *3rd July 2014*
Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 74(5), 97(1), (2)(b) and (3)(c), 101AF(1), (3)(b) and (4)(b)(a), 101I(b), 101L(1) and (2)(b)(c), 113(1), 153(1)(d) and (2)(c), 181(1)(e), 182(2) and (3) and 183(1)(f) of the Pension Schemes Act 1993(g), sections 10(3), 37(4)(a) to (c), (e) and (8)(h), t8o47(5)(a), 73(6), (7) and (8)(a)(i), 75(5)(j) and (10), 124(1)(k) and 174(2) and (3) of the Pensions Act 1995(l), sections 23(1)(b), 26(1)(m), 30(1) and 83(4) and (6) of the Welfare Reform and Pensions Act 1999(n), sections 117, 126(1)(b) and (5), 135(4), 138(10)(a), 146(1), 161(3)(b), 179(1)(a) and (3), 189(11)(b), 190(1), 207, 232, 315(2), (4) and (5) and 318(1)(o) of and paragraphs 12(3A)(b)(p), 17(3A)(b)(q), 20(7) and 33(1) of Schedule 7 to the Pensions Act 2004(r), section 212(1)(s) of and paragraph 5(2) of Schedule 7 to the Equality Act 2010(t) and sections 30(1) and (2), 31(1) and 33(1)(a), (b) and (d) of the Pensions Act 2011(u).

-
- (a) Section 101AF was inserted by the Pensions Act 2004 (c. 35) (“the 2004 Act”).
 - (b) Section 101I was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30) (“the 1999 Act”).
 - (c) Section 101L was inserted by section 37 of the 1999 Act.
 - (d) Section 153(1) was amended by sections 122 and 177 of and Schedules 3 and 7 to the Pensions Act 1995 (c. 26) (“the 1995 Act”).
 - (e) Section 181(1) is cited for the meaning it gives to “prescribe” and “regulations”.
 - (f) Section 183(1) was amended by sections 151, 173 and 177 of and Schedules 5, 6 and 7 to the 1995 Act.
 - (g) 1993 c. 48.
 - (h) Section 37 was substituted by section 250 of the 2004 Act.
 - (i) Section 73 was substituted by section 270(1) of the 2004 Act.
 - (j) Section 75(5) was amended by section 271(1) and (3) of the 2004 Act.
 - (k) Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
 - (l) 1995 c. 26.
 - (m) Section 26(1) is cited for the meaning it gives to “prescribed”.
 - (n) 1999 c. 30.
 - (o) Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.
 - (p) Paragraph 12(3A) was inserted by section 101(1)(b) of and Schedule 2 to the 2008 Act.
 - (q) Paragraph 17(3A) was inserted by section 101(1)(b) of and Schedule 2 to the 2008 Act.
 - (r) 2004 c. 35.
 - (s) Section 212(1) is cited for the meaning it gives to “prescribed”.
 - (t) 2010 c. 15.
 - (u) 2011 c. 19.

In accordance with section 185(1) of the Pension Schemes Act 1993^(a), section 120(1) of the Pensions Act 1995, section 83(11) of the Welfare Reform and Pensions Act 1999 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

PART 1

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 and come into force immediately after section 29 of the Pensions Act 2011 (definition of money purchase benefits) comes into force.

(2) Part 15 of these Regulations (Financial Assistance Scheme) extends to Northern Ireland.

(3) In these Regulations—

“the Act” means the Pensions Act 2011;

“the 1993 Act” means the Pension Schemes Act 1993;

“the 1995 Act” means the Pensions Act 1995;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999;

“the 2004 Act” means the Pensions Act 2004;

“the applicable rules” has the meaning given by section 94(2) of the 1993 Act (right to cash equivalent)^(b);

“the appointed day” is the day appointed for the coming into force of section 29 of the Act (definition of money purchase benefits);

“assessment period” is to be construed in accordance with section 132(2) to (6) of the 2004 Act;

“the Board” means the Board of the Pension Protection Fund established under section 107 of the 2004 Act;

“cash balance underpin benefits” are cash balance benefits to which, under an occupational pension scheme, a member only has rights if the amount of the cash balance underpin benefits exceeds a defined benefit minimum promised to the member;

“cash equivalent” means a cash equivalent or guaranteed cash equivalent mentioned in section 93A(1) (salary related schemes: right to statement of entitlement)^(c) or 94(1)^(d) of the 1993 Act;

“defined benefit minimum” except in Part 2 and regulation 9 (money purchase underpin benefits and top-up benefits) means—

- (a) in relation to money purchase underpin benefits or cash balance underpin benefits, benefits which are not money purchase benefits, but which accrue or may accrue under an occupational pension scheme in respect of the same period of a member’s pensionable service as the member’s rights to money purchase underpin benefits or cash balance underpin benefits; or
- (b) in relation to top-up benefits, a specified minimum value or amount, where, under an occupational pension scheme, a member is promised that the member’s rights to money purchase benefits or cash balance benefits will be at least equal to that specified minimum value or amount;

(a) Section 185(1) was amended by sections 122, 151 and 177 of, and Schedules 3, 5 and 7 to the 1995 Act.

(b) Section 94(2) was substituted by section 319(1) of and paragraph 13 of Schedule 12 to the 2004 Act.

(c) Section 93A was inserted by section 153 of the 1995 Act and was amended by section 84(1) of and paragraph 34 of Schedule 12 to the 1999 Act.

(d) Section 94(1) was amended by section 154(1) and (2) of the 1995 Act.

“eligible scheme” has the meaning given by section 126 of the 2004 Act (eligible schemes);

“further assessment period” means the assessment period mentioned in section 159(3) of the 2004 Act (closed schemes: further assessment periods);

“money purchase underpin benefits” are money purchase benefits to which, under an occupational pension scheme, a member only has rights if the amount of the money purchase benefits exceeds a defined benefit minimum promised to the member;

“multi-employer scheme”, except in Part 7 (deficiencies in the assets) has the meaning given by section 307(4) of the 2004 Act (modification of this Act in relation to certain categories of schemes)(a);

“the Regulator” means the Pensions Regulator established under section 1 of the 2004 Act;

“top-up benefit”, except in Part 2 and regulation 9, is a benefit—

- (a) the value or amount of which is greater than nil; and
- (b) to which, under an occupational pension scheme, a member only has rights where the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member; and

“value or amount” includes in particular a rate of pension, whether specified under the scheme or determined by reference to external criteria, such as a statutory minimum requirement.

Meaning of “cash balance benefit”

2.—(1) For the purposes of these Regulations, a benefit is a “cash balance benefit” if conditions 1 and 2 are met.

(2) Condition 1 is that a sum of money (“the available sum”) is available under the scheme for the provision of the benefit to or in respect of the member.

(3) Condition 2 is that under the scheme—

- (a) there is a promise about the amount of the available sum; but
- (b) there is no promise about the rate or amount of any pension to be provided from the available sum.

(4) The promise mentioned in paragraph (3)(a) includes in particular a promise about the change in the value of, or the return from, payments made under the scheme by the member or by any other person in respect of the member.

(5) The promise mentioned in paragraph (3)(b) includes a promise that—

- (a) the amount of the available sum will be sufficient to provide a pension of a particular rate or amount; and
- (b) the rate or amount of a pension will represent a particular proportion of the available sum.

(6) But a benefit is not prevented from being a cash balance benefit merely because under the scheme there is a promise that—

- (a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member; or
- (b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available sum.

(a) Section 307 was amended by section 31(2) of the Pensions Act 2011(c. 19) (“the Act”).

PART 2

Money purchase underpin benefits and top-up benefits

Interpretation and application of this Part

3.—(1) This Part—

- (a) applies in relation to any period after 1st January 1997; and
- (b) is subject to the contrary provision for transitional purposes made by these Regulations.

(2) In this Part—

- (a) “defined benefit minimum” means—
 - (i) in relation to money purchase underpin benefits, benefits which are not money purchase benefits, but which accrue or may accrue under an occupational pension scheme in respect of the same period of a member’s pensionable service as the member’s rights to money purchase underpin benefits; or
 - (ii) in relation to top-up benefits, a specified minimum value or amount, where, under the scheme, a member is promised that the member’s rights to money purchase benefits will be at least equal to that specified minimum value or amount; and
- (b) a “top-up benefit” is a benefit—
 - (i) the value or amount of which is greater than nil; and
 - (ii) to which, under an occupational pension scheme, a member only has rights where the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member.

Money purchase underpin benefits

4.—(1) If, at the relevant date, a member of an occupational pension scheme has rights under the scheme to money purchase underpin benefits, the existence of a contingent promise under the scheme to provide a defined benefit minimum to the member does not prevent the money purchase underpin benefits from being money purchase benefits for as long as the defined benefit minimum is of equal or lower value than the amount of the member’s rights to money purchase underpin benefits.

(2) In this regulation “the relevant date” means the date as at which the amount of the money purchase underpin benefits and the value of a defined benefit minimum promised under the scheme is being compared (for any purpose) in order to determine which is greater.

Top-up benefits

5.—(1) If, at the relevant date, a member of an occupational pension scheme has rights to—

- (a) money purchase benefits, the amount of which is less than a defined benefit minimum promised to the member under the scheme; and
- (b) a top-up benefit,

the amount of the member’s rights to money purchase benefits by reference to which the top-up benefit is calculated and the value of the top-up benefit must be aggregated to form a single benefit, which is not a money purchase benefit.

(2) In this regulation “the relevant date” means the date as at which the amount of the member’s rights to money purchase benefits and the amount of the top-up benefit is being calculated (for any purpose).

PART 3

Application of Part 4 of the Act and these Regulations to the Imperial Home Decor Pension Scheme

6. No provision of Part 4 of the Act (money purchase benefits) or of these Regulations applies to or in relation to the Imperial Home Decor Scheme.

PART 4

Protected rights

Schemes which provided protected rights as cash balance benefits etc

7.—(1) This regulation applies to an occupational pension scheme—

- (a) which was contracted-out in relation to an earner's employment under section 9(3) of the 1993 Act (requirements for certification of schemes: general)(a) in relation to a period before the appointed day; and
- (b) which provided protected rights in the form of—
 - (i) cash balance benefits;
 - (ii) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits); or
 - (iii) top-up benefits,

in relation to the earner's pensionable service under the scheme.

(2) Where this regulation applies, Part 3 of the 1993 Act (certification of pension schemes and effects on members' state scheme rights and duties) has effect (in relation to periods before, including or after 6th April 2012) as if—

- (a) references in Part 3 of that Act and regulations made under that Part to—
 - (i) "money purchase benefits" included cash balance benefits, a defined benefit minimum or top-up benefits (as the case may be);
 - (ii) "money purchase scheme" included a scheme which included cash balance benefits, top-up benefits or defined benefit minima (as the case may be); and
 - (iii) "money purchase contracted-out scheme" included a scheme which was contracted-out on a money purchase basis (whether or not the scheme included only money purchase benefits); and
- (b) in section 31 of the 1993 Act (investment and resources of schemes)(b) the reference in subsection (2) to "income or capital gain" was a reference to "notional income or capital gain".

(3) In this regulation "protected rights" has the meaning given by section 10(1) of the 1993 Act (protected rights and money purchase benefits) as that section stood immediately before 6th April 2012(c), subject to the modifications specified in paragraph (2).

(a) Subsection (3) of section 9 was repealed by section 15(3)(a) of and paragraph 4 of Schedule 4 to the Pensions Act 2007 (c. 22) ("the 2007 Act") with effect from 6th April 2012.

(b) Relevant amendments were made to section 31 by S.I. 2011/1730. This section is to be repealed from 6th April 2015 by sections 15(3)(a) and 27(2) of and Schedules 4 and 7 to the 2007 Act.

(c) Section 10 was repealed by section 106 of and Schedule 11 to the 2008 Act with effect from 6th April 2012.

PART 5

Modification of schemes

The subsisting rights provisions

- 8.**—(1) This regulation applies where—
- (a) on or after 6th April 2006 but before the appointed day, a power under an occupational pension scheme to which section 67 of the 1995 Act (the subsisting rights provisions)(a) applies has been exercised so as to modify the scheme by replacing or converting a right or entitlement to any of the benefits specified in paragraph (2) with or to a right or entitlement to money purchase benefits (“the scheme modification”);
 - (b) if section 29 of the Act had been in force at the time that the scheme modification took effect (and if this regulation did not apply), the modification would have been a protected modification; and
 - (c) the consent requirements (see section 67B(3) of the 1995 Act(b)) were not satisfied before the scheme modification took effect.
- (2) The benefits specified in this paragraph are—
- (a) cash balance benefits;
 - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits); and
 - (c) top-up benefits.
- (3) Where this regulation applies and the requirements specified by—
- (a) section 67(2)(b) and (c) of the 1995 Act (trustee approval and reporting requirements); and
 - (b) in the case of each affected member, the actuarial equivalence requirements (within the meaning of section 67C of that Act (the actuarial equivalence requirements)(c),
- are satisfied, section 67A(3)(a) of that Act (the subsisting rights provisions: interpretation)(d) applies as if the right or entitlement to a benefit specified in paragraph (2) which was replaced by or converted to a right or entitlement to money purchase benefits were a right or entitlement to money purchase benefits.

Money purchase underpin benefits and top-up benefits

- 9.**—(1) This regulation applies in relation to any time on or after the appointed day when a member of an occupational pension scheme or a survivor of a member has under the scheme a right or entitlement to—
- (a) money purchase underpin benefits; or
 - (b) money purchase benefits, where, under the scheme, the member has a contingent right to a top-up benefit if the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member.
- (2) Where this regulation applies, section 67A of the 1995 Act applies as if—
- (a) in subsection (6)—
 - (i) in paragraph (a)(i) the second “or” were omitted; and
 - (ii) after paragraph (a)(i), there were inserted—

(a) Section 67 was substituted for that section as originally enacted by section 262 of the 2004 Act.

(b) Section 67B was inserted by section 262 of the 2004 Act.

(c) Section 67C was inserted by section 262 of the 2004 Act.

(d) Section 67A was inserted by section 262 of the 2004 Act.

- “(ia) any contingent right under the scheme rules to a defined benefit minimum (in relation to money purchase underpin benefits) or to a top-up benefit (to which, under the scheme, a member only has rights where the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member); or”;
- (b) after subsection (6), there were inserted—
- “(6A) In subsection (6)—
- (a) “defined benefit minimum” and “top-up benefit” have the meaning given by regulation 3(2) of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014; and
- (b) “money purchase underpin benefits” has the meaning given by regulation 1(4) of those Regulations.”;
- (c) in subsection (7), after “At any time when the pensionable service of a member of an occupational pension scheme is continuing,”, there were inserted “subject to subsection (7A)”;
- (d) after subsection (7), there were inserted—
- “(7A) Where a contingent right specified in subsection (6)(a)(ia) would be extinguished if a member had opted to terminate pensionable service under the scheme, the member’s subsisting right to that contingent benefit is to be determined as if the member had not opted to terminate that pensionable service.”.
- (3) In this regulation “defined benefit minimum” and “top-up benefit” have the meaning given by regulation 3(2) (interpretation and application of Part 2).

PART 6

Winding Up

Application of this Part in relation to multi-employer schemes

10. Where, by virtue of regulation 12 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (winding up of sectionalised schemes etc)(a), section 73 of the 1995 Act (preferential liabilities on winding up)(b) applied or applies to a scheme as if a section or part of the scheme were separate schemes (or would do or have done so, but for these Regulations), this Part also so applies.

Schemes treated as money purchase schemes: winding up commencing before 6th April 2005

11.—(1) This regulation applies where—

- (a) an occupational pension scheme began to wind up before 6th April 2005 (whether or not the scheme has completed winding up before the appointed day); and
- (b) if it were not for this regulation, the trustees or managers of the scheme would have been required to wind up the scheme in accordance with section 73 of the 1995 Act.

(2) Where the conditions specified in paragraph (3) are met in relation to the scheme, section 73 of that Act (as it stood on the date that the scheme began to wind up) has effect in relation to the scheme as if after subsection (1) there were inserted—

“(1A) In subsection (1) “salary related occupational pension scheme” does not include a scheme which provides—

(a) S.I. 1996/3126.

(b) Section 73 was substituted with prospective effect by section 270(1) of the 2004 Act for section 73 as originally enacted, but the original form of that section continues to have effect in relation to schemes which commence winding up before 6th April 2005. There are no relevant amendments to Section 73 as originally enacted.

- (a) cash balance benefits;
 - (b) money purchase benefits; or
 - (c) pensions derived from money purchase or cash balance benefits,
- and no benefits other than those specified in paragraphs (a) to (c) or death benefits.

(1B) In subsection (1A) “cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014.”.

