Department for Work & Pensions

# Money purchase benefits in pensions law: guidance on recent changes to legislation

November 2014

# Contents

# Chapter One
# Background

## 1.1 Money purchase benefits

1. The term "money purchase benefits" is fundamental to pensions law. It is defined in[1] and used throughout pensions legislation. The law treats money purchase benefits differently from other benefits such as those offered by final salary or average salary schemes. The regulatory framework to protect members of occupational pension schemes is built on the understanding that money purchase benefits cannot develop a funding deficit. Occupational pension schemes that provide benefits which fall outside the meaning of "money purchase benefits" are subject to a range of provisions in law to protect members with these benefits against the risk that their scheme is not able to meet the benefits promised or guaranteed by the scheme. These provisions do not apply to money purchase benefits.

## 1.2 Supreme Court judgment

1. The Supreme Court judgment in Bridge Trustees *v* Houldsworth and another (2011)[2] (referred to as the judgment in *Bridge* in this guidance) decided that certain benefits could be considered money purchase benefits even though it was possible for them to develop funding deficits. This led to uncertainty for trustees and managers, and others about what type of pension arrangements fell within the meaning of money purchase benefits.

## 1.3 Changes in the law

1. Section 29 of the Pensions Act 2011 which came into force on 24 July 2014 (with retrospective effect to 1 January 1997) clarifies the definition of money purchase benefits to remove this uncertainty. It does this by inserting a new section 181B into the Pension Schemes Act 1993 (and new section 99A into the Pensions Act 2008). The effect is that for a benefit to be a money purchase benefit, the amount or rate of the benefit must be calculated only by reference to the scheme's assets which,

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[1] Section 181(1) of the Pension Schemes Act 1993, section 99 of the Pensions Act 2008, and paragraph 1(2) of Schedule 10A to the Building Societies Act 1986, as amended by section 29 of the Pensions Act 2011.

[2] Houldsworth and another *v* Bridge Trustees Limited and another and Secretary of State for Work and Pensions [2011] UKSC 42.

because of the nature of the calculation, must necessarily suffice to provide the benefit. There is no possibility of a funding shortfall for a money purchase benefit (in the absence of fraud or error) because whatever the amount or rate of the benefit is, will equate to the scheme's assets available for the provision of that benefit. An occupational pension scheme may also provide money purchase benefits where, under the scheme, contributions made by or on behalf of the member are paid towards an insurance policy, and, there is a promise under the scheme that the member will be entitled to the proceeds of that insurance policy, with no other promise under the scheme itself.

2. Where a scheme provides benefits that are guaranteed or subject to a promise, the calculation of the benefit must take that guarantee or promise into account. These are not money purchase benefits, as the scheme may not necessarily have sufficient assets to fully fund the guaranteed or promised benefits. Examples of this are a guaranteed investment return, a guarantee that the contributions will not fall in value once paid to the scheme, or a promise under the scheme as to the amount or value of the member's benefit on retirement (including an annuity rate or actuarial conversion factors guaranteed in advance of taking the benefit). The regulatory framework protects scheme members with benefits subject to a guarantee or promise in a number of ways. Schemes need to be sufficiently funded to meet their liabilities, employers are liable for a deficit in the scheme, and members have access to compensation where the employer becomes insolvent and the scheme is underfunded.

3. Section 29 of the Pensions Act 2011 ("section 29") takes effect back to 1 January 1997. Where in the past decisions have been made by schemes that are in keeping with the clarified definition, the retrospective effect of section 29 will ensure they remain valid, despite the fact that those decisions may be incompatible with the judgment in *Bridge*.

4. Where decisions have been made that are inconsistent with the clarified definition there is transitional provision in regulations that validates, in almost all cases, the past actions of trustees and managers of occupational pension schemes which provided certain benefits that are not money purchase benefits, but were treated as such before section 29 came into force. This means that trustees and managers will not need to unpick past decisions in relation to certain benefits affected by the judgment in *Bridge* or section 29.