(3) The conditions specified in this paragraph are that, immediately before the scheme began winding up—

- (a) the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
- (b) the scheme included no benefits other than those specified in sub-paragraph (a), money purchase benefits or death benefits; and
- (c) the trustees or managers of the scheme treated the scheme as a money purchase scheme.

Non-money purchase schemes providing benefits treated as money purchase benefits: winding up commencing before 6th April 2005

12.—(1) This regulation applies where an occupational pension scheme not treated by the trustees or managers of the scheme as a money purchase scheme began to wind up before 6th April 2005 (whether or not winding up has been completed by the appointed day).

(2) Where the conditions specified in paragraph (3) are met in relation to the scheme, regulation 13 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (hybrid schemes)(a) has effect in relation to the scheme as if—

- (a) in paragraph (1)(b), after “relevant money purchase benefits” there were inserted “or relevant cash balance benefits”;
- (b) in paragraph (2), for ““relevant money purchase benefits” means money purchase benefits” there were substituted ““relevant money purchase benefits” and “relevant cash balance benefits” means (as the case may be) money purchase benefits or cash balance benefits”;
- (c) for paragraph (3) there were substituted—

“(3) In this regulation—

- (a) “cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014; and
- (b) “underpin benefits” means money purchase or cash balance benefits (as the case may be) which will only be provided in respect of a member if their value exceeds the value of other benefits in respect of the member under the scheme which are not money purchase or cash balance benefits.”.

(3) The conditions specified in this paragraph are that immediately before the scheme began winding up—

- (a) the scheme included cash balance benefits; and
- (b) the trustees or managers of the scheme treated those benefits as if they were money purchase benefits.

(a) S.I.1996/3126. Regulation 13 applies in relation to schemes commencing winding up before 6th April 2005. Regulation 13 was amended by S.I.s 2002/380 and 2005/3377.

Schemes treated as money purchase schemes: winding up commencing on or after 6th April 2005 but before the appointed day

13.—(1) This regulation applies where an occupational pension scheme which was treated as a money purchase scheme began to wind up on or after 6th April 2005 but before the appointed day (whether or not winding up has been completed by the appointed day).

(2) Where the conditions specified in regulation 11(3) (schemes treated as money purchase schemes: winding up commencing before 6th April 2005) are met in relation to the scheme, section 73 of the 1995 Act (preferential liabilities on winding up)(a) has effect in relation to the scheme as if for subsection (2) there were substituted—

“(2) This section applies to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme;
- (b) a cash balance scheme;
- (c) a scheme which provides money purchase benefits and cash balance benefits and no other benefits except death benefits; or
- (d) a prescribed scheme or a scheme of a prescribed description.

(2A) In this section—

“cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;

“cash balance scheme” means a scheme which provides—

- (a) cash balance benefits or pensions derived from cash balance benefits; and
- (b) no benefits other than—
 - (i) those specified in paragraph (a);
 - (ii) money purchase benefits or pensions derived from money purchase benefits; or
 - (iii) death benefits; and

“money purchase scheme” means a scheme which provides or may provide no benefits other than—

- (a) money purchase benefits or pensions derived from money purchase benefits; or
- (b) death benefits.”.

Non-money purchase schemes including benefits treated as money purchase benefits: winding up commencing on or after 6th April 2005 but before the appointed day

14.—(1) This regulation applies where an occupational pension scheme not treated by the trustees or managers of the scheme as a money purchase scheme began to wind up on or after 6th April 2005, but before the appointed day (whether or not winding up has been completed by the appointed day).

(2) Where the condition specified in paragraph (3) is met immediately before the scheme began winding up, section 73 of the 1995 Act applies in relation to the winding up of the scheme as if the benefits specified in paragraph (4) which the trustees or managers of the scheme treated as money purchase benefits were money purchase benefits.

(3) The condition specified in this paragraph is that the scheme included benefits specified in paragraph (4) which the trustees or managers of the scheme treated as money purchase benefits.

(4) The benefits specified in this paragraph are—

- (a) cash balance benefits;

(a) Section 73 was substituted with prospective effect for that section as originally enacted by section 270(1) of the 2004 Act: the current version of the section has effect in relation to schemes which commence winding up on or after 6th April 2005.

- (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
- (c) top-up benefits;
- (d) pensions derived from money purchase benefits; and
- (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

Schemes winding up after an assessment period

15.—(1) This regulation applies where an assessment period in relation to an occupational pension scheme began before the appointed day and either—

- (a) that assessment period comes to an end (whether before, on or after the appointed day) and the trustees or managers of the scheme are required to wind up or continue to wind up the scheme in accordance with section 154(1) of the 2004 Act (requirement to wind up schemes with sufficient assets to meet protected liabilities)^(a); or
- (b) the Board ceases to be involved with the scheme in accordance with section 149(1) of that Act (circumstances in which Board ceases to be involved with an eligible scheme) and the scheme is winding up.

(2) Subject to paragraph (4), where the condition specified in paragraph (3) is met, the trustees or managers of the scheme may determine that the benefits specified in regulation 14(4) (non-money purchase schemes including benefits treated as money purchase benefits: winding up commencing on or after 6th April 2005 but before the appointed day), which the trustees or managers treated as money purchase benefits, are to be treated as money purchase benefits for the purposes of winding up the scheme in accordance with section 73 of the 1995 Act.

(3) The condition specified in this paragraph is that, immediately before the assessment period referred to in paragraph (1) began, the scheme included any of the benefits specified in regulation 14(4), which the trustees or managers of the scheme treated as money purchase benefits.

(4) Where the Board has previously made a determination under regulation 54(1) (discharge as money purchase benefits: periods after the appointed day) that benefits specified in regulation 44(3) (validity of valuations etc, determinations, transfer notices and discharge of benefits before the appointed day) should, or should not, be discharged as money purchase benefits, the trustees or managers of the scheme must wind up or continue to wind up the scheme in accordance with that determination.

(5) Where the trustees or managers of the scheme—

- (a) determine in accordance with paragraph (2) that benefits specified in regulation 14(4) which the trustees or managers of the scheme treated as money purchase benefits should be treated as money purchase benefits for the purposes of winding up the scheme; or
- (b) are required to wind up or continue to wind up the scheme in accordance with paragraph (4),

section 73 of the 1995 Act applies in relation to the benefits treated as money purchase benefits as if those benefits were money purchase benefits.

Closed schemes: further assessment periods

16.—(1) This regulation applies where—

- (a) an assessment period in relation to an occupational pension scheme began before the appointed day;
- (b) the scheme is authorised (whether before, on or after that day) to continue as a closed scheme under section 153(5) of the 2004 Act (closed schemes);

(a) Section 154(5) was amended by section 22 of and paragraph 10 of Schedule 4 to the Act.

- (c) there is a further assessment period in relation to the scheme; and
- (d) that further assessment period ends because the conditions specified in section 154(5) of that Act are met.

(2) Where the conditions specified in paragraph (3) are met, the trustees or managers of the scheme must wind up or continue the winding up of the scheme as if the benefits specified in regulation 14(4) which the trustees or managers of the scheme treated as money purchase benefits were money purchase benefits.

(3) The conditions specified in this paragraph are that—

- (a) the scheme included any of the benefits specified in regulation 14(4); and
- (b) the trustees or managers of the scheme have either —
 - (i) in accordance with regulation 52(2) (schemes continuing as closed schemes after an assessment period), determined that benefits specified in regulation 52(4) treated as money purchase benefits should continue to be treated as money purchase benefits; or
 - (ii) in accordance with regulation 52(5)(b), treated benefits specified in regulation 14(4) as money purchase benefits in accordance with a determination or a direction made by the Board.

(4) Where the trustees or managers of the scheme are required to wind up or continue to wind up the scheme in accordance with paragraph (2), section 73 of the 1995 Act applies in relation to the benefits treated as money purchase benefits as if those benefits were money purchase benefits.

Discharge of pensions in payment derived from additional voluntary contributions treated as money purchase benefits: scheme commencing winding up on or after the appointed day

17.—(1) Subject to paragraph (3), where the conditions specified in paragraph (2) are met in relation to a member's pension or part of a pension in payment, the trustees or managers of an occupational pension scheme may determine that the pension or part of a pension should be discharged as if it were money purchase benefits.

(2) The conditions are that—

- (a) the scheme commences winding up on or after the appointed day;
- (b) the pension or part of a pension—
 - (i) is derived from additional voluntary contributions;
 - (ii) is, or is derived from (as the case may be), any of the benefits specified in regulation 14(4) which were before the appointed day treated by the trustees or managers of the scheme as money purchase benefits; and
 - (iii) comes into payment on or before 1st April 2015; and
- (c) the trustees or managers of the scheme are satisfied that it is reasonable in the circumstances to treat the pension or part of a pension as money purchase benefits.

(3) Where an assessment period or further assessment period in relation to an eligible scheme has begun, the power of the trustees or managers of the scheme under paragraph (1) is subject to a direction by the Board under regulation 57(1) (discharge of pensions in payment derived from additional voluntary contributions treated as money purchase benefits: periods after the appointed day) that the pension or part of the pension should, or should not, be discharged as money purchase benefits.

PART 7

Deficiencies in the assets

Interpretation

18. In this Part—

“approved withdrawal arrangement”, “flexible apportionment arrangement”, “multi-employer scheme”, “regulated apportionment arrangement”, “scheme apportionment arrangement” and “withdrawal arrangement” have the same meaning as in regulation 2(1) of the Employer Debt Regulations (interpretation)(a);

“the effective date” is the date by reference to which the assets of a scheme are valued and the amount of the scheme liabilities is calculated;

“employer” has the same meaning as in section 75 of the 1995 Act (deficiencies in the assets)(b) and regulations 6 (multi-employer schemes: general)(c) and 9 (frozen schemes and former employers)(d) of the Employer Debt Regulations;

“the Employer Debt Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations 2005(e); and

“share of the difference”, in relation to an employer participating in a multi-employer scheme, has the meaning given by regulation 2(1) of the Employer Debt Regulations (interpretation)(f) and includes in particular an employer’s share under—

- (a) a scheme apportionment arrangement;
- (b) a withdrawal arrangement;
- (c) a flexible apportionment arrangement;
- (d) an approved withdrawal arrangement; and
- (e) a regulated apportionment arrangement.

Application to multi-employer schemes

19. Where, by virtue of regulation 8 (single employer sections, multi-employer sections etc)(g), 14 (schemes covering United Kingdom and foreign employment)(h) or 15 (schemes with partial government guarantee)(i) of the Employer Debt Regulations, section 75 of the 1995 Act applied before the appointed day to a scheme in relation to which there is more than one employer as if a section or part of the scheme were a separate scheme (or would have so applied but for these Regulations)—

- (a) this Part also so applies; and
- (b) “employer” and “member” must be read accordingly.

(a) The definitions of “multi-employer scheme” and “withdrawal arrangement” were substituted, and the definitions of “approved withdrawal arrangement”, “regulated apportionment arrangement” and “scheme apportionment arrangement” inserted, by S.I. 2008/731. The definition of “flexible apportionment arrangement” was inserted by S.I. 2011/2973.

(b) Section 75(1) to (4C) was substituted for subsections (1) to (4) of that section as originally enacted by section 271(1) and (2) of the Pensions Act 2004 (c. 35) (“the 2004 Act”). Subsections (6A) to (6D) were inserted by section 271(1) and (5) of that Act and section 271(3), (4) and (6) of that Act amended other parts of section 75.

(c) Regulation 6 was amended by S.I.s 2008/731, 2010/725, 2011/2973 and 2012/1817.

(d) Regulation 9 was substituted by S.I. 2008/731 and amended by S.I.s 2010/725 and 2011/2973.

(e) S.I. 2005/678.

(f) The definition “share of the difference” was inserted by S.I. 2008/731.

(g) Regulation 8 was substituted by S.I. 2008/731.

(h) Regulation 14 was amended by S.I. 2010/725.

(i) Regulation 15 was amended by S.I. 2010/725.

Application of section 75 of the 1995 Act to schemes treated as money purchase schemes: periods before the appointed day

20.—(1) Where, on the appointed day, the conditions specified in paragraph (2) are met in relation to an occupational pension scheme, section 75 of the 1995 Act does not apply to the scheme in relation to any time before the appointed day.

- (2) The conditions specified in this paragraph are that, if this regulation did not apply—
- (a) a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with section 75 of the 1995 Act in relation to a time before the appointed day;
 - (b) at that time—
 - (i) benefits under the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
 - (ii) the scheme did not include any benefits other than those specified in paragraph (i), death benefits or money purchase benefits;
 - (iii) the trustees or managers of the scheme treated the scheme as a money purchase scheme; and
 - (iv) for that reason, the trustees or managers treated the scheme as if section 75 of that Act did not apply to it.

Application of section 75 of the 1995 Act to non-money purchase schemes including benefits treated as money purchase benefits: periods before the appointed day

21.—(1) This regulation applies where before the appointed day—

- (a) an occupational pension scheme included benefits other than money purchase benefits;
- (b) in accordance with section 75 of the 1995 Act, a debt became due to the trustees or managers of the scheme from an employer in relation to the scheme; and
- (c) at the time that the debt became due, the scheme included any of the benefits specified in paragraph (2) and met the condition specified in paragraph (3).

(2) The benefits specified in this paragraph are—

- (a) cash balance benefits;
- (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
- (c) top-up benefits;
- (d) pensions derived from money purchase benefits; and
- (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

(3) The condition specified in this paragraph is that assets and liabilities in respect of benefits specified in paragraph (2) were treated as if they related to money purchase benefits for the purposes of calculating the debt referred to in paragraph (1)(b).

(4) Where this regulation applies, section 75 of the 1995 Act applies in relation to the time that the debt referred to in paragraph (1)(b) became due (or would have become due if this regulation did not apply) as if the assets and liabilities relating to the benefits specified in paragraph (2) which were treated as money purchase benefits for the purposes of calculating the debt referred to in paragraph (1)(b) related to money purchase benefits.

Non-money purchase schemes which are multi-employer schemes: arrangements before the appointed day

22.—(1) This regulation applies where at any time before the appointed day an occupational pension scheme which was a multi-employer scheme—

- (a) included any of the benefits specified in regulation 21(2) (application of section 75 of the 1995 Act to non-money purchase schemes including benefits treated as money purchase benefits: periods before the appointed day); and
- (b) met the condition specified in paragraph (2).

(2) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the assets and the amount of the liabilities of the scheme for the purposes of section 75 of the 1995 Act was determined as if benefits specified in regulation 21(2) were money purchase benefits.

(3) Where this regulation applies, section 75 of that Act applies at the time that that debt became due (or would have become due if this regulation did not apply), as if the assets and liabilities relating to the benefits specified in regulation 21(2) which were treated as money purchase benefits for the purposes of calculating an employer's share of the difference, related to money purchase benefits.

Schemes or benefits treated as money purchase falling outside regulations 20 to 22

23.—(1) Subject to paragraph (11), this regulation applies where—

- (a) at any time before the appointed day, an occupational pension scheme included benefits which were not money purchase benefits;
- (b) if this regulation did not apply, a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with section 75 of the 1995 Act, in relation to a time before the appointed day;
- (c) regulations 20 to 22 do not apply in relation to the scheme; and
- (d) one or more of the conditions specified in paragraphs (2) to (4) is met in relation to the scheme.

(2) The condition specified in this paragraph is that the trustees or managers of the scheme—

- (a) treated the scheme as if it were a money purchase scheme; and
- (b) did not, in accordance with section 75 of the 1995 Act, treat a difference between the value of the assets and the amount of the liabilities of the scheme as a debt due from an employer in relation to the scheme.

(3) The condition specified in this paragraph is that the trustees or managers of the scheme—

- (a) treated benefits which were not money purchase benefits, death benefits or benefits specified in regulation 21(2) as money purchase benefits; and
- (b) excluded assets and liabilities representing the value or amount of rights to any of those benefits from a calculation of the amount of the scheme liabilities and the value of the scheme assets for the purposes of section 75 of the 1995 Act.

(4) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the scheme assets and the amount of the scheme liabilities, for the purposes of section 75 of that Act, was determined as if benefits which were not money purchase benefits, death benefits or benefits specified in regulation 21(2) were money purchase benefits.

(5) Subject to paragraph (6), the trustees or managers of a scheme to which this regulation applies, must, as soon as reasonably possible after the appointed day—

- (a) secure a valuation of the scheme assets and scheme liabilities, calculated in accordance with regulation 5 of the Employer Debt Regulations (calculation of the amount of scheme liabilities and value of scheme assets)(a);
- (b) where the value of the scheme assets at the effective date of that valuation is less than the amount of the scheme liabilities, treat the difference as a debt due from an employer in relation to the scheme; and

(a) Regulation 5 was substituted by S.I. 2008/731 and amended by S.I.s 2011/2973, 2010/725 and 2012/1817.

(c) designate a time for the purposes of a debt to be imposed in accordance with section 75 of the 1995 Act.

(6) Paragraph (5) does not apply to a scheme which is not in winding up if either of the conditions specified in paragraphs (7) and (8) are met.

(7) The condition specified in this paragraph is that an actuarial valuation has been prepared in accordance with section 224 of the 2004 Act (actuarial valuations and reports) in the period of 3 years ending immediately before the appointed day and either—

- (a) it appears to the trustees or managers of the scheme that the statutory funding objective was met on the effective date of that actuarial valuation; or
- (b) the statutory funding objective was not met on the effective date of the valuation but on the appointed day a recovery plan is in force in relation to the scheme.

(8) The condition specified in this paragraph is that the trustees or managers of the scheme obtain an actuarial valuation in accordance with section 224 of the 2004 Act and either—

- (a) it appears to the trustees or managers that the statutory funding objective is met on the effective date of that valuation; or
- (b) the statutory funding objective is not met at that time but the trustees or managers ensure, within 6 months beginning with the effective date of the valuation, that a recovery plan in relation to the scheme is in force.

(9) The actuarial valuation mentioned in paragraph (8) must have an effective date within the period of 12 months beginning with the appointed day, and the trustees and managers of the scheme must ensure that they receive that valuation within 15 months beginning with the effective date.

(10) Where—

- (a) the trustees or managers of the scheme comply with the requirements of paragraph (5); or
- (b) either of the conditions specified in paragraph (7) or (8) is met,
no provision of section 29 of the Act or of these Regulations requires the trustees or managers of the scheme to calculate a debt which was due or would have become due from an employer in relation to the scheme in relation to a time before the appointed day.

(11) This regulation does not apply where regulation 24 (schemes or benefits treated as money purchase falling outside regulations 20 to 22: insolvent employer) applies to the scheme.

(12) Where the trustees or managers of a scheme do not comply with the requirements of paragraph (5), section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(13) In this regulation—

“recovery plan” is a recovery plan prepared in accordance with section 226 of the 2004 Act; and

“statutory funding objective” is the requirement mentioned in section 222 of that Act.

Schemes or benefits treated as money purchase falling outside regulations 20 to 22: insolvent employer

24.—(1) This regulation applies where—

- (a) the circumstances specified in regulation 23(1) apply in relation to an occupational pension scheme; and
- (b) an event which is or would be (if this regulation did not apply)—
 - (i) a relevant event within section 75(6A)(a) or (b) of the 1995 Act (in relation to periods on or after 6th April 2005); or
 - (ii) a relevant insolvency event within section 75(4) of that Act (in relation to periods before that date),

has occurred in relation to the employer in relation to the scheme, or in a case where the scheme is a multi-employer scheme, all the employers in relation to the scheme.

(2) Where this regulation applies, section 75 of the 1995 Act applies as if the assets and liabilities of the scheme relating to the non-money purchase benefits treated as money purchase benefits related to money purchase benefits, or (as the case may be), as if the scheme were a money purchase scheme.

PART 8

Revaluation, indexation and preservation of benefits

Revaluation of cash balance benefits etc: pensionable service before the appointed day

25.—(1) Where—

- (a) a member of an occupational pension scheme has, under the applicable rules, accrued rights to—
 - (i) cash balance benefits in respect of which the available sum is not calculated by reference to final salary;
 - (ii) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits); or
 - (iii) top-up benefits;
- (b) the accrued rights to benefits specified in sub-paragraph (a) are attributable to periods of pensionable service before the appointed day; and
- (c) the trustees or managers of the scheme have before that day treated those benefits as if they were money purchase benefits,

if the trustees or managers of the scheme think it appropriate, those benefits or (as the case may be) the available sum in respect of which those benefits are calculated shall be revalued by the money purchase method.

(2) Where—

- (a) the conditions specified in paragraph (1)(a) and (c) are satisfied; and
- (b) the accrued rights to benefits specified in paragraph (1)(a) which were treated as money purchase benefits are attributable to periods of pensionable service falling partly before and partly on or after the appointed day,

if the trustees or managers of the scheme think it appropriate, so much of those benefits or of the available sum in respect of which those benefits are calculated as is attributable to periods of pensionable service before that day shall be revalued by the money purchase method.

(3) In this regulation—

- (a) “final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;
- (b) “money purchase method” has the meaning given by Schedule 3 to the 1993 Act, except that it also includes the application of a guaranteed notional interest rate or investment yield, in accordance with the rules of the scheme, to the benefits or to the available sum in respect of which the benefits are calculated; and
- (c) “pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated.

(4) Where the trustees or managers of the scheme determine that benefits should be revalued in accordance with this regulation, section 84 of the 1993 Act applies in relation to those benefits revalued in accordance with this regulation as if they were money purchase benefits.

Indexation of cash balance benefits etc: pensions in payment before the appointed day

26.—(1) Section 51 of the 1995 Act (annual increase in rate of pension)(a) does not apply to a pension or part of a pension payable under an occupational pension scheme which meets the conditions specified in paragraph (2).

(2) The conditions specified in this paragraph are that—

(a) the pension or part of a pension—

(i) is derived from any of the benefits specified in paragraph (3) which were attributable to a member's pensionable service on or after 6th April 1997; and

(ii) first came into payment on or after 6th April 2005 but before the appointed day;

(b) the trustees or managers of the scheme before the appointed day treated those benefits as if they were money purchase benefits; and

(c) the pension or part of a pension is not, under the scheme, required to be increased each year or is to be increased at a rate below that required by section 51 of the 1995 Act.

(3) The benefits specified in this paragraph are—

(a) cash balance benefits;

(b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits); and

(c) top-up benefits.

Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

27.—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(b) are amended as follows.

(2) In regulation 10(2) (money purchase benefits) for the words after “calculate” to the end substitute—

“(a) the money purchase benefits, when they become payable, in accordance with the terms of an insurance policy or annuity contract in which the amount allocated to provide the benefits is invested; or

(b) a pension under the scheme derived from the money purchase benefits, on the basis of actuarial advice.”.

(3) Omit regulation 14 (computation of benefit – money purchase schemes)(c).

(4) For regulation 14A (circumstances in which uniform accrual does not apply – money purchase benefits)(d), substitute—

“Benefits to which section 74(6) does not apply – money purchase benefits

14A. Section 74(6) of the Act (computation of short service benefit) does not apply to money purchase benefits.”.

(a) Section 51 was amended by section 84(1) of and Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30) (“the 1999 Act”), section 51(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19) (“the 2000 Act”), section 278(1), (2)(b) and (c), (3), (5) and (6)(a) and (b) of the 2004 Act, sections 19(7) and (8) and 21(1), (2) and (3) of the Act and S.I. 2006/745.

(b) S.I.1991/167.

(c) Regulation 14 was amended by S.I.s 1994/1062 and 1996/2131.

(d) Regulation 14A was inserted by S.I. 1996/2131.

Amendment of the Occupational Pension Schemes (Revaluation) Regulations 1991

28.—(1) Regulation 4 of the Occupational Pension Schemes (Revaluation) Regulations 1991 (hybrid benefits)(a) is amended as follows.

(2) For paragraph (2), substitute—

“(2) In this regulation, “hybrid benefit” means a benefit the rate or amount of which is calculated by reference to the greatest, or smallest, of two or more benefits.”.

PART 9

Transfers

Interpretation

29. In this Part “the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996(b).

Cash equivalent of cash balance benefits etc treated as money purchase benefits: transitional arrangements

30.—(1) This regulation applies where—

- (a) a member of an occupational pension scheme has, under the applicable rules, accrued rights to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits; and
- (b) the pensionable service of the member has terminated before the appointed day.

(2) Where the conditions specified in paragraph (3) are met—

- (a) the cash equivalent of the member’s benefits specified in paragraph (1)(a) which were treated as money purchase benefits is to be calculated as if those benefits were money purchase benefits;
- (b) the member acquires a right to the cash equivalent of those benefits as if section 94(1)(a) of the 1993 Act (right to cash equivalent)(c) applied;
- (c) a member who acquires a right to a cash equivalent of those benefits in accordance with sub-paragraph (b) may require the trustees or managers of the scheme to use the cash equivalent in any of the ways specified in section 95(2) of the 1993 Act (ways of taking cash equivalent)(d);
- (d) an application to use the cash equivalent of the benefits in accordance with sub-paragraph (c) must be made to the trustees or managers of the scheme in writing and is subject to the provisions of sections 96 to 99 (provisions concerning exercise of options) of the 1993 Act(e); and
- (e) a member may withdraw an application made in accordance with sub-paragraph (d) by giving the trustees or managers of the scheme notice in writing, in accordance with the provisions of section 100 of that Act (withdrawal of application)(f).

(a) S.I. 1991/168. Regulation 4 was amended by S.I. 1994/1062.

(b) S.I. 1996/1847.

(c) Section 94(1) was amended by section 154(1) and (2) of the 1995 Act.

(d) Section 95(2) was amended by S.I. 2001/3649.

(e) Section 96 was amended by section 151 of and Schedule 5 to the 1995 Act, sections 18, 84(1) and 88 of and Schedules 2 and 13 to the 1999 Act, sections 15(3)(a) and 27(2) of and Schedules 4 and 7 to the 2007 Act. Section 97 was amended by paragraph 4 of Schedule 6 to the 1995 Act and paragraph 8(1) of Schedule 5 to the 2000 Act. Section 98 was amended by paragraph 5 of Schedule 6 to the 1995 Act, paragraph 37 of Schedule 12 to the 1999 Act, and paragraph 8(2) of Schedule 5 to the 2000 Act. Section 99 was amended by paragraph 6 of Schedule 6 to the 1995 Act and paragraph 14 of Schedule 12 to the 2004 Act.

(f) Section 100 was amended by section 84(1) of and Schedule 12 to the 1999 Act.

- (3) The conditions specified in this paragraph are that before the appointed day—
- (a) the trustees or managers of the scheme treated benefits specified in paragraph (1)(a) accrued by a member as if they were money purchase benefits;
 - (b) the member has made an application to the trustees or managers of the scheme for a written statement of entitlement of the amount of the cash equivalent of those benefits (whether or not the application also relates to other benefits) in accordance with section 93A(1) of the 1993 Act (salary related schemes: right to statement of entitlement)(a); and
 - (c) the member has been treated as acquiring a right to the cash equivalent of those benefits, in accordance with section 94(1)(a) of that Act (including in a case where section 94(1)(a) of that Act is modified by regulation 19(2)(b) of the Transfer Values Regulations (hybrid schemes)).

(4) Where—

- (a) the conditions specified in paragraph (3) are met; and
- (b) the trustees or managers of the scheme have (at any time) used the cash equivalent of those benefits treated as money purchase benefits in any of the ways specified in section 95(2) of the 1993 Act,

they are discharged from the obligation to provide the benefits to which that cash equivalent value relates, as if section 99(1) of that Act (trustees' duties after exercise of option)(b) applied.

Statement of entitlement in relation to cash balance benefits etc treated as money purchase benefits: periods before the appointed day

31.—(1) Where the conditions specified in paragraph (2) are met—

- (a) section 93A(1) of the 1993 Act does not, in relation to any period before the appointed day, require the trustees or managers of an occupational pension scheme to provide a statement of entitlement in respect of cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits which were treated as money purchase benefits;
- (b) section 93A(4) of that Act does not apply in relation to a failure to provide a statement of entitlement occurring before the appointed day; and
- (c) regulation 6(3) of the Transfer Values Regulations (guaranteed statements of entitlement) does not prevent the member making a further application under section 93A(1) of that Act for a statement of entitlement within a period of twelve months beginning on the date of an application by the member where the circumstances specified in paragraph (2)(a) of this regulation apply.

(2) The conditions specified in this paragraph are that before the appointed day—

- (a) the trustees or managers of an occupational pension scheme have not, on the application of a member of the scheme made in accordance with section 93A(1) of the 1993 Act, provided the member with a statement of entitlement of the amount of the cash equivalent of cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits which have accrued to or in respect of the member under the applicable rules; and
- (b) the trustees or managers of the scheme did not provide a statement of entitlement because, at the time that they received the application, those benefits were treated by the trustees or managers as money purchase benefits.

(a) Section 93A was inserted by section 153 of the Pension Schemes Act 1993 (c. 48) and was amended by section 84(1) of and Schedule 12 to the 1999 Act.

(b) Section 99(1) was amended by S.I. 2011/1730.

Amendment of the Transfer Values Regulations

32.—(1) The Transfer Values Regulations are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)(a)—

(a) after the definition of “base rate”, insert—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;” and

(b) after the definition of “effective date” insert—

““final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;” and

(c) after the definition of “member” insert—

““pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated;”.

(3) In regulation 7 (manner of calculation and verification of cash equivalents – general provisions)(b)—

(a) in paragraph (1)(a)(i), after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”;

(b) in paragraph (1)(a)(ii) after “money purchase benefits” insert “and cash balance benefits in respect of which the available sum is not calculated by reference to final salary”; and

(c) for paragraph (7) substitute—

“(7) Where a portion of the cash equivalent relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash equivalent is to be calculated—

(a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 7A and 7B; and

(b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 7C.”.

(4) In regulation 7A (manner of calculation of initial cash equivalents for salary related benefits)—

(a) in the heading, at the end insert “other than cash balance benefits not calculated by reference to final salary”; and

(b) in paragraph (1) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.

(5) In regulation 7B (initial cash equivalents for salary related benefits: assumptions and guidance)(c)—

(a) in the heading, after “salary related benefits” insert “other than cash balance benefits not calculated by reference to final salary”; and

(b) in paragraph (1), after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.

(a) Regulation 1(2) was amended by S.I.s 1997/786, 1997/1613, 2003/1727, 2005/3377, 2007/60, 2008/1050, 2011/1246 and 2012/692.

(b) Regulations 7 to 7E were substituted for regulations 7 and 8 as originally enacted by S.I. 2008/1050.

(c) Regulation 7B was also amended by S.I. 2008/2450.

(6) In regulation 7C (manner of calculation of initial cash equivalents for money purchase benefits)—

- (a) in the heading, at the end insert “and cash balance benefits not calculated by reference to final salary”;
- (b) in paragraph (1) after “For” insert “cash balance benefits in respect of which the available sum is not calculated by reference to final salary and”; and
- (c) For paragraph (4) substitute—

“(4) The realisable value must include—

- (a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules; or
- (b) for cash balance benefits—
 - (i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;
 - (ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;
 - (iii) any options the member has which would increase the value of the member’s benefits under the scheme (adjusted to reflect the proportion of members the trustees determine are likely to exercise those options); and
 - (iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded.”.

(7) In regulation 7D (reductions to initial cash equivalents)—

- (a) in paragraph (1), at the beginning insert “For salary-related benefits”;
- (b) for paragraphs (2) and (3) substitute—

“(2) For the purposes of paragraph (1) the trustees may—

- (a) request an insufficiency report from the actuary in accordance with Schedule 1B (insufficiency reports)(a); or
- (b) treat the actuary’s last relevant GN11 report as an insufficiency report.

(3) For money purchase benefits, an initial cash equivalent may, or as the case may be, must be reduced in accordance with paragraphs 7 to 11, 14 and 15 of Schedule 1A (reductions in initial cash equivalents)(b).”.

PART 10

Early leavers: Cash Transfer Sums and Contribution Refunds

33. In this Part “the Early Leavers Regulations” mean the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006(c).

Cash transfer sum: cash balance benefits etc treated as money purchase benefits

34.—(1) Where the conditions specified in paragraph (2) are met, a cash transfer sum to which the member has acquired a right under section 101AB of the 1993 Act (right to cash transfer sum and contribution refund)(d) is to be calculated as if it related to money purchase benefits.

(a) Schedule 1B was inserted by S.I. 2008/1050.

(b) Schedule 1A was inserted by S.I. 2008/1050. Paragraph 9 was revoked by S.I. 2011/1246.

(c) S.I. 2006/33.

(d) Sections 101AB, 101AC and 101AD were inserted by section 264 of the 2004 Act.