5. Going forward, from 24 July 2014 these schemes must fully comply with the legislation as it applies to benefits that are not money purchase. The regulations contain various measures to ease affected schemes over specified transitional periods into the regulatory requirements.

6. There are two sets of regulations that implement Part 4 of the Pensions Act 2011 (that includes section 29), they are:-

   **The Pensions Act 2011(Transitional, Consequential and Supplementary Provisions) Regulations 2014** (the more detailed statutory instrument of 79 regulations that are referred to as the “Transitional Regulations” in this guidance), and

**The Pensions Act 2011(Consequential and Supplementary Provisions) Regulations 2014** (a much shorter statutory instrument of 4 regulations making amendments to other Acts referred to by its title in this guidance)

References to both sets of regulations are referred to as “the Regulations” in this guidance.

7. The Government’s response to the consultation on a draft version of the Regulations can be found at **https://www.gov.uk/government/consultations/definition-of-money-purchase-benefits-in-occupational-pension-schemes**

# Chapter Two
# Purpose of this guidance

## 2.1 Who is this guidance for?

1. This guidance is primarily for the trustees or managers of occupational pension schemes to help them identify benefits that might be affected by the recent changes in the law as a consequence of section 29 of the Pensions Act 2011 and the Regulations coming into force, and to understand what those changes mean in practice.
2. Trustees and managers of schemes may need to consider whether their scheme provides any benefits that fall outside the definition of "money purchase benefits" in section 29 which, before 24 July 2014, were treated as money purchase benefits. If so, trustees and managers need to take account of how the Transitional Regulations apply to their schemes. This guidance sets out the different circumstances in which the legislation may apply.

## 2.2 How should this guidance be used?

1. This guidance explains what each regulation in the Transitional Regulations does**.** It is intended to be a practical guide to help trustees and managers of schemes understand in general terms, the key details of the legislation. It complements the information that is contained in the explanatory memorandum which can be found by following this link.
   **http://www.legislation.gov.uk/uksi/2014/1711/memorandum/contents**
2. **This guidance has no legal force and is not an authoritative interpretation of the law, which is a matter for the Courts. You should not treat this guidance as a substitute for the legislation, which is available from http://www.legislation.gov.uk (please note that the site does not always incorporate amendments to legislation).**
3. Trustees or managers may need to seek professional advice on how the changes to pensions law apply to the particular circumstance of their scheme should they have concerns.
4. This guidance is correct as of November 2014.

# Chapter Three
# Key terms and benefit types

## 3.1 Key terms used

1. There are a number of key terms used throughout the Transitional Regulations, including the types of benefits provided by an occupational pension scheme to which the Regulations apply. These terms include types of benefit to which certain transitional measures apply. The terms used in this guidance are defined in regulation 1(4) of the Transitional Regulations and include:
2. **Appointed day** – this is the day section 29 of the Pensions Act 2011 (definition of money purchase benefits), came into force, on 24 July 2014.
3. **Cash balance underpin benefits** – these are cash balance benefits (as defined in regulation 2 of the Transitional Regulations – see paragraph 3.3) to which a member only has rights under a scheme if their amount exceeds a specified minimum ("a defined benefit minimum") promised to the member. A cash balance benefit is one of the two types of benefit which were considered in the judgment in *Bridge* (the other type is pensions in payment from the scheme derived from money purchase benefits).
4. **Defined benefit minimum** – is either:
    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 a scheme over the same period of a member's pensionable service as the member's right 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 a member is promised under the scheme that their rights to money purchase benefits or cash balance benefits will be at least equal to that specified minimum.
5. **Money purchase underpins benefits** – are money purchase benefits to which a member only has rights under a scheme if the amount of these benefits exceeds a defined benefit minimum promised to the member.
6. **Top-up benefit** – is a benefit the value or amount of which is greater than nil and to which a member only has rights under a scheme where the amount of the member's rights to money purchase benefits falls short of a defined benefit minimum promised to that member.
7. **Value or amount** – includes a rate of pension whether specified under the scheme or determined by reference to external criteria such as a statutory minimum requirement.