- (2) The conditions specified in this paragraph are that—
- (a) before the appointed day the member has acquired a right to a cash transfer sum or to a contribution refund in accordance with section 101AB of the 1993 Act;
 - (b) at any time, the trustees or managers of the scheme have, in accordance with section 101AC of that Act (notification of right to cash transfer sum or contribution refund), given to the member a statement in writing specifying the amount of the cash transfer sum to which the member has acquired a right under section 101AB of that Act;
 - (c) the statement specifying the amount of the cash transfer sum relates to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits which the trustees or managers of the scheme treated as money purchase benefits (whether or not the statement also relates to other benefits);
 - (d) the cash transfer sum relating to those benefits specified in the statement has been calculated as if the benefits were money purchase benefits; and
 - (e) the trustees or managers of the scheme have been notified in accordance with section 101AD of that Act (exercise of right under section 101AB) that the member wishes to take a cash transfer sum in accordance with section 101AB(1)(a).
- (3) Where—
- (a) the conditions specified in paragraph (2) are met;
 - (b) the cash transfer sum to which the member acquires a right has been calculated in the manner specified in paragraph (2)(d); and
 - (c) the trustees or managers of the scheme have (at any time) done what is needed to carry out the requirement specified in the member’s notice under section 101AD(2)(b) of that Act,

the trustees or managers of the scheme are discharged from any obligation in respect of any rights (including contingent rights) of, or in respect of, the member to the benefits to which the cash transfer sum relates, or to make any other payment by way of refund of contributions made by or in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit).

Amendment of the Early Leavers Regulations

35.—(1) The Early Leavers Regulations are amended as follows.

- (2) In regulation 1(2) (interpretation)(a)—
- (a) after the definition of “actuary”, insert—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;”;
 - (b) after the definition of “discount rates” insert—

““final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;”;
 - (c) after the definition of “insufficiency report liabilities” insert—

““pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated;”.
- (3) In regulation 2 (manner of calculation and verification of cash transfer sums – general provisions)(b)—

(a) Relevant amendments were made to regulation 1(2) by S.I.s 1997/1613, 2003/1727, 2007/60 and 2008/1050.
 (b) Regulations 2 to 2D were substituted for regulation 2 by S.I. 2008/1050.

- (a) in paragraph (1)(a)(i), after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”;
 - (b) in paragraph (1)(a)(ii) after “money purchase benefits” insert “and cash balance benefits in respect of which the available sum is not calculated by reference to final salary”; and
 - (c) for paragraph (7) substitute—
 - “(7) Where a portion of the cash transfer sum relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash transfer sum is to be calculated—
 - (a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 2A and 2B; and
 - (b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 2C.”.
- (4) In regulation 2A (manner of calculation of initial cash transfer sums for salary related benefits)—
- (a) in the heading, at the end insert “other than cash balance benefits not calculated by reference to final salary”; and
 - (b) in paragraph (1) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.
- (5) In regulation 2B (initial cash transfer sum for salary related benefits: assumptions and guidance)—
- (a) in the heading, after “salary related benefits” insert “other than cash balance benefits not calculated by reference to final salary”; and
 - (b) in paragraph (1), after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.
- (6) In regulation 2C (manner of calculation of initial cash transfer sums for money purchase benefits)—
- (a) in the heading, at the end insert “and cash balance benefits not calculated by reference to final salary”;
 - (b) in paragraph (1) after “For” insert “cash balance benefits in respect of which the available sum is not calculated by reference to final salary and”; and
 - (c) for paragraph (4) substitute—
 - “(4) The realisable value must include—
 - (a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules; or
 - (b) for cash balance benefits—
 - (i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;
 - (ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;
 - (iii) any options the member has which would increase the value of the member’s benefits under the scheme (adjusted to reflect the proportion of members the trustees determine are likely to exercise those options); and

- (iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded.”.
- (7) In regulation 4 (reduction of cash transfer sums and contribution refunds)(a)—
 - (a) in paragraph (1), for the words after “trustees or managers” substitute—
 - “if—
 - (a) the insufficiency conditions are met; and
 - (b) the cash transfer sum relates to salary-related benefits.”;
 - (b) in paragraph (3), after “initial cash transfer sum” insert “which does not relate to money purchase benefits”; and
 - (c) in paragraph (7), after “the initial cash transfer sum or contribution refund” insert “, where it does not relate to money purchase benefits,”.

PART 11

Payment of surplus funds to employer

Interpretation

36.—(1) In this Part—

“employer” has the meaning given by section 124(1) of the 1995 Act; and

“the Payments to Employer Regulations” means the Occupational Pension Schemes (Payments to Employer) Regulations 2006**(b)**.

(2) Where—

- (a) a trust scheme in relation to which there is more than one employer is divided into two or more sections; and
- (b) the provisions of the scheme meet the conditions specified in regulation 18(1)(b) of the Payments to Employer Regulations (schemes with more than one employer),

this Part applies as if each section of the scheme were a separate scheme.

Failure to comply with the requirements of section 37 or 76 of the 1995 Act: periods before the appointed day

37.—(1) Where the conditions specified in paragraph (2) are met neither—

- (a) section 37 of the 1995 Act (payment of surplus to employer)**(c)**; nor
- (b) section 76 of that Act (excess assets on winding up)**(d)**,

(as the case may be) apply in respect of a payment from scheme funds made to the employer in relation to the scheme.

(2) The conditions specified in this paragraph are that—

- (a) the trustees of a trust scheme have exercised a power under the scheme rules to make a payment to the employer out of funds held for the purposes of the scheme and that payment was made to the employer before the appointed day;
- (b) at the time that the payment was made to the employer the scheme included—
 - (i) cash balance benefits; or

(a) Regulation 4 was substituted by S.I. 2008/1050.

(b) S.I. 2006/802.

(c) Section 37 was substituted by section 250 of the 2004 Act and was amended by section 130 of the 2008 Act.

(d) Section 76 was amended by sections 319(1) and Schedule 12 to the 2004 Act and by S.I. 2006/745.

- (ii) pensions derived from money purchase or cash balance benefits;
- (c) no benefits other than those specified in sub-paragraph (b), money purchase benefits and death benefits secured by insurance policies or annuity contracts; and
- (d) the trustees of the scheme treated the scheme as if it were a money purchase scheme and for that reason did not comply with the requirements—
 - (i) for schemes not in winding up, of section 37 of the 1995 Act; or
 - (ii) for schemes in winding up, of section 76 of that Act,
 before exercising the power to make a payment to the employer.

Non money-purchase schemes providing cash balance benefits etc

38.—(1) Where the circumstances specified in paragraph (2) apply—

- (a) the trustees of a trust scheme may not use an actuarial valuation made on the basis specified in paragraph (2)(c) for the purposes of fulfilling the conditions specified in section 37(3)(a) of the 1995 Act or regulation 4(1) or (2) of the Payments to Employer Regulations (schemes that are subject to Part 3 of the 2004 Act – determination of assets and liabilities); and
 - (b) a valuation certificate prepared in relation to an actuarial valuation made on the basis specified in paragraph (2)(c) is not valid in relation to any period after the appointed day.
- (2) The circumstances specified in this paragraph are that—
- (a) the scheme is subject to Part 3 of the 2004 Act (scheme funding);
 - (b) the scheme provides any of the benefits specified in paragraph (3); and
 - (c) the trustees of the scheme propose to use an actuarial valuation made on the basis that benefits specified in paragraph (3) were money purchase benefits for the purpose of meeting the condition specified in section 37(3)(a) of the 1995 Act.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
 - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
 - (c) top-up benefits;
 - (d) pensions derived from money purchase benefits; and
 - (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

Amendment of the Payments to Employer Regulations

39. For the definition of “money purchase benefits” in regulation 2 of the Payments to Employer Regulations (interpretation) substitute—

““money purchase benefits” has the meaning given by section 181(1) of the Pension Schemes Act 1993 (general interpretation)(a);”.

(a) Relevant amendments were made to section 181(1) by section 29 of the Pensions Act 2011 (c. 19) (“the Act”).

PART 12

Scheme Administration

Modification of the Occupational Pension Schemes (Scheme Administration) Regulations 1996

- 40.**—(1) This regulation applies where during any period before the appointed day—
- (a) benefits under an occupational pension scheme included benefits which are not money purchase benefits;
 - (b) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme; and
 - (c) for that reason, the trustees or managers of the scheme treated the scheme as if it were exempted by regulation 3(2)(a) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (exemption from the professional advisers requirements for money purchase schemes)(a) (“the Scheme Administration Regulations”) from the requirement to appoint an actuary in relation to the scheme in accordance with section 47(1)(b) of the 1995 Act (professional advisers).
- (2) Where this regulation applies—
- (a) regulation 3(2)(a) of the Scheme Administration Regulations applies in relation to any period before the date specified in sub-paragraph (b) during which there was no actuary appointed in relation to the scheme as if the scheme were a money purchase scheme; and
 - (b) subject to paragraph (3), the trustees or managers of the scheme must, on or before 6th October 2014, appoint an actuary in accordance with section 47(1)(b) of the 1995 Act.
- (3) The requirement in paragraph (2)(b) to appoint an actuary in accordance with section 47(1)(b) of that Act does not apply where, in relation to any period, the scheme is exempted from that requirement by regulation 3 of the Scheme Administration Regulations.

Scheme accounts

- 41.**—(1) This regulation applies where, before the appointed day—
- (a) benefits under an occupational pension scheme included benefits which are not money purchase benefits; and
 - (b) the trustees or managers of the scheme treated those benefits as if they were money purchase benefits.
- (2) Where this regulation applies, no provision of Part 4 of the Act or of these Regulations affects the validity of scheme accounts prepared in relation to any period before the appointed day.

PART 13

The Pension Protection Fund

Interpretation

- 42.**—(1) In this Part—
- “administration levy” is a levy imposed in accordance with section 117(1) of the 2004 Act (administration levy);

(a) S.I. 1996/1715. Regulation 3(2) was amended by S.I.s 2005/2426, 2006/778 and 2010/499.

“admissible rules” has the meaning given by paragraph 35(2) of Schedule 7 to the 2004 Act (scheme rules, admissible rules etc)(a);

“assessment date” has the meaning given by section 142(1) of the 2004 Act (sections 140 and 141: interpretation);

“employer” has the meaning given by section 318(1) of the 2004 Act (general interpretation), including the extensions to that meaning made by—

(a) regulation 1(4) of the Entry Rules Regulations (citation, commencement and interpretation)(b); and

(b) in relation to a non-segregated scheme or a multi-employer section of a segregated scheme, regulation 1(5) of those Regulations(c);

“the Entry Rules Regulations” means the Pension Protection Fund (Entry Rules) Regulations 2005(d);

“fraud compensation levy” has the same meaning as in section 189(1) of the 2004 Act;

“the Fraud Compensation Levy Regulations” means the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006;

“initial levy” has the same meaning as in section 174(1) of the 2004 Act;

“non-segregated scheme” has the meaning given by regulation 1(3) of the Entry Rules Regulations;

“the PPF Miscellaneous Regulations” means the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006(e);

“pension protection levy” has the meaning given by section 175(1) of the 2004 Act (pension protection levies);

“the relevant Pension Protection Fund provisions” means—

(a) Part 2 of the 2004 Act (the Board of the Pension Protection Fund) (except section 172(6) of that Act (relationship with fraud compensation regime)) and any instrument made under that Part;

(b) Part 3 of Schedule 5 (proceedings and delegation etc) and Schedule 7 (pension compensation provisions) to the 2004 Act and any instrument made under those provisions;

(c) Chapter 1 of Part 3 (pension compensation on divorce etc) of and Schedule 5 (pension compensation payable on discharge of pension compensation credit) to the Pensions Act 2008(f) and any instrument made under those provisions; and

(d) any provision corresponding to the provisions mentioned in sub-paragraph (a), (b) or (c) in force in Northern Ireland;

“relevant time” means the date in relation to which the value of the assets and liabilities of the eligible scheme is calculated;

“segregated scheme” has the meaning given by regulation 1(2) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (citation, commencement and interpretation)(g);

(2) Where, by virtue of any provision of regulations made under section 307(1) of the 2004 Act, the relevant Pension Protection Fund provisions apply or applied to a scheme as if a section or segregated part of an occupational pension scheme were a separate scheme—

(a) this Part also so applies; and

(a) Paragraph 35(2) was amended by section 122 of and Schedule 8 to the 2008 Act.

(b) Regulation 1(4) was substituted by S.I. 2005/2113.

(c) Regulation 1(5) was substituted by S.I. 2005/2113 and amended by S.I.s 2010/725 and 2011/2973.

(d) S.I. 2005/590.

(e) S.I. 2006/580.

(f) 2008 c. 30.

(g) S.I. 2005/441.

- (b) “admissible rules”, “employer”, “member” and “trustees or managers of the scheme” must be read accordingly.

Eligibility: schemes treated as money purchase schemes

43.—(1) Subject to paragraph (3), where the Board considers that the conditions specified in paragraph (2) are met in relation to an occupational pension scheme—

- (a) an occupational pension scheme which would otherwise be an eligible scheme is not an eligible scheme in relation to any period before 1st April 2015;
 - (b) the scheme becomes an eligible scheme on 1st April 2015; and
 - (c) the relevant Pension Protection Fund provisions apply in relation to the scheme with effect from that date.
- (2) The conditions specified in this paragraph are that immediately before the appointed day—
- (a) the scheme included benefits which are not money purchase benefits; and
 - (b) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme and, for that reason, was not an eligible scheme.
- (3) Paragraph (1)(b) and (c) does not apply where—
- (a) the scheme falls within the description of schemes which are not eligible schemes specified in regulation 2 of the Entry Rules Regulations (schemes which are not eligible schemes)(a);
 - (b) an insolvency event has occurred in relation to the employer in relation to the scheme before 1st April 2015; or
 - (c) the trustees or managers of the scheme have during the period beginning with the appointed day and ending immediately before 1st April 2015, entered into a legally enforceable agreement, the effect of which is to reduce the amount of any debt due to the scheme under section 75 of the 1995 Act (deficiencies in the assets)(b) which may be recovered by, or on behalf of, the trustees or managers of the scheme.

(4) Paragraph (3)(b) applies in relation to a multi-employer scheme that is a non-segregated scheme as if the reference to “the employer in relation to the scheme” were a reference to the employer who is the only remaining employer in relation to that scheme.

(5) Paragraph (3)(c) does not apply where the conditions specified in regulation 2(3)(a) or (b) of the Entry Rules Regulations would be met if the scheme had been an eligible scheme in the period beginning with the appointed day and ending immediately before 1st April 2015.

(6) In this regulation, “insolvency event” has the meaning given by section 121 of the 2004 Act (insolvency event, insolvency date and insolvency practitioner)(c).

Validity of valuations etc, determinations, transfer notices and discharge of benefits before the appointed day

44.—(1) Where the conditions specified in paragraph (2) are met, no provision of Part 4 of the Act or of these Regulations affects the validity, in relation to any period before the appointed day, of—

- (a) a valuation obtained by the Board in accordance with section 143(2)(b) (Board’s obligation to obtain valuation of assets and protected liabilities)(d), section 152(9) or

(a) Regulation 2 was amended by S.I.s 2005/993, 2005/2153, 2006/580, 2007/782, 2008/731, 2009/1906, 2010/196, 2010/725 and 2011/2973.

(b) Section 75(1) to (4C) was substituted for subsections (1) to (4) of that section as originally enacted by section 271(1) and (2) of the Pensions Act 2004 (c. 35) (“the 2004 Act”). Subsections (6A) to (6D) were inserted by section 271(1) and (5) of that Act and section 271(3), (4) and (6) of that Act amended other parts of section 75.

(c) Section 121 was amended by S.I.s 2005/2893 and 2009/1941.

(d) Section 143(2) was substituted by section 22 of and Schedule 4 to the Act.

- (10A) (duty to assume responsibility following reconsideration)(a) or section 158(3)(b) (duty to assume responsibility for closed schemes)(b) of the 2004 Act;
- (b) a determination made by the Board under section 143(2)(a), section 152(3) or section 158(3)(a) of that Act;
 - (c) a protected benefits quotation accompanying an application made in accordance with section 151(1) of that Act (application for reconsideration);
 - (d) the Board’s approval of a valuation made with respect to a scheme in accordance with section 144(2)(a) of that Act (approval of valuation)(c);
 - (e) a valuation provided by the trustees or managers of an occupational pension scheme to the Board in accordance with section 156 of that Act (valuations of closed schemes) or regulations made under that section;
 - (f) audited scheme accounts prepared or provided for any of the purposes of Part 2 of the 2004 Act or of regulations made under that Part;
 - (g) a direction given by the Board under section 134 of that Act (directions);
 - (h) a transfer notice (within the meaning of section 160(2) of that Act (transfer notice)) given (at any time) by the Board to the trustees or managers of the scheme; or
 - (i) the discharge of benefits specified in paragraph (3) which were treated by the trustees or managers of the scheme as if they were money purchase benefits.
- (2) The conditions specified in this paragraph are that—
- (a) an assessment period or further assessment period in relation to the scheme began before the appointed day; and
 - (b) the Board is satisfied that immediately before the beginning of that assessment period or further assessment period—
 - (i) the scheme included any of the benefits specified in paragraph (3); and
 - (ii) the trustees or managers of the scheme treated benefits specified in paragraph (3) as if they were money purchase benefits.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
 - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
 - (c) top-up benefits; and
 - (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.