8. Note that Part 2 of the Transitional Regulations (subject to the transitional measures in those Regulations) clarifies the following in relation to money purchase underpin benefits and top-up benefits.
   a. Underpin arrangements: **-** a promise to a defined benefit minimum does not change the nature of a money purchase underpin benefit, as long as that defined benefit is of equal or lower value than the amount of the member’s right to money purchase underpin benefits at the time (“the relevant date”) a calculation is being done to compare the two for any purpose (regulation 4).
   b. Top-up arrangements: **-** where at the time (“the relevant date”) a comparison is being done of the amount of a member’s rights to money purchase benefits and the defined benefit minimum and the amount of the money purchase benefits is less than the defined benefit minimum so that the top-up benefit applies, the two benefits (i.e. the money purchase benefit and the top-up benefit) must be aggregated to form a single benefit that is not money purchase (regulation 5).
9. **The relevant date referred to for money purchase underpin arrangements** is the date at which the amount of the money purchase underpin benefits and the value of the defined benefit minimum are being compared for any purpose in order to determine which is greater (regulation 4(2)).
10. **The relevant date referred to for top-up benefit arrangements** is the date at which the amount of the member’s right to money purchase benefits and the amount of the top-up benefit is being calculated for any purpose (regulation 5(2)).
11. ‘**Any purpose’** is not defined in the Regulations and therefore takes its ordinary English meaning in the context of the legislation. ‘Any purpose’ under pensions legislation could include, for example, the calculation of the value or amount of the member’s benefits on transfer or retirement, actuarial valuations under the Pensions Act 2004 whether for scheme funding or Pension Protection Fund purposes, and calculation of a debt due on the employer under section 75 of the Pensions Act 1995 on the wind-up of a scheme, employer insolvency or departure of an employer from a multi-employer scheme.

# 3.2 Benefit types

1. Trustees or managers of occupational pension schemes will need to consider if any of the benefits their schemes provide are affected by both the judgment in *Bridge* and/or the subsequent changes in law under section 29 and the Regulations. The majority of schemes affected are likely to be hybrid schemes, that is schemes that provide both money purchase and non-money purchase benefits, and so will be already subject to regulatory measures to the extent that they provide benefits that are not money purchase and these benefits have always been treated as such. The main types of benefits affected here (“affected benefits”) (are described in detail at 3.3, 3.4 and 3.5 below:
   - cash balance benefits;

- money purchase underpin benefits, cash balance underpin benefits and top-up benefits;
- pensions derived from cash balance benefits, money purchase underpin benefits, cash balance underpin benefits, top-up benefits or money purchase benefits.

2. The Regulations provide transitional measures for schemes that have treated as money purchase benefits affected by section 29 or the judgment in *Bridge* that are not money purchase, i.e. cash balance benefits or pensions in payment from the scheme derived from cash balance or money purchase benefits. They also provide for money purchase underpin benefits and top-up benefits where the defined benefit minimum exceeded the money purchase underpin benefit or a top-up benefit was applied, and which were treated as money purchase before 24 July 2014.