Schemes which become eligible schemes: provision of valuations to determine scheme underfunding

45.—(1) Where the conditions specified in regulation 43(2) (eligibility: schemes treated as money purchase schemes) are met in relation to an occupational pension scheme, the trustees or managers of the scheme must obtain and provide an actuarial valuation of the scheme (“the first valuation”) for the purposes of section 179 of the 2004 Act (valuations to determine scheme underfunding) to the Board, or to the Regulator on the Board’s behalf, on or before 31st March 2015.

(2) The relevant time of the first valuation must be within the period beginning with the appointed day and ending with 31st March 2015.

(a) Section 152(10A) was inserted by section 22 of and Schedule 4 to the Act.
 (b) Section 158(3) was substituted by section 22 of and Schedule 4 to the Act.
 (c) Section 144(2) was amended by section 22 of and Schedule 4 to the Act.

(3) For the purposes of that valuation, the assets and the protected liabilities of the scheme must be calculated as if the scheme were an eligible scheme, in accordance with regulations 5 (valuation of assets)(a), 6 (valuation of protected liabilities)(b) and 7 (alternative valuation of assets and protected liabilities in specific cases)(c) of the Pension Protection Fund (Valuation) Regulations 2005(d).

(4) The relevant time of any subsequent actuarial valuation for the purposes of section 179 of the 2004 Act must be no more than 3 years after the relevant time of the first valuation provided to the Board or to the Regulator on the Board's behalf.

(5) The trustees or managers of the scheme must provide any subsequent valuation for the purposes of section 179 of that Act to the Board, or to the Regulator on the Board's behalf, within a period of 15 months beginning immediately after the relevant time of the valuation.

(6) In this regulation "protected liabilities" means the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation which would be payable, in relation to the scheme, in accordance with the pension compensation provisions (see section 162 of the 2004 Act (the pension compensation provisions)) if the scheme were an eligible scheme for which the Board were to assume responsibility.

Provision of information: schemes and benefits treated as money purchase

46.—(1) This regulation applies—

- (a) in the case of a scheme which is an eligible scheme on the appointed day, where the trustees or managers of the scheme have, before the appointed day, excluded liabilities relating to benefits which are not money purchase benefits from a valuation under section 179 of the 2004 Act because those liabilities were treated as if they related to money purchase benefits; or
- (b) where the trustees or managers of a scheme which includes liabilities relating to benefits which are not money purchase benefits have not, before the appointed day, carried out valuations under section 179 of that Act because they treated the scheme as if it were a money purchase scheme.

(2) Where this regulation applies, the trustees or managers of the scheme must, on or before 31st March 2015, inform the Regulator that the scheme includes benefits which are not money purchase benefits but have been treated as money purchase benefits.

(3) Where—

- (a) paragraph (1)(a) of this regulation applies; and
- (b) the scheme is an eligible scheme on the appointed day,

the Board, or the Regulator on the Board's behalf, may direct the trustees or managers of the scheme to provide any information or documents relevant to the calculation of the levies in relation to the scheme.

(4) Information or documents relevant to the calculation of the levies includes, in particular—

- (a) accounts in relation to the scheme;
- (b) actuarial reports in relation to the scheme; and
- (c) actuarial valuations in relation to the scheme.

(5) The Board or the Regulator on the Board's behalf may revoke or vary any direction given under paragraph (3).

(a) Regulation 5 was amended by S.I. 2006/580.

(b) Regulation 6 was amended by S.I.s 2005/993, 2007/782, 2012/3083 and 2013/627.

(c) Regulation 7 was amended by S.I.s 2012/3083 and 2013/627.

(d) S.I. 2005/672.

(6) Where a direction under paragraph (3) given to the trustees or managers of a scheme is not complied with, section 10 of the 1995 Act (civil penalties)(a) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

Eligible schemes including benefits treated as money purchase benefits: initial levy and pension protection levies

47.—(1) For the purposes of the initial levy and the pension protection levies, where the conditions specified in paragraph (2) are met, and subject to paragraph (4), no provision of Part 4 of the Act or of these Regulations—

- (a) affects the validity of an actuarial valuation, the relevant time of which is before the appointed day, and which is provided to the Board, or the Regulator on the Board's behalf (whether before, on or after the appointed day), in accordance with section 179 of the 2004 Act;
- (b) requires the trustees or managers of an eligible scheme to obtain or provide a further or revised actuarial valuation in respect of a financial year before 1st April 2015;
- (c) affects the validity of any calculation or determination by the Board in relation to the amount of a pension protection levy or initial levy imposed on a scheme in respect of a financial year before 1st April 2015;
- (d) permits the Board, or the Regulator on the Board's behalf, to increase the amount of a pension protection levy payment which has been notified to the trustees or managers of a scheme in respect of a financial year before 1st April 2015;
- (e) prevents recovery by the Board, or by the Regulator on the Board's behalf, of a debt due in respect of a pension protection levy or initial levy which—
 - (i) has arisen in accordance with sections 181(6) (calculation, collection and recovery of levies) or 181A(3) (pension protection levy: interest for late payment)(b) of the 2004 Act; and
 - (ii) relates to an amount payable in respect of a financial year before 1st April 2015.

(2) The conditions specified in this paragraph are that the Board is satisfied that at the relevant time of the valuation provided to the Board, or to the Regulator on the Board's behalf, in accordance with section 179 of that Act—

- (a) the scheme included any of the benefits specified in paragraph (3);
- (b) the trustees or managers of the scheme treated benefits specified in paragraph (3) as if they were money purchase benefits; and
- (c) the amount of a pension protection levy or initial levy due in respect of the scheme has been calculated on the basis that benefits specified in paragraph (3) which were treated by the trustees or managers of the scheme as if they were money purchase benefits were money purchase benefits.

(3) The benefits specified in this paragraph are—

- (a) cash balance benefits;
- (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
- (c) top-up benefits; and
- (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.

(4) Paragraph (1) is subject to the power of the Board, or the Regulator on the Board's behalf, to direct the trustees or managers of an eligible scheme to obtain and provide an out-of-cycle

(a) Section 10 was amended by sections 319(1) and 320 of and Schedule 12 to the 2004 Act and by section 18 of and paragraph 11 of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c. 30) ("the 1999 Act").

(b) Section 181A was inserted by section 129 of and Schedule 10 to the Pensions Act 2008 (c.30) ("the 2008 Act").

valuation under regulation 49(1) (eligible schemes including benefits which become non-money purchase: power to direct out-of-cycle valuations).

Schemes which become eligible schemes: administration levy and pension protection levies: periods after the appointed day

48.—(1) The trustees or managers of an occupational pension scheme which becomes an eligible scheme on 1st April 2015 in accordance with regulation 43(1)(b) are liable to pay the administration levy and the pension protection levy in respect of the scheme with effect from that date.

(2) The trustees or managers of the scheme must pay the amount of the administration levy and the pension protection levy notified by the Board, or by the Regulator on the Board's behalf, within the period of 28 days beginning with the date on which the Board or the Regulator gives notification of the amounts to the trustees or managers.

(3) In the case of the late payment of the pension protection levy under this regulation, interest is to be charged in accordance with regulation 19A of the PPF Miscellaneous Regulations (interest for late payment of the pension protection levy)(a), unless the Board has granted a waiver under those Regulations.

Eligible schemes including benefits which become non-money purchase: power to direct out-of-cycle valuations

49.—(1) Where the conditions specified in regulation 47(2) apply to an occupational pension scheme, the Board, or the Regulator on the Board's behalf, may direct the trustees or managers of the scheme to obtain and provide to the Board an out-of-cycle valuation in relation to the scheme for any financial year beginning on 1st April 2015, 2016 or 2017.

(2) Where the Board, or the Regulator on the Board's behalf, exercises the power to direct the trustees or managers of an occupational pension scheme to obtain and provide an out-of-cycle valuation, the Board may, having regard to that valuation, calculate or recalculate a pension protection levy payment in relation to that scheme in respect of any financial year beginning on any date specified in paragraph (1).

(3) The trustees or managers of the scheme must pay the amount of the pension protection levy notified by the Board, or by the Regulator on the Board's behalf, within the period of 28 days beginning with the date on which the Board or the Regulator gives notification of the amount of the levy to the trustees or managers.

(4) In the case of the late payment of the pension protection levy notified to the trustees or managers by the Board, or by the Regulator, under paragraph (3), interest is to be charged in accordance with regulation 19A of the PPF Miscellaneous Regulations, unless the Board has granted a waiver under those Regulations.

(5) Where the amount of the pension protection levy notified by the Board or the Regulator to the trustees or managers of the scheme is less than an amount previously notified to, and paid by, the trustees or managers in respect of the same financial year, the Board must repay the difference between the two amounts to the trustees or managers.

(6) Where the Board, or the Regulator on the Board's behalf, directs the trustees or managers of the scheme to obtain and provide an out-of-cycle valuation, the relevant time of any subsequent actuarial valuation for the purposes of section 179 of the 2004 Act must be within the period of three years beginning immediately after the relevant time of the out-of-cycle valuation.

(7) The Board, or the Regulator on the Board's behalf, may revoke or vary any direction given under paragraph (1).

(a) Regulation 19A was inserted by S.I. 2010/560.

(8) Where a direction under paragraph (1) given to the trustees or managers of a scheme is not complied with, section 10 of the 1995 Act (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

(9) In this regulation, an “out-of-cycle valuation” means a valuation which has a relevant time which is—

- (a) after the appointed day; and
- (b) within the period of three years beginning immediately after the relevant time of the last actuarial valuation for the purposes of section 179 of the 2004 Act (whether the relevant time of that valuation was before, on or after the appointed day).

Waiver of Fraud Compensation Levy: periods before the appointed day

50.—(1) Where the conditions specified in paragraph (2) are met, a waiver by the Board of payment of an amount due in relation to any fraud compensation levy imposed under section 189 of the 2004 Act (fraud compensation levy), in accordance with regulation 7 of the Fraud Compensation Levy Regulations (waiver)^(a), applies as if the scheme had been a money purchase scheme at the time of the waiver.

(2) The conditions specified in this paragraph are that—

- (a) the fraud compensation levy payment was due in respect of a period before the appointed day;
- (b) the trustees or managers of the scheme confirmed in writing to the Board that the conditions specified in regulation 7(1) of the Fraud Compensation Levy Regulations were met during that period; and
- (c) the Board is satisfied that during that period—
 - (i) the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
 - (ii) the scheme included no benefits other than benefits falling within paragraph (i), money purchase benefits or death benefits; and
- (d) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme.

Discharge of cash equivalent of benefits treated as money purchase

51. Where—

- (a) before the appointed day, the conditions specified in regulation 30(3) (cash equivalent of cash balance benefits etc treated as money purchase benefits: transitional arrangements) are met in relation to a member of an occupational pension scheme; and
- (b) an assessment period begins in relation to the scheme,

the Board may secure the discharge of the cash equivalent of the member’s accrued rights to benefits specified in regulation 30(1)(a) which were treated by the trustees or managers of the scheme as money purchase benefits as if those benefits were money purchase benefits.

Schemes continuing as closed schemes after an assessment period

52.—(1) This regulation applies where—

- (a) an assessment period in relation to an occupational pension scheme began before the appointed day; and
- (b) the scheme is authorised (whether before, on or after the appointed day) to continue as a closed scheme under section 153(5) of the 2004 Act (closed schemes).

(a) S.I. 2006/558.

(2) Subject to paragraph (5), where the conditions specified in paragraph (3) are met, the trustees or managers of the scheme may determine that benefits specified in paragraph (4) which were treated by the trustees or managers of the scheme as if they were money purchase benefits should continue to be treated as money purchase benefits.

(3) The conditions specified in this paragraph are that—

- (a) the scheme provides any of the benefits specified in paragraph (4); and
- (b) the trustees or managers of the scheme, immediately before the assessment period began, treated those benefits as if they were money purchase benefits.

(4) The benefits specified in this paragraph are—

- (a) cash balance benefits;
- (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
- (c) top-up benefits; and
- (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.

(5) Where the Board has made a determination or a direction under any of the relevant Pension Protection Fund provisions or these Regulations that benefits specified in paragraph (4) should or should not be treated as money purchase benefits—

- (a) paragraph (2) does not apply; and
- (b) the trustees or managers of the scheme must treat those benefits in accordance with the direction or determination of the Board.

Discharge as money purchase liabilities: periods before the appointed day

53.—(1) Where the Board or the trustees or managers of an occupational pension scheme have, before the appointed day, secured the discharge of liabilities in respect of any of the benefits specified in regulation 44(3) (validity of valuations etc, determinations, transfer notices and discharge of benefits before the appointed day) that discharge is to be regarded as having been made—

- (a) where the Board has secured the discharge of those liabilities, in accordance with section 170 of the 2004 Act (discharge of liabilities in respect of money purchase benefits)(a); or
- (b) where the trustees or managers of the scheme have secured the discharge of those liabilities, in accordance with regulation 2 of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (discharge of liabilities in respect of money purchase benefits during the assessment period)(b).

(2) Where paragraph (1)(a) or (b) applies, the relevant Pension Protection Fund provisions apply in relation to the liabilities discharged and the assets applied towards their discharge as if they were liabilities for, and assets applied towards, money purchase benefits.

Discharge as money purchase liabilities: periods after the appointed day

54.—(1) Where—

- (a) an assessment period or further assessment period in relation to an eligible scheme has begun before the appointed day; and
- (b) the Board is satisfied that benefits which have accrued in accordance with the admissible rules of the scheme include any of the benefits specified in regulation 44(3);

(a) Section 170(3) was omitted by, and section 170(4) amended by, SI 2011/1730.

(b) S.I. 2005/449.

the Board may determine, in the circumstances specified in paragraph (2), that benefits specified in regulation 44(3) treated by the trustees and managers of the scheme as if they were money purchase benefits are to be treated as money purchase benefits for the purposes of the relevant Pension Protection Fund provisions.

- (2) The circumstances specified in this paragraph are that the Board is satisfied—
- (a) that, immediately before that assessment period or further assessment period began, the trustees or managers of the scheme treated those benefits as money purchase benefits; and
 - (b) that it is reasonable in the circumstances to treat those benefits as money purchase benefits for the purposes of the relevant Pension Protection Fund provisions.

Closed schemes: Board's assumption of responsibility after the appointed day

55.—(1) This regulation applies where—

- (a) an assessment period in relation to an occupational pension scheme began before the appointed day;
- (b) the scheme is authorised (whether before, on or after the appointed day) to continue as a closed scheme under section 153(5) of the 2004 Act (closed schemes);
- (c) there is a further assessment period in relation to the scheme; and
- (d) the Board assumes responsibility for the scheme in accordance with section 158(1) of the 2004 Act.

(2) Where the conditions specified in paragraph (3) are met, the Board may determine that the liabilities in relation to benefits specified in regulation 52(4) (schemes continuing as closed schemes after an assessment period) which were treated as money purchase benefits are to be treated as money purchase benefits for the purposes of the relevant Pension Protection Fund provisions.

(3) The conditions specified in this paragraph are that—

- (a) the scheme included any of the benefits specified in regulation 52(4); and
- (b) either—
 - (i) the trustees or managers of the scheme have determined in accordance with regulation 52(2) (schemes continuing as closed schemes after an assessment period) that benefits specified in regulation 52(4) should continue to be treated as money purchase benefits; or
 - (ii) the trustees or managers of the scheme have, in accordance with regulation 52(5)(b), treated those benefits as money purchase benefits in accordance with a determination or a direction made by the Board.

Discharge as money purchase benefits: scheme right to transfer payment or contribution refund

56.—(1) Where the Board is satisfied that—

- (a) the pensionable service of a member of an eligible scheme has terminated on the commencement of an assessment period;
- (b) as a result, on the appointed day the member has rights under the admissible rules to—
 - (i) a transfer payment calculated by reference to the value of the benefits which have accrued to the member under the scheme; or
 - (ii) a cash payment calculated by reference to the amount of contributions made by the member or on the member's behalf to the scheme;
- (c) Chapter 5 of Part 4 of the 1993 Act (early leavers: cash transfer sums and contribution refunds) does not apply to the member;

- (d) the member does not have relevant accrued rights to benefit under the scheme (within the meaning of section 101AA(4) of that Act (scope of Chapter 5)(a));
- (e) the rights specified in sub-paragraph (b) relate to any of the benefits specified in sub-paragraphs (a) to (d) of regulation 44(3) (whether or not they also relate to other benefits); and
- (f) immediately before an assessment period or further assessment period in relation to the eligible scheme began, the trustees or managers of the scheme treated benefits specified in sub-paragraphs (a) to (d) of regulation 44(3) as if they were money purchase benefits,

the Board may determine that those benefits are to be treated, for the purposes of the relevant Pension Protection Fund provisions, as money purchase benefits.