# 3.3 Cash balance benefit

1. A "cash balance benefit" in the Transitional Regulations is a pension arrangement where a member builds up a pot of money from contributions made by them and often also by their employer. Under the scheme there is a promise of some type about the amount of money in the pot (for example, a guaranteed investment return) but no promise about the amount or rate of pension a member can expect to receive. The pot can be used by the member to buy an insurance policy which provides a regular income in retirement known as an annuity, or converted within the scheme to provide a pension from scheme funds (a scheme pension), often referred to as an internal annuity.
2. The meaning of a 'cash balance benefit' for the purposes of the Regulations is set out in regulation 2 of the Transitional Regulations. (This is based on the similar definition in section 51ZB of the Pensions Act 1995)
3. Trustees and managers of schemes will need to consider whether there are any benefits that fall within this definition in their scheme which they have, before 24 July 2014, treated as money purchase benefits, and if so take account of how the Transitional Regulations makes transitional and other provisions in various circumstances described under the subject headings in this guidance.
4. Note that cash balance benefits are not money purchase in pensions legislation, but for certain tax legislation cash balance benefits are 'other money purchase benefits'. The Regulations only deal with pensions legislation.

# 3.4 Money purchase underpin benefits, cash balance underpin benefits and top-up benefits

## Money purchase underpin benefits

1. A money purchase underpin benefit is a pension arrangement where the member has, under a scheme, a right to the greater of: money purchase benefits; or benefits which are not money purchase (“the defined benefit minimum”) that accrue at the same time as the money purchase benefits i.e. non-money purchase benefits calculated by reference to, for example, the member’s service or salary. The existence of a promise (or guarantee) to a defined benefit minimum in relation to money purchase underpin benefits does not prevent a benefit which otherwise qualifies as a money purchase benefit from being a money purchase benefit. This is as long as the value of that money purchase underpin benefit is equal or greater than the defined benefit minimum at the relevant date.
2. The relevant date is any time at which a comparison is being done (for any purpose) to determine the higher of the amount of the money purchase underpin benefits and the value of a defined benefit minimum promised under the scheme.

## Cash balance underpin benefits

3. The Regulations make certain transitional provisions for schemes that have, before the appointed day, treated cash balance underpin benefits (i.e. cash balance benefits that accrued at the same time as other benefits that are not money purchase) as money purchase underpin benefits.

## Top-up benefits

4. A top-up benefit arrangement is where a member has, under the scheme, rights to a benefit that tops-up to a pre-set level or value (“the defined benefit minimum”) a money purchase benefit if there is a shortfall between the money purchase benefit and that pre-set level or amount at the relevant date.
5. Where at the relevant date, a member has rights to money purchase benefits the amount of which is less than a defined benefit minimum promised under the scheme and a top-up benefit, both benefits must be aggregated to form a single non-money purchase benefit.
6. The relevant date is any time at which the shortfall between the money purchase benefits and the value of the top-up benefits promised under the scheme is being calculated for any purpose.
7. The Transitional Regulations make certain transitional and other provisions for schemes that have treated a top-up benefit, where it has been applied to a defined benefit minimum, as money purchase before 24 July 2014.

8. Note that top-up and underpin arrangements are sometimes generally referred to outside legislation as hybrid benefits. The use of hybrid scheme in this document refers to schemes offering both money purchase and non-money purchase benefits. ‘Hybrid benefits’ in so far as they fall within the Regulations are underpin benefits and top-up benefits.

# 3.5 Pensions derived from affected benefits or money purchase benefits.

1. These are pensions paid from the scheme derived from any of the affected benefits or money purchase benefits. The pensions are not money purchase benefits, because the scheme has promised a rate of pension which must be funded by the scheme. Transitional Regulations contain transitional and other provisions for those schemes that have treated these pensions before 24 July 2014 as money purchase benefits.

# Chapter Four
# How do the changes affect protected rights?

## 4.1 Protected rights

1. Until 6 April 2012, contracting out of the State Second Pension was allowed on a money purchase basis. Scheme members who were contracted-out paid standard rate National Insurance contributions but received a rebate. This rebate was invested as a protected right money purchase benefit to provide a money purchase pension as an alternative to the State Second Pension.

## 4.2 Schemes which provided protected rights as cash balance benefits etc

1. Some schemes that contracted-out in this way held these protected rights as cash balance money purchase underpin benefits and top-up benefits. The Transitional Regulations provide measures to validate the past actions of certain schemes that before the appointed day were contracted-out of state pensions under (repealed) section 9(3) of the Pension Schemes Act 1993. These are schemes which provided, in relation to a member's pensionable service under the scheme, protected rights in the form of cash balance benefits, a defined benefit minimum (in relation to money purchase or cash balance underpin benefits), or top-up benefits ("affected benefits"). Protected rights in this regulation refers to a member's rights to money purchase benefits under a scheme and has the same meaning as in (repealed) section 10(1) of the Pension Schemes Act 1993.
2. Regulation 7(2) of the Transitional Regulations validates the treatment of the affected benefits as money purchase benefits in the certification of a contracted-out scheme under Part III of the Pension Schemes Act 1993 and regulations made under that Part. A contracting-out certificate was required (until they were cancelled with prospective effect on 6 April 2012) for employers to be able to deduct and pay National Insurance contributions at a reduced rate for employees in contracted-out schemes.

# Chapter Five
# Modification of schemes

1. The rules of most occupational pension schemes contain a power of amendment which allows them to be modified so as to replace or convert a right or entitlement to one type of benefit, with another benefit. When trustees or scheme managers modify non-money purchase benefits the law requires certain conditions, including in some cases the consent of scheme members before making the modification, but this is not necessary for a money purchase benefit. This is provided the value of the money purchase benefit once modified is not less than it was before.

## 5.1 The subsisting rights provisions

1. Regulation 8 applies where, before the appointed day, benefits that are not money purchase benefits have been converted into money purchase benefits without the prior consent of scheme members in accordance with section 67 of the Pensions Act 1995. Where the benefits so converted were benefits affected by the clarified definition of 'money purchase benefits', regulation 8 'validates' a failure to obtain consent, provided that the other requirements in the Pensions Act 1995 relating to trustee approval and reporting, and actuarial equivalence, have been satisfied. The affected benefits are cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) and top-up benefits. In these cases, the modifications have effect as if a member's rights or entitlements to any of the affected benefits were rights or entitlements to money purchase benefits.

## 5.2 Money purchase underpin benefits and top-up benefits

1. The Transitional Regulations also include provisions covering periods after the appointed day. This is in respect of changes which could adversely affect the non-money purchase part of an underpin benefit or top-up benefit arrangement. The nature of these benefits is that their status as either money purchase or non-money purchase will not be clear until the point at which they are paid. Therefore, in order to protect members, the provisions specify that a change which could have an adverse affect on these benefits will be treated as a change which is subject to the requirement that the value of the benefit once changed is not less than it was before.
2. Regulation 9 applies on or after the appointed day to scheme modifications involving money purchase underpin benefits, or money purchase benefits subject to a contingent promise that a top-up benefit will be paid if the money purchase benefits

falls short of a defined benefit minimum promised to the member. Such modifications are to be treated as detrimental modifications for the purposes of section 67A of the Pensions Act 1995 where it adversely affects a contingent right to a defined benefit minimum or a top-up benefit. In these cases section 67A is modified to require employers or trustees wishing to make a detrimental modification to seek the prior consent of the affected members, or to comply with actuarial equivalence requirements. As regulation 9 applies from the appointed day, the definitions of “defined benefit minimum” and “top-up benefit” are those set out in Part 2 of the Transitional Regulations.

# Chapter Six
# What happens if a scheme is winding up?

## 6.1 Winding up and the priority order

1. Winding up of an occupational pension scheme means terminating the scheme and can happen when, for example, the sponsoring employer can no longer pay its contributions because it is insolvent. The trustees or managers of the scheme are responsible for dealing with the way the scheme assets are distributed.
2. When an occupational pension scheme begins to wind up, it does so in accordance with the scheme rules unless there are insufficient assets to buy out all the benefits under the scheme with an insurance provider. In that case, section 73 of the Pensions Act 1995 sets out the priority order according to which the scheme assets must be applied towards the liabilities of the scheme. Trustees and managers should be aware that section 73 of the Pensions Act 1995 has been extensively amended and modified in subsequent legislation, and that it is the date upon which the scheme begins to wind up which determines which version of the priority order in section 73 applies.