(2) In this regulation “transfer payment” means a payment to another occupational pension scheme or a personal pension scheme in respect of the member’s rights under the scheme.

Discharge of pensions in payment derived from additional voluntary contributions treated as money purchase benefits: periods after the appointed day

57.—(1) Where the conditions specified in paragraph (2) are met in relation to a member’s pension in payment under an occupational pension scheme, the Board may give the trustees or managers of an eligible scheme a direction regarding the exercise of the trustees or managers’ power to determine that the member’s pension or part of a pension should be discharged as if it were money purchase benefits (see regulation 17 (discharge of pensions in payment derived from additional voluntary contributions treated as money purchase benefits: scheme commencing winding up on or after the appointed day)).

(2) The conditions specified in this paragraph are that—

- (a) the assessment date or further assessment date in relation to an eligible scheme is on or after the appointed day;
- (b) the pension or part of a pension is derived from additional voluntary contributions;
- (c) the pension or part of a pension is derived from any of the benefits specified in sub-paragraphs (a) to (c) of regulation 44(3) or from money purchase benefits;
- (d) the pension or part of a pension comes into payment on or before 1st April 2015;
- (e) pensions in payment which satisfied the conditions specified in sub-paragraphs (b) and (c) were, before the appointed day, treated by the trustees or managers of the scheme as money purchase benefits; and
- (f) the Board is satisfied that it is reasonable in the circumstances to treat the pension or part of a pension as money purchase benefits.

(3) Where the Board directs the trustees or managers of an eligible scheme, in accordance with paragraph (1), that a pension or part of a pension should be discharged as if it were money purchase benefits, the relevant Pension Protection Fund provisions apply as if the pension or part of a pension discharged were a money purchase benefit.

Modification of the Pension Protection Fund (Entry Rules) Regulations 2005

58.—(1) The Entry Rules Regulations(b) are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation)—

(a) after the definition of “the 1995 Act” insert—

““the appointed day” is the day appointed for the coming into force of section 29 of the Pensions Act 2011 (definition of money purchase benefits);”;

(a) Section 101AA was inserted by section 264 of the 2004 Act.

(b) S.I. 2005/590.

- (b) after the definition of “the Authority”, insert—
 - ““cash balance benefits” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;”.
- (3) After regulation 2(2) (schemes which are not eligible schemes)(a) insert—
 - “(2A) Except as otherwise provided in paragraphs (3) and (4) of this regulation, an occupational pension scheme which becomes an eligible scheme in accordance with regulation 43(1)(b) of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 (eligibility: schemes treated as money purchase schemes) is not an eligible scheme if—
 - (a) the trustees or managers of the scheme during the period beginning with the appointed day and ending immediately before 1st April 2015 have entered into a legally enforceable agreement; and
 - (b) the effect of that agreement (at any time) is to reduce the amount of any debt due to the scheme under section 75 of the 1995 Act (deficiencies in the assets) which may be recovered by, or on behalf of, the trustees or managers of the scheme.”.
- (4) In regulation 2(3) and (4), for “paragraph (2)” substitute “paragraphs (2) and (2A)”.
- (5) In regulation 21 (refusal to assume responsibility – schemes which become eligible schemes)(b)—
 - (a) in paragraph (1)(a) omit “and”; and
 - (b) at the end of paragraph (1)(b) insert—
 - “and
 - (c) in the case of a scheme which becomes an eligible scheme on 1st April 2015 in accordance with regulation 43(1)(b) of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014—
 - (i) where the date on which an assessment period began is less than three years after 1st April 2015, be the period beginning on 1st April 2015 and ending with the assessment date; or
 - (ii) where the date on which an assessment period began is at least three years after 1st April 2015, be the period of three years preceding the date on which that assessment period began.”.

Modification of the Pension Protection Fund (Compensation) Regulations 2005 where there is no provision for a survivor’s pension

59. In a case where—

- (a) immediately before the assessment date—
 - (i) under the admissible rules of an eligible scheme a member is entitled to present payment of a pension under an occupational pension scheme; and
 - (ii) that pension does not include the provision of a survivor’s pension in the event of the member’s death;
- (b) the member is entitled, from the assessment date, to compensation under paragraph 3 or 5 (pension benefits postponed at assessment date) of Schedule 7 to the 2004 Act; and

(a) Regulation 2(2) was amended by S.I.s 2005/993 and 2005/2153.
 (b) Regulation 21 was amended by S.I.s 2005/993 and 2010/196.

(c) the member dies on or after the assessment date,

regulation 3 of the Pension Protection Fund (Compensation) Regulations 2005 (circumstances where a widow or widower is not entitled to payment of periodic compensation)(a) has effect as if for paragraph (b) there were substituted—

“(b) no provision to pay a survivor’s pension—

- (i) under the admissible rules of the scheme; or
- (ii) because the member has chosen a pension under the scheme which does not include the provision of a survivor’s pension.”.

Amendment of the Pension Protection Fund (Compensation) Regulations 2005

60.—(1) The Pension Protection Fund (Compensation) Regulations 2005 are amended as follows.

(2) After regulation 13 (manner of determining the revaluation percentage in the case of active members who have not attained normal pension age at assessment date)(b) insert—

“Active members below normal pension age: cases where it is unclear whether pensionable service is attributable to periods on or after 6th April 2009

13A.—(1) This regulation applies for the purposes of paragraph 12(3A)(b) of Schedule 7 to the Act (cases where it is unclear whether pensionable service is attributable to periods before 6th April 2009) in the case of active members who have not attained normal pension age at the assessment date.

(2) Where this regulation applies, in any case where it is unclear whether any particular pensionable service (either actual or notional) falls, or is to be treated for the purposes of the scheme as falling, on or after 6th April 2009, the Board may determine as best as it is able, having regard to the admissible rules and all the circumstances of the case, how much of the service or notional service concerned should be treated for the purposes of paragraph 12(3)(b) of Schedule 7 to the Act as having occurred on or after 6th April 2009.”.

(3) After regulation 15 (manner of determining the higher revaluation percentage in the case of deferred members who have not attained normal pension age at assessment date)(c) insert—

“Deferred members below normal pension age: cases where it is unclear whether pensionable service is attributable to periods on or after 6th April 2009

15ZA.—(1) This regulation applies where it is unclear whether—

- (a) pensionable service is attributable to periods before, or on or after 6th April 2009, in the case of deferred members and pension credit members who have not attained normal pension age or normal benefit age at the assessment date;
- (b) any particular pensionable service (whether actual or notional) falls, or is to be treated as falling, for the purposes of the scheme, on or after 6th April 2009; or
- (c) pension credit rights are to be treated for the purposes of the scheme as derived from rights attributable to pensionable service of the transferor (whether actual or notional) falling or to be treated as falling on or after 6th April 2009.

(2) Where this regulation applies, the Board may determine as best as it is able, having regard to the admissible rules and all the circumstances of the case, how much of the service or notional service concerned should be treated for the purposes of paragraph 17(3)(b) of Schedule 7 to the Act as having occurred on or after 6th April 2009.”.

(a) S.I. 2005/670.

(b) Regulation 13 was amended by S.I. 2011/554.

(c) Regulation 15 was amended by S.I.s 2009/809 and 2011/554.

(4) In regulation 15B (determination of the revaluation percentage in respect of certain periods)(a)—

(a) after paragraph (3) insert—

“(3A) Where this regulation applies and it is unclear whether any particular—

- (a) pensionable service (whether actual or notional) is to be treated for the purposes of the scheme as service falling before 31st March 2011 (to be revalued in accordance with paragraph (2)), or service falling on or after that date (to be revalued in accordance with paragraph (3)); or
- (b) pension credit rights are derived from rights attributable to pensionable service of the transferor (whether actual or notional) falling before 31st March 2011, or from rights attributable to pensionable service falling on or after that date,

revaluation shall be determined in accordance with regulations 13 and 15 as modified by paragraphs (4) to (6).”;

(b) after paragraph (5) insert—

“(6) For the purposes of paragraph (3A) regulations 13 and 15 are modified as follows—

- (a) each regulation becomes paragraph (1) of that regulation; and
- (b) after paragraph (1) of each regulation, insert—

“(2) In any case where it is unclear whether—

- (a) any particular pensionable service (whether actual or notional) is to be treated for the purposes of the scheme as service falling before 31st March 2011, or service falling on or after that date; or
- (b) pension credit rights are derived from rights attributable to pensionable service of the transferor (whether actual or notional) falling before 31st March 2011, or from rights attributable to pensionable service falling on or after that date,

the Board may determine as best as it is able, having regard to the admissible rules and all the circumstances of the case, how much of the service or notional service concerned should be treated for the purposes of this regulation as having occurred before 31st March 2011 and how much on or after that date.”.

(5) In regulation 25 (cash balance schemes: modification of paragraphs 5, 15 and 19 of Schedule 7 to the Act)(b)—

(a) in the heading, for “paragraphs 5, 15 and 19” substitute “paragraphs 3, 5, 8, 10, 11, 14, 15, 19, 22 and 37”;

(b) in paragraph (1) omit the words after “cash balance scheme” to the end of the paragraph;

(c) for paragraph (2) substitute—

“(2) In their application to cash balance benefits or to a pension derived from cash balance benefits, the provisions of Schedule 7 to the Act have effect with the following modifications—

(a) paragraph 3 (pensions in payment at assessment date) has effect as if—

(i) in sub-paragraph (3), after “The annual rate of the periodic compensation is” there were inserted “subject to sub-paragraph (3A)”; and

(ii) after sub-paragraph (3) there were inserted—

“(3A) In a case where—

(a) Regulation 15B was inserted by S.I. 2011/554.

(b) Regulation 25 was amended by S.I. 2010/560.

- (a) the pension is derived from money purchase benefits or cash balance benefits;
- (b) there is no requirement or discretion under the admissible rules to increase the pension; and
- (c) the pension is not required to be increased in accordance with section 51 of the Pensions Act 1995,

the annual rate of the periodic compensation is the protected pension rate.”;

- (iii) in sub-paragraph (5), for “sub-paragraph (3)” there were substituted “sub-paragraphs (3) and (3A)”.

- (b) paragraph 5 (pension benefits postponed at assessment date) has effect as if—

- (i) in sub-paragraph (3), after “The annual rate of the periodic compensation is” there were inserted “subject to sub-paragraphs (3A) and (3B)”;

- (ii) after sub-paragraph (3) there were inserted—

“(3A) In a case where—

- (a) the postponed pension is derived from money purchase benefits or cash balance benefits;
- (b) there is no requirement or discretion under the admissible rules to increase the pension; and
- (c) the pension is not required to be increased in accordance with section 51 of the Pensions Act 1995,

the annual rate of the periodic compensation is to be determined in accordance with sub-paragraph (3B).

(3B) In a case falling within sub-paragraph (3A) the annual rate of the periodic compensation is—

- (a) where the commencement of periodic compensation under this paragraph has not been postponed for any period by virtue of paragraph 25A, 100% of the protected pension rate; or
- (b) where the commencement of periodic compensation has been so postponed, 100% of the aggregate of the protected pension rate and the amount of the actuarial increase under paragraph 25A.”;

- (iii) in sub-paragraph (4) for “In sub-paragraph (3)” there were substituted “In sub-paragraphs (3) and (3B)”;

- (iv) after sub-paragraph (4) there were inserted—

“(4A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (4) what would have been the annual rate of the pension, the “protected pension rate” shall mean what the Board may, having regard to the admissible rules, determine would have been the annual rate of pension if the postponement of pension had ceased immediately before the assessment date.”; and

- (v) in sub-paragraph (5) after “(4)” there were inserted “or (4A)”;

- (c) paragraph 8 (active members over normal pension age at assessment date) has effect as if—

- (i) for sub-paragraph (5) there were substituted—

“(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such initial annual rate of pension to which the member would have been entitled under the admissible rules when the pensionable service relating to the pension ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the initial annual rate of pension on the basis referred to in sub-paragraph (5), the Board

may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”; and

(ii) sub-paragraphs (6) and (7) were omitted;

(d) paragraph 10 has effect as if—

(i) for sub-paragraph (4) there were substituted—

“(4) Subject to sub-paragraph (4A), the accrued amount means an amount equal to such amount of scheme lump sum to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the scheme lump sum ended.

(4A) In any case where the Board is satisfied that it is not possible to identify the amount of the scheme lump sum on the basis referred to in sub-paragraph (4), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”;

(ii) sub-paragraphs (5), (6) and (7) were omitted;

(e) paragraph 11 (active members who have not attained normal pension age at assessment date) has effect as if—

(i) for sub-paragraph (5) there were substituted—

“(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such initial annual rate of pension to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the pension ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the initial annual rate of pension on the basis referred to in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”; and

(ii) sub-paragraphs (6) and (7) were omitted;

(f) paragraph 14 has effect as if —

(i) for sub-paragraph (5) there were substituted—

“(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such scheme lump sum to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the scheme lump sum ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the amount of the scheme lump sum on the basis referred to in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”;

(ii) sub-paragraphs (6) and (7) were omitted;

(g) paragraph 15 (deferred members who have not attained normal pension age at assessment date) has effect as if—

(i) at the beginning of sub-paragraph (5) there were inserted “Subject to sub-paragraph (5A)”;

and

(ii) after sub-paragraph (5) there were inserted—

“(5A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (5) what would have been the initial annual rate of the pension, the accrued amount shall mean an amount equal to such initial annual rate as the Board may, having regard to the admissible rules and in accordance with actuarial factors published by the Board, determine the deferred member would have been entitled to had normal pension age been the actual age attained by the deferred member when the pensionable service relating to the lump sum ended.”;

- (h) paragraph 19 has effect as if—
 - (i) at the beginning of sub-paragraph (5) there were inserted “Subject to sub-paragraph (5A)”; and
 - (ii) after sub-paragraph (5) there were inserted—

“(5A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (5) what would have been the amount of the scheme lump sum, the accrued amount shall mean an amount equal to such scheme lump sum amount as the Board may, having regard to the admissible rules and in accordance with actuarial factors published by the Board, determine the deferred member would have been entitled to had normal pension age been the actual age attained by the deferred member when the pensionable service relating to the lump sum ended.”;
- (i) paragraph 22 (survivors who do not meet conditions for scheme benefits at assessment date) has effect as if—
 - (i) at the beginning of sub-paragraph (3)(a) there were inserted “subject to sub-paragraph (3A)”; and
 - (ii) after sub-paragraph (3) there were inserted—

“(3A) In any case where the Board is satisfied that it is not possible to identify the initial rate of pension mentioned in sub-paragraph (3)(a), the Board may, having regard to the admissible rules, determine the initial rate of the compensation in accordance with actuarial factors published by the Board.”;
- (j) paragraph 37(1) has effect as if after “In this Schedule—” there were inserted—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;”;
- (d) after paragraph (2), insert—

“(3) In this regulation—

“cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014; and

“cash balance scheme” means a scheme which provides cash balance benefits, whether or not the scheme also provides other benefits.”.

Amendment of the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005

61. In the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005(a) in the first column of paragraph 16C (paragraphs 16C, 16D, 16E and 16F)(b) of the table—

- (a) omit “and”; and
- (b) at the end insert “, 16G, 16H and 16F”.

PART 14
Scheme Funding

Interpretation of this Part

62.—(1) In this Part—

-
- (a) S.I. 2005/669.
 - (b) Paragraph 16C was inserted by S.I. 2011/731.

“effective date”, in relation to an actuarial report or actuarial valuation, has the meaning given by section 224(2)(b) or (d) of the 2004 Act (actuarial valuations and reports), as the case may be;

“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005(a).

(2) Where, by virtue of regulation 2(2) (interpretation)(b) of and paragraph 1, 4, 5 or 7 of Schedule 2 to the Scheme Funding Regulations (multi-employer sectionalised schemes, partly foreign schemes and schemes with a partial public authority guarantee), Part 3 of the 2004 Act (scheme funding) applied as if each section or part of a scheme were a separate scheme (or would have so applied but for this Part)—

- (a) this Part also so applies; and
- (b) “employer” and “member” must be read accordingly.

(3) Subject to paragraph (4), where—

- (a) the conditions specified in regulation 63(2) (application of Part 3 of the 2004 Act to schemes treated as money purchase: periods before the appointed day) are met in relation to an occupational scheme; and
- (b) the scheme has no active members,

references to “the employer” in Part 3 of the 2004 Act and in this Part have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have active members (“the freezing event”).

(4) A person ceases to be treated as an employer under paragraph (3) if, after the freezing event, that person ceases to be treated as a former employer by virtue of regulation 9 (frozen schemes and former employers) of the Occupational Pension Schemes (Employer Debt) Regulations 2005(c).