## 6.2 Schemes treated as money purchase schemes

1. The Transitional Regulations provide protection for schemes treated as money purchase schemes where winding up started before the appointed day, whether or not winding up is completed by this date. Regulations 11 and 13 apply to schemes which have been treated by the trustees or managers as money purchase schemes and may be affected by the coming into force of the clarified definition. These two regulations (and others dealing with such schemes) only cover cash balance benefits and pensions derived from money purchase benefits, and not defined benefit minima (in relation to money purchase benefits) or top-up benefits. This is because the definition of “money purchase scheme” in section 181(1) of the Pensions Act 1993 excludes a scheme which “may” provide non-money purchase benefits and therefore these schemes could not, in accordance with the law before the clarified definition of money purchase benefits came into force, have been treated as money purchase schemes.
2. Regulation 11 modifies section 73 of the Pensions Act 1995 (as it stood on the day the scheme began to wind up) so that it does not apply to schemes which have been treated as money purchase schemes that started to wind up before 6 April 2005. It

applies to a scheme that included cash balance benefits or pensions derived from these or from money purchase benefits, and no other benefits apart from money purchase benefits or death benefits.

3. Regulation 13 provides transitional measures for schemes with affected benefits that have been treated as money purchase schemes and which began to wind up on or after 6 April 2005 and before the appointed day. The regulation modifies section 73 so that it does not apply to cash balance schemes; schemes which provide money purchase benefits, cash balance benefits and no other benefits except death benefits; prescribed schemes, as well as money purchase schemes.

# 6.3 Non-money purchase schemes including benefits treated as money purchase

1. Regulations 12 and 14 apply to schemes that included affected benefits, but also other defined benefits, which have not been treated as money purchase schemes.
2. Regulation 12 provides that section 73 does not apply to affected benefits in a hybrid scheme (a scheme which includes both money purchase and non-money purchase benefits) where the scheme began to wind up before 6 April 2005. It applies where the scheme included any affected benefits and the trustees treated at least some of them as if they were money purchase benefits immediately before the scheme started to wind up. Regulation 13 of the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126), which excludes from section 73 “relevant money purchase benefits” in a hybrid scheme, is modified here for this purpose.
3. Regulation 14 provides transitional measures for schemes with affected benefits and benefits which are not money purchase benefits, and which began to wind up on or after 6 April 2005 and before the appointed day. Section 73 does not to apply to the affected benefits if the trustees or managers treated some or all of them as money purchase benefits immediately before the scheme began to wind up.

# 6.4 Winding up and the Pension Protection Fund assessment period

1. Regulations 15 to 17 apply where a scheme with affected benefits is involved with the Pension Protection Fund under Part 2 of the Pensions Act 2004.
2. Regulation 15 sets out the transitional measures for a scheme with affected benefits that winds up after an assessment period in respect of the Pension Protection Fund, if the assessment period began before the appointed day. Subject to a determination by the Board of the Pension Protection Fund, trustees or managers of the scheme have discretion to treat the affected benefits as money purchase benefits in winding up the

scheme under section 73, and to discharge them accordingly. This is provided that the trustees or managers had treated some or all of the affected benefits as money purchase benefits immediately before the assessment period began. Where the Board has determined under regulation 54 that any of the affected benefits should or should not be discharged as money purchase benefits, the trustees must wind up the scheme in accordance with that determination.