Application of Part 3 of the 2004 Act to schemes treated as money purchase: periods before the appointed day

63.—(1) Part 3 of the 2004 Act does not apply to an occupational pension scheme in relation to any period before the appointed day during which it met both of the conditions specified in paragraph (2).

(2) The conditions specified in this paragraph are that—

- (a) the scheme included benefits which are not money purchase benefits; and
- (b) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme.

Application of Part 3 of the 2004 Act to schemes including benefits treated as money purchase benefits: periods before the appointed day

64.—(1) Part 3 of the 2004 Act applies in relation to any period before the appointed day during which an occupational pension scheme met both of the conditions specified in paragraph (2), as if the benefits specified in paragraph (2)(b) treated by the trustees or managers of the scheme as money purchase benefits were money purchase benefits.

(2) The conditions specified in this paragraph are that—

- (a) Part 3 of the 2004 Act applied to the scheme; and
- (b) benefits under the scheme included benefits which are not money purchase benefits, but which the trustees or managers of the scheme treated as if they were money purchase benefits.

(a) S.I. 2005/3377.

(b) Regulation 2 was amended by S.I.s 2007/60 and 2012/1817.

(c) S.I. 2005/678.

Actuarial valuations and reports for schemes treated as money purchase schemes: periods on and after the appointed day

65. Where, immediately before the appointed day, the conditions specified in regulation 63(2) (application of Part 3 of the 2004 Act to schemes treated as money purchase: periods before the appointed day) are met in relation to an occupational pension scheme, the scheme is to be treated for the purposes of section 224(3)(a) of the 2004 Act (actuarial valuations and reports) as having been established on the appointed day.

Modification of the Scheme Funding Regulations for schemes treated as money purchase schemes: periods on and after the appointed day

66.—(1) Where, immediately before the appointed day, the conditions specified in regulation 63(2) are met in relation to an occupational pension scheme, the Scheme Funding Regulations are modified as follows.

(2) Regulation 6(2) (statement of funding principles) has effect in relation to the first statement of funding principles under section 223 of the 2004 Act (statement of funding principles) to be prepared after the appointed day, as if after “the first actuarial valuation” there were inserted “after the day appointed for the coming into force of section 29 of the Pensions Act 2011 (“the section 29 commencement day”)”.

(3) Regulation 8(1)(a) (recovery plan)(a) applies in relation to the first recovery plan under section 226(1) of the 2004 Act (recovery plan) to be prepared after the appointed day, as if after “the first actuarial valuation” there were inserted “after the section 29 commencement day”.

(4) Regulation 9(1) (schedule of contributions) applies in relation to the first schedule of contributions under section 227 of the 2004 Act (schedule of contributions) to be prepared after the appointed day as if for “following the establishment of the scheme” there were substituted “after the section 29 commencement day”.

Provision of summary funding statement in relation to schemes treated as money purchase: periods on and after the appointed day

67. Where—

- (a) immediately before the appointed day, the conditions specified in regulation 63(2) are met in relation to an occupational pension scheme; and
- (b) the trustees or managers of the scheme would, if it were not for this regulation, be required to provide a summary funding statement to members and beneficiaries in accordance with regulation 15(1) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(b),

the trustees or managers of the scheme must provide the first summary funding statement to all members and beneficiaries of the scheme on, before or within a reasonable period after, the date by which they are required under section 224(3)(a) of the 2004 Act (as modified by regulation 65 of these Regulations (actuarial valuations and reports for schemes treated as money purchase schemes: periods on and after the appointed day)) to ensure that they receive the first actuarial valuation in relation to the scheme.

Schedule of payments in relation to schemes treated as money purchase: periods on and after the appointed day

68. Where, immediately before the appointed day, the conditions specified in regulation 63(2) are met in relation to an occupational pension scheme, until the first schedule of contributions has been certified by the actuary in relation to the scheme in accordance with section 227(5) of the 2004 Act—

(a) Regulation 8 was amended by S.I. 2006/1733.

(b) S.I. 2013/2734.

- (a) the most recent schedule of payments prepared before the appointed day under section 87 of the 1995 Act (schedules of payments to money purchase schemes)(a) continues to have full effect with respect to the contributions payable towards the scheme by or on behalf of employers and active members of the scheme; and
- (b) sections 87, 88 (schedules of payments to money purchase schemes: supplementary)(b) and 89 (application of further provisions to money purchase schemes)(c) of the 1995 Act and Part 4 of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (money purchase schemes)(d) continue to apply to the scheme.

Application of Part 3 of the 2004 Act to schemes including benefits treated as money purchase: periods on or after the appointed day

69.—(1) Where the conditions specified in regulation 64(2) (application of Part 3 of the 2004 Act to schemes including benefits treated as money purchase benefits: periods before the appointed day) are met in relation to an occupational pension scheme—

- (a) the effective date of the scheme’s first actuarial valuation under section 224 of the 2004 Act on or after the appointed day must be not more than 3 years after the effective date of the scheme’s last actuarial valuation before the appointed day, and
- (b) the effective date of the scheme’s first actuarial report under section 224 of the 2004 Act on or after the appointed day must be not more than one year after the effective date of the scheme’s last actuarial valuation or actuarial report before the appointed day, whichever is the most recent.

(2) Where the conditions specified in regulation 64(2) are met in relation to an occupational pension scheme, no provision of section 29 of the Act (definition of money purchase benefits) or of these Regulations affects the validity of—

- (a) a statement of funding principles prepared, or revised, as the case may be, under section 223 of the 2004 Act before the appointed day;
- (b) the latest actuarial valuation obtained under section 224 of that Act before the appointed day, which has been prepared and signed by the actuary in accordance with section 224(2)(a) of that Act;
- (c) the latest actuarial report obtained under section 224 of that Act before the appointed day, which has been prepared and signed by the actuary in accordance with section 224(2)(c) of that Act;
- (d) a certification of the scheme’s technical provisions by the actuary in accordance with section 225 of that Act;
- (e) a recovery plan prepared in accordance with section 226 of that Act and in force before the appointed day;
- (f) a schedule of contributions certified by the actuary in accordance with section 227(5) of that Act and in force before the appointed day.

(a) Section 87 was amended by sections 319(1) and 320 of and Schedules 12 and 13 to the Pensions Act 2004 (c. 35) (“the 2004 Act”).

(b) Section 88 was amended by section 10(2) of the 1999 Act, section 56 of and Schedule 5 to 2000 Act, section 269(2) of the 2004 Act and sections 319(1) and 320 of and Schedules 12 and 13 to the 2004 Act.

(c) Section 89 was amended by section 319(1) of and Schedules 12 and 13 to the 2004 Act.

(d) S.I. 1996/1715.

PART 15

Financial Assistance Scheme

Application and interpretation

70.—(1) This Part applies for the purposes of the Financial Assistance Scheme established by regulations made under section 286 of the 2004 Act (financial assistance scheme for members of certain pension schemes)(a).

(2) In this Part—

“the Financial Assistance Scheme Regulations” means the Financial Assistance Scheme Regulations 2005(b);

“notional pension” has the meaning given by regulation 27(1) of the Financial Assistance Scheme Regulations (scheme manager calculations after a valuation)(c);

“qualifying pension scheme” has the meaning given by regulation 9(1) of those Regulations (qualifying pension schemes)(d); and

“scheme manager” has the meaning given by regulation 5(2) of those Regulations (scheme manager)(e).

(3) Where, by virtue of regulation 9(2) of the Financial Assistance Scheme Regulations, a section of a scheme is required to be treated as a separate scheme for the purposes of those Regulations (or would have been so required to be treated, but for this Part) this Part applies in relation to the section of the scheme as if that section were a separate scheme.

Schemes treated as money purchase schemes: non-qualifying schemes

71.—(1) Where the scheme manager is satisfied that the condition specified in paragraph (2) is met, an occupational pension scheme which would otherwise be a qualifying pension scheme is not a qualifying pension scheme.

(2) The condition specified in this paragraph is that, immediately before the scheme began winding up, the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme.

Qualifying schemes including benefits treated as money purchase benefits

72.—(1) Where the conditions specified in paragraph (2) are met, no provision of Part 4 of the Act or of these Regulations—

(a) affects the validity of the discharge, before the appointed day, of benefits—

(i) specified in paragraph (2)(a); and

(ii) treated as money purchase benefits and discharged as such in reliance on section 135(4A)(f) of the 2004 Act (restrictions on winding up, discharge of liabilities etc) (as modified by paragraph 3B(d) of Schedule 1 to the Financial Assistance Scheme Regulations)(f);

(b) affects the validity of a valuation—

(i) the calculation date (see regulation 2(1) of the Financial Assistance Scheme Regulations(g)) of which is before the appointed day; and

(a) Section 286 was amended by section 18(1) to (3) of the Pensions Act 2007 (c. 22), section 124(1) to (6) of the Pensions Act 2008 (c. 30) and sections 23(1) and 24 of the Pensions Act 2011 (c.19).

(b) S.I. 2005/1986.

(c) Regulation 27 was inserted by S.I. 2010/1149.

(d) Regulation 9 was amended by S.I.s 2007/3581, 2008/1903, 2008/3069 and 2014/837.

(e) Regulation 5 was amended by S.I. 2009/1851.

(f) Paragraph 3B was inserted by S.I. 2010/1149.

(g) The definition of “calculation date” was inserted by S.I. 2010/1149.

- (ii) which was obtained by the trustees or managers of a qualifying pension scheme in accordance with regulation 22 (scheme manager to obtain a valuation of assets and liabilities) of the Financial Assistance Scheme Regulations(a);
 - (c) requires the trustees or managers of a qualifying pension scheme to obtain or provide a further or revised valuation in relation to any period before the appointed day;
 - (d) affects the validity of any determination made before the appointed day by the scheme manager in accordance with regulation 27 or 28 (determination of certain asset shares, notional pensions and survivor notional pensions) of those Regulations(b) in relation to—
 - (i) the entitlement of any person to a notional pension;
 - (ii) the amount, duration or cessation date of any notional pension; or
 - (iii) the asset share of any person;
 - (e) affects the validity of any decision made before the appointed day by the scheme manager that a determination in accordance with regulation 27(2) of the Financial Assistance Scheme Regulations should not be made;
 - (f) affects the validity of a transfer notice sent before the appointed day by the scheme manager to the trustees or managers of a qualifying pension scheme in accordance with regulation 29(1) (transfer notice) of the Financial Assistance Scheme Regulations(c); or
 - (g) affects the validity of arrangements made before the appointed day by the scheme manager to facilitate payments in relation to the value of rights in respect of money purchase benefits under the scheme in accordance with regulation 31 of those Regulations (payments where amounts relating to money purchase benefits are transferred to the Secretary of State)(d).
- (2) The conditions specified in this paragraph are that the scheme manager is satisfied that, immediately before the scheme began to wind up—
- (a) the liabilities of a qualifying pension scheme included liabilities in relation to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), top-up benefits or pensions derived from money purchase benefits or cash balance benefits; and
 - (b) the trustees or managers of the scheme treated liabilities relating to those benefits as if they related to money purchase benefits.
- (3) Where the conditions specified in paragraph (2) are met, section 286 of the 2004 Act and the Financial Assistance Scheme Regulations apply as if the liabilities relating to the benefits specified in paragraph (2)(a) treated by the trustees or managers of the scheme as money purchase benefits were liabilities relating to money purchase benefits.

PART 16

Equality

Modification of the Occupational Pension Schemes (Equal Treatment) Regulations 1995

73.—(1) Regulation 15 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (exceptions to the equal treatment rule: use of actuarial factors which differ for men and women)(e) has effect in relation to periods before 1st October 2010 as if for paragraph (2)(c) there were substituted—

-
- (a) Regulation 22 was inserted by S.I. 2010/1149.
 - (b) Regulation 28 was inserted by S.I. 2010/1149.
 - (c) Regulation 29 was inserted by S.I. 2010/1149.
 - (d) Regulation 31 was inserted by S.I. 1010/1149.
 - (e) S.I. 1995/3183. These regulations were revoked by section 211(2) and Part 2 of Schedule 7 to the Equality Act 2010 (c. 15) with effect from 1st October 2010.

“(c) a pension derived from money purchase benefits within the meaning of section 181(1) of the Pension Schemes Act 1993;”.

(2) Where the conditions specified in paragraph (3) are satisfied, regulation 15 of those Regulations has effect as if after paragraph (2)(c) there were inserted—

“(ca) a pension derived from cash balance benefits within the meaning of regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;”.

(3) The conditions specified in this paragraph are that before 1st October 2010 the trustees or managers of the scheme—

- (a) treated cash balance benefits as if they were money purchase benefits; and
- (b) applied different actuarial factors for men and for women in determining the rate of a pension derived from those benefits.

Retrospective modification of the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010

74.—(1) Regulation 4(2)(c) (exceptions to the sex equality rule: use of actuarial factors which differ for men and women) of the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010(a) (“the Sex Equality Exceptions Regulations”) has effect as if the amendments made by regulation 75(a) of these Regulations came into force on 1st October 2010.

(2) Where the conditions specified in paragraph (3) are satisfied, regulation 4 of the Sex Equality Exceptions Regulations has effect as if the amendments made by regulation 75(b) of these Regulations came into force on 1st October 2010.

(3) The conditions specified in this paragraph are that on or after 1st October 2010 and before the appointed day the trustees or managers of an occupational pension scheme —

- (a) treated benefits specified in regulation 73(3)(a) as if they were money purchase benefits; and
- (b) applied different actuarial factors for men and for women in determining the rate of a pension derived from those benefits.

Amendment of the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010

75. Regulation 4 of the Sex Equality Exceptions Regulations is amended as follows—

- (a) in paragraph (2)(c), before “money purchase benefits” insert “a pension which is derived from”; and
- (b) after paragraph (2)(c) insert—

“(ca) a pension which is derived from cash balance benefits within the meaning of regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;”.

PART 17

Pension Sharing

Valuations for the purposes of pension sharing etc: transitional arrangements

76.—(1) Where, before the appointed day, for the purposes of pension sharing or attachment on divorce or dissolution of a civil partnership, a person responsible for a pension arrangement has

(a) S.I. 2010/2132.

provided a valuation of the benefits accrued under a pension arrangement, no provision of Part 4 of the Act or of these Regulations—

- (a) affects the validity of that valuation; or
- (b) requires the person responsible for the pension arrangement to obtain or provide a further or revised valuation of the benefits.

(2) Where the conditions specified in paragraph (3) are met, a person responsible for a pension arrangement who has provided a valuation of a member's accrued benefits made on the basis that those benefits were money purchase benefits, may make a subsequent valuation of the member's benefits on the same basis.

(3) The conditions specified in this paragraph are that—

- (a) the earlier valuation was provided before the appointed day in accordance with regulations made under section 23(1)(a) of the 1999 Act (supply of pension information in connection with divorce etc)(a);
- (b) the benefits valued in the earlier valuation included any of the benefits specified in paragraph (4); and
- (c) a subsequent valuation of the same benefits is to be made for the purposes of Part 4 of the 1999 Act (pension sharing) or Part 4A of the 1993 Act (requirements relating to pension credit benefit)(b) in the same or connected proceedings.

(4) The benefits specified in this paragraph are—

- (a) cash balance benefits;
- (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
- (c) top-up benefits; and
- (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.

(5) In this regulation “connected proceedings” means proceedings in relation to pension sharing or attachment on divorce or dissolution of a civil partnership involving the same parties and the same benefits as earlier proceedings.

PART 18

Cross-border Schemes

Cross-border schemes treated as money purchase schemes

77.—(1) Where the conditions specified in paragraph (2) are met—

- (a) the trustees or managers of an occupational pension scheme which, before the appointed day, was receiving contributions from a European employer, are not required to make a further or revised application for authorisation or approval in relation to any period before the appointed day under—
 - (i) section 288(1) of the 2004 Act (general authorisation to accept contributions from European employers); or
 - (ii) section 289(1) of that Act (approval in relation to a particular European employer)(c);

(a) Section 23(1) was amended by section 261(1) of and paragraph 157(2) and (3) of Schedule 27 to the Civil Partnership Act 2004 (c. 33).

(b) Part 4A was inserted by section 37 of the 1999 Act.

(c) Section 289 was amended by S.I. 2007/3014.

- (b) the Regulator’s authorisation of the scheme under section 288(2)(a) of that Act or approval of the trustees or managers of the scheme under section 289(2)(a) (as the case may be) is valid in respect of any period before the appointed day;
 - (c) that authorisation of the scheme or approval of the trustees or managers of the scheme (as the case may be) remains valid on or after the appointed day until the application required under paragraph (3) is granted or refused by the Regulator; and
 - (d) section 287(5) of the 2004 Act (occupational pension scheme receiving contributions from European employer) (civil penalties) does not apply in relation to a failure to apply for authorisation under section 288(1) of that Act or approval under section 289(1) of that Act in the form prescribed for a scheme which is not a money purchase scheme during any period before the application required under paragraph (3) is granted or refused by the Regulator.
- (2) The conditions specified in this paragraph are that before the appointed day—
- (a) an occupational pension scheme included cash balance benefits or pensions derived from cash balance benefits or money purchase benefits;
 - (b) the scheme included no benefits other than those falling within sub-paragraph (a), money purchase benefits or death benefits;
 - (c) the trustees or managers of the scheme treated the scheme as a money purchase scheme;
 - (d) an application made by the trustees or managers of a scheme for authorisation under section 288(1) of the 2004 Act or for approval under section 289(1) of that Act was made in the form prescribed for a money purchase scheme in accordance with any of the following provisions of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005(a) (“the Cross-border Regulations”)—
 - (i) regulation 4(2)(a) (applications for general authorisation to accept contributions from European employers: established schemes which are not carrying on cross-border activity);
 - (ii) regulation (5)(2)(a) (applications for general authorisation to accept contributions from European employers: established schemes which are carrying on cross-border activity)(b);
 - (iii) regulation 5(3)(b)(ii)(aa)(c);
 - (iv) regulation 5(4)(a)(d);
 - (v) regulation 6(2)(a) (applications for general authorisation to accept contributions from European employers: new schemes);
 - (vi) regulation 9(2)(a) (applications for approval in relation to particular European employer: established schemes which are not carrying on cross-border activity);
 - (vii) regulation 10(2)(a) (applications for approval in relation to particular European employer: established schemes which are carrying on cross-border activity)(e); and
 - (e) the Regulator has granted or approved that application in accordance with section 288(2)(a) or 289(2)(a) of the 2004 Act.
- (3) Where the trustees or managers of an occupational pension scheme which meets the conditions specified in paragraph (2) intend to accept contributions from European employers on or after the appointed day, they must make a further application for authorisation under section 288(1) or approval under section 289(1)—
- (a) within the period of one year beginning with the appointed day; and

(a) S.I. 2005/3381.

(b) Paragraph (2) was amended by S.I. 2007/814.

(c) Paragraph (3) was inserted by S.I. 2006/467 and was amended by S.I. 2006/925.

(d) Paragraph (4) of regulation 5 was inserted by S.I. 2007/814.

(e) Regulation 10 was amended by S.I.s 2006/467, 2006/925 and 2007/814.

- (b) in the form prescribed for a scheme which is not a money purchase scheme in accordance with paragraph (2)(b) of regulation 4 to 6, 9 or 10 (as the case may be) of the Cross-border Regulations.

(4) In this regulation “European employer” has the meaning given by regulation 3(1) (meaning of “European employer” and “host member State” in Part 7 of the Act) of the Cross-border Regulations(a).

(5) Where, by virtue of regulation 2(3) of the Cross-border Regulations, a section of a segregated multi-employer scheme is required to be treated as a separate scheme for the purposes of those Regulations (or would have been so required, but for this regulation) this regulation applies in relation to that section of the scheme as if it were a separate scheme.

(6) In this regulation “segregated multi-employer scheme” has the meaning given by regulation 2(1) of the Cross-border Regulations(b).

PART 19

Disclosure

Benefits and schemes treated as money purchase before the appointed day

78.—(1) Where the conditions specified in paragraph (2) are met—

- (a) the trustees or managers of an occupational pension scheme are not, in relation to any period before the appointed day, required to supply information under the provisions specified in paragraph (2)(c); and
- (b) neither—
 - (i) regulation 11 (civil penalties)(c) of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996(d) (“the 1996 Disclosure Regulations”); nor
 - (ii) regulation 5 (civil penalties relating to occupational pension schemes) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(e) (“the Disclosure Regulations”),

applies in relation to a failure to provide information required under the provisions specified in paragraph (2)(c) in relation to a period before the appointed day.

(2) The conditions specified in this paragraph are that, before the appointed day—

- (a) members of an occupational pension scheme—
 - (i) had, under the scheme, accrued rights to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits) or top-up benefits; or
 - (ii) were entitled to a pension derived from cash balance benefits or money purchase benefits;
- (b) the trustees or managers of the scheme treated benefits specified in sub-paragraph (a) as money purchase benefits or treated the scheme as a money purchase scheme; and
- (c) the trustees or managers did not supply to members of the scheme information specified in the following provisions—
 - (i) in the 1996 Disclosure Regulations—
 - (aa) paragraph 4 of Schedule 2(f), in accordance with regulation 5(4) (information to be made available to individuals);

(a) Regulation 3(1) was substituted by S.I. 2007/814 and amended by 2007/3014.

(b) Regulation 2(1) was amended by S.I.s 2006/467, 2006/925, 2007/814 and 2007/3014.

(c) Regulation 11 was substituted by S.I. 2005/704 and amended by S.I. 2009/615 before revocation by S.I. 2013/2734.

(d) S.I. 1996/1655. These Regulations were (prospectively) revoked by S.I. 2013/2734.

(e) S.I. 2013/2734.

(f) Paragraph 4 of Schedule 2 was amended by S.I. 2000/2691.

- (bb) paragraph 16 of Schedule 2, in accordance with regulation 5(12)(a);
 - (cc) paragraphs 17 to 22 of Schedule 2(a), in accordance with regulation 5(12ZA)(b) and subject to regulation 5(16)(c);
 - (dd) regulation 6(1)(b) to (d) (availability and content of annual report)(d);
 - (ee) regulation 7(1)(a) to (ca) and (e) (availability of other documents)(e);
- (ii) in the Disclosure Regulations—
- (aa) Part 3 of Schedule 3 (information on funding principles and actuarial valuations etc), in accordance with regulation 13 (other information to be given on request);
 - (bb) Schedule 4, in accordance with regulation 15(1) (summary funding statements);
 - (cc) Schedule 5, in accordance with regulation 16 (statements of benefits: non money purchase benefits);
 - (dd) paragraph 16 of Schedule 8 (information on expected benefits), in accordance with regulation 25(2)(b)(ii) (occupational pension schemes after winding up for individual members).

Amendment of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013

79.—(1) The Disclosure Regulations are amended as follows.

(2) In regulation 2 (interpretation), after the definition of “beneficiary” insert—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;”.

(3) After regulation 16 (statements of benefits: non money purchase benefits) insert—

“Statements of benefits: cash balance benefits

16A.—(1) The information mentioned in paragraph (2) (in addition to the information required under regulation 16 (statements of benefits: non money purchase benefits)) must be given to any member in accordance with this regulation where—

- (a) the member has rights to cash balance benefits;
- (b) the member requests that information; and
- (c) information has not been given to that member under this regulation in the 12 months before that request.

(2) The information is that listed in paragraphs 6A, 9 to 14, 16A and 17 of Schedule 6 (statements of benefits: money purchase benefits).

(3) The information must be given as soon as practicable but no more than two months after the date the request is made.”.

(4) In regulation 19(1) (first information on accessing benefits) after “money purchase benefits” insert “or cash balance benefits”.

(5) In regulation 25 (occupational pension schemes after winding up for individual members), for paragraph (2)(a) substitute—

“(a) where the member or beneficiary of the scheme—

(a) Paragraphs 17 to 22 of Schedule 2 were inserted by S.I. 2005/3377.

(b) Paragraph (12ZA) of regulation 5 was inserted by S.I. 2005/3377 and was amended by S.I. 2007/814.

(c) Paragraph (16) of regulation 5 was inserted by S.I. 2007/814.

(d) Paragraph (1) of regulation 6 was amended by S.I.s 1997/786 and 2005/3377.

(e) Paragraph (1) of regulation 7 was amended by S.I.s 2005/3377 and 2006/1733.

- (i) has rights to benefits other than money purchase benefits, the information mentioned in Part 2 of Schedule 8; or
 - (ii) has rights to money purchase benefits, the information mentioned in paragraph 10 of Schedule 8; and”.
- (6) In Schedule 2—
- (a) after paragraph 16 insert—

“**16A.** Where the member has rights to cash balance benefits, a statement that the value of the pension will depend on several factors including the amount of contributions paid, any guaranteed interest or bonuses applied and the cost of converting the benefits into an annuity.”;
 - (b) after paragraph 28, insert—

“**28A.** Where the member has rights to cash balance benefits, a statement that the value of the pension will depend on several factors including the amount of contributions paid, any guaranteed interest or bonuses applied and the cost of converting the benefits into an annuity.”.
- (7) In the heading to Schedule 6 (statements of benefits: money purchase benefits), after “money purchase benefits” insert “and cash balance benefits”.
- (8) In Schedule 6—
- (a) at the beginning of paragraph 6(1) insert “For money purchase benefits,”;
 - (b) after paragraph 6 insert—

“**6A.** For cash balance benefits, an illustration of the amount of the pension calculated—

 - (a) in accordance with paragraph 7(1)(a)(ii) and (2);
 - (b) in accordance with the rules of the scheme; and
 - (c) where appropriate, in a manner consistent with the relevant guidance,

that is likely to be secured by the member at the member’s normal pension age in respect of the member’s rights to cash balance benefits that have arisen or may arise under the scheme.”; and
 - (c) after paragraph 16 insert—

“**16A.** A statement that the amount of any pension payable under the scheme to or in respect of the member will depend on considerations (including the cost of buying an annuity at the time the pension becomes payable) which may be different from any assumptions made.”.

Signed by authority of the Secretary of State for Work and Pensions

Steve Webb
Minister of State
Department for Work and Pensions

1st July 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Part 4 of the Pensions Act 2011 (c. 19) (“the Act”), section 29 of which clarifies the definition of “money purchase benefits” in section 181 of the Pension Schemes Act 1993 (c. 48) (“the 1993 Act”) and other Acts. Section 29 has retrospective effect to 1st January 1997 and these Regulations make transitional, consequential and supplementary provision to support its commencement.

Part 1 of these Regulations provides for citation, commencement, extent and interpretation.

Part 2 is supplementary to Part 4 of the Act. Regulation 4 makes clear that section 29 does not change the character of money purchase underpin benefits, where the value of those benefits equals or exceeds the value of other benefits under an occupational pension scheme which are not money purchase benefits, or equals or exceeds the amount of a minimum promise under the scheme. Regulation 5 similarly clarifies that where there is contingent promise to pay a top-up benefit if a money purchase benefit is less than a specified minimum amount or value, the existence of that promise does not prevent the benefit from being a money purchase benefit, provided the money purchase benefit is equal to or greater than the specified minimum.

Part 3 exempts the Imperial Home Decor Pension Scheme (which was the subject of the Supreme Court's judgment in *Houldsworth and another v Bridge Trustees Ltd and another* ("Bridge Trustees")) from Part 4 of the Act and from these Regulations.

Part 4 makes transitional provision for schemes which were previously contracted-out of the state pension system and which provided protected rights in the form of cash balance benefits, underpin benefits or top-up benefits.

Part 5 provides transitional protection for trustees or managers of a scheme where a benefit subject to a guarantee has been converted into a money purchase benefit without first obtaining the consent of each affected member, as required under section 67 of the Pensions Act 1995 (c. 26) ("the 1995 Act"). Regulation 9 also restricts, with prospective effect, the manner in which detrimental changes to a contingent promise in relation to members' money purchase benefits may be made.

Part 6 makes transitional arrangements for schemes which have begun to wind up before the day appointed for the coming into force of section 29 of the Act ("the appointed day") and which include benefits which may be affected by section 29 ("affected benefits"). Regulations 11 and 13 make arrangements for schemes treated as money purchase schemes and regulations 12 and 14 apply to schemes providing affected benefits as well as other defined benefits. Regulations 15 and 16 apply where a scheme has been involved with the Pension Protection Fund ("PPF"). Regulation 17 permits trustees or managers to discharge a pension which is derived from both affected benefits and additional voluntary contributions and which comes into payment before 1st April 2015, as if the pension were money purchase benefits.

Part 7 deals with the application of section 75 of the 1995 Act to occupational pension schemes which may be affected by the coming into force of section 29 of the Act. Regulation 20 disapplies section 75 of the 1995 Act where an event which would have triggered a debt due from an employer in relation to a scheme ("a relevant event") occurred before the appointed day, had the scheme not been treated as a money purchase scheme. Regulations 21 and 22 make similar provision for schemes with affected benefits which experienced a relevant event during that period. Regulations 23 and 24 set out transitional arrangements for schemes providing non-money purchase benefits which the trustees or managers of the scheme had treated as money purchase benefits, but which were not affected by the Supreme Court's judgment in *Bridge Trustees*, where a relevant event occurred before the appointed day.

Part 8 makes supplementary, consequential and transitional arrangements in relation to revaluation, indexation and preservation of benefits. Regulation 25 makes transitional arrangements where affected benefits have before the appointed day been revalued by the application of notional interest. Regulation 26 makes transitional arrangements for schemes which before the appointed day began to provide non-indexed pensions derived from affected benefits. Regulation 27 makes consequential amendments to the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (S.I. 1991/167).

Part 9 provides transitional arrangements for calculating transfer values relating to cash balance benefits which were treated as money purchase benefits. Regulation 32 also makes supplementary amendments to the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) to provide for calculation of transfer values in relation to cash balance benefit after the appointed day.

Part 10 makes transitional provision for members of schemes who have acquired a right to a cash transfer sum or contribution refund under Chapter 5 of Part 4 of the 1993 Act, where the member's benefits were treated as money purchase benefits before the appointed day. Regulation 35 also amends the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 (S.I. 2006/33).

Part 11 makes transitional provision for cases where a scheme was treated as a money purchase scheme and a payment of surplus funds was made to the employer before the appointed day without first complying with the conditions specified in section 37 or 76 of the 1995 Act.

Part 12 modifies the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 1996/1715) for transitional purposes in cases where trustees or managers of a scheme have treated the scheme as if it were a money purchase scheme.

Part 13 provides transitional, consequential and supplementary arrangements for schemes involved with the PPF. Regulation 43 provides for a scheme treated as a money purchase scheme to be ineligible for the PPF in relation to periods before 1st April 2015. Regulation 44 validates valuations etc made before the appointed day. Regulation 47 makes transitional provision in relation to levy calculations covering periods before the appointed day. Regulations 45, 46, 48 and 49 provide transitional arrangements for schemes which have been treated as money purchase schemes, or schemes with affected benefits, in relation to periods after the appointed day. Regulations 51 to 57 validate the treatment of affected benefits as money purchase benefits in relation to periods before the appointed day, and also permit those benefits to be discharged as money purchase benefits after the appointed day where specified conditions are met.

Regulation 58 amends the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) for transitional purposes, to provide for schemes previously treated as money purchase schemes which become eligible schemes. Regulations 59 and 60 make consequential and supplementary amendments to the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670), which in turn modify Schedule 7 to the Pensions Act 2004 ("the 2004 Act"). Regulation 61 makes consequential and supplementary amendments to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I. 2005/669).

Part 14 sets out transitional arrangements in relation to Part 3 of the 2004 Act. Regulation 63 deals with schemes which are not money purchase schemes but were treated as such before the appointed day. Regulation 64 makes provision for schemes providing non-money purchase benefits which were before the appointed day treated as money purchase benefits. Regulations 65 to 69 provide transitional arrangements, including modification of Part 3 of that Act and of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377), for schemes treated as money purchase schemes before the appointed day.

Part 15 makes transitional provision in relation to the Financial Assistance Scheme. Regulation 71 provides that schemes treated as money purchase schemes are not qualifying schemes for the purposes of the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986). Regulation 72 ensures that decisions or actions made in relation to eligible schemes before the appointed day do not have to be revisited.

Part 16 makes transitional modifications and consequential and supplementary amendments to the Equality Act (Sex Equality Rule) (Exceptions) Regulations 2010 (S.I. 2010/2132) in relation to affected benefits.

Part 17 provides transitional arrangements in relation to pension sharing activity before the appointed day.

Part 18 makes transitional provision for schemes operating across borders which have been treated as money purchase schemes before the appointed day, but will not be money purchase schemes on or after that day.

Part 19 covers disclosure of information in relation to benefits and schemes which were treated as money purchase before the appointed day. Regulation 78 disapplies specified provisions of the Occupational Pension Schemes (Disclosure) Regulations 1996 (S.I.1996/1655) and the

Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) (“the Disclosure Regulations”) in relation to periods before the appointed day, so as to ensure that trustees or managers of schemes are not required to provide information in relation to a scheme or benefits treated as money purchase. Regulation 79 makes consequential and supplementary amendments to the Disclosure Regulations.

An assessment of the impact of this legislation on the private sector and civil society organisations has been made. A copy of this impact assessment is available in the libraries of both Houses of Parliament and alongside this instrument on www.legislation.gov.uk. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA.

© Crown copyright 2014

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.