3. Regulation 16 makes transitional provision for a closed scheme that re-enters an assessment period, and exits to wind up. It applies where the scheme has been operating as a closed scheme following an assessment period which started before the appointed day. Where trustees or managers have treated any of the affected benefits as money purchase benefits, they must discharge these as money purchase benefits (unless the Board has directed otherwise) in winding up the scheme if the prescribed conditions are met. The conditions are that immediately before the scheme entered the first assessment period, the trustees or managers treated these benefits as money purchase, and continued to do so after that assessment.
4. Regulation 17 is a transitional measure for members of schemes that have made additional voluntary contributions that have been treated as giving rise to money purchase benefits. It applies to schemes that begin to wind up on or after the appointed day and which provide a pension which comes into payment on or before 1 April 2015 derived from additional voluntary contributions and affected benefits which have been treated as money purchase benefits. (A member with AVCs where the scheme began to wind up before the appointed day is protected under other regulations). In these circumstances the trustees or managers have discretion to discharge the pension as if it were money purchase benefits, if it is reasonable to do so, so that these benefits would be discharged outside the statutory priority order. This is subject to a direction by the Board under regulation 57(1) that the pension or part if it should or should not be discharged as money purchase benefits.

# Chapter Seven
# What happens if a scheme is deficient in assets?

## 7.1 Employer debt

1. Where an employer ceases to participate in an occupational pension with non-money purchase benefits there may be a shortfall between the scheme's assets and the cost of providing the pensions the scheme is required to pay. In order to provide protection for members the employer is required to make good this shortfall. This is known as the employer debt and the level of the debt is set at the cost of purchasing insurance policies or annuities which will cover all the pensions the scheme is required to pay.
2. If an employer wishes to leave a multi-employer pension scheme they will normally have to pay a debt in respect of their share of the scheme's liabilities. Similarly if the employer wishes to wind up a scheme or the scheme becomes insolvent a debt will normally become due. No debt will be due if the scheme involved only contains money purchase benefits.
3. Trustees or managers of schemes with affected benefits that have been treated as money purchase need to be aware that the application of employer debt legislation in section 75 of the Pensions Act 1995 may be affected by section 29 of the Pensions Act 2011 and the Transitional Regulations. Part 7 of these Regulations deals with the various circumstances in which this may apply.
4. Regulation 18 is the interpretation provision. Regulation 19 applies Part 7 to multi-employer schemes.

## 7.2 Periods before the appointed day

1. Regulations 20 to 22 provide transitional measures for schemes with affected benefits treated by the trustees or managers as money purchase benefits before the appointed day. These are schemes which, had the trustees or managers not treated the affected benefits as money purchase benefits, either would have had a debt due on an employer under section 75 or where a debt had been due, that amount may have been greater.
2. Regulation 20 dis-applies section 75 where, had the scheme not been treated as a money purchase scheme, a section 75 debt would have been due on an employer in relation to the scheme before the appointed day. It applies where the trustees or managers of a scheme that provided affected benefits (cash balance benefits or pensions derived from these or money purchase benefits), and no other benefits apart

from death benefits or money purchase benefits, treated the scheme as a money purchase scheme and did not apply section 75.

3. Regulation 21 makes transitional provision for schemes in cases where a debt became due on the employer under section 75 before the appointed day and the scheme included any of the affected benefits that were treated as money purchase benefits. As such, the scheme's assets and liabilities relating to these benefits were excluded from the section 75 debt calculation. The regulation validates the treatment of any of the affected benefits as money purchase benefits for the purposes of the debt calculation, and provides that section 29 and the Transitional Regulations do not require the trustees or managers to recalculate that past debt. The affected benefits are cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), top-up benefits and pensions derived from these benefits or from money purchase benefits.
4. Regulation 22 is for a multi-employer scheme with affected benefits. It applies where before the appointed day, an employer's share of the difference between the value of the scheme's assets and liabilities for the purposes of section 75 was determined as if the affected benefits were money purchase benefits and excluded from the calculation. The regulation validates the treatment of the affected benefits as money purchase benefits in such cases. An employer's share of the difference is an amount that is the employer's share of the shortfall between the value of the scheme's assets and liabilities as set out in regulation 18(1). Regulation 22 also applies to an employer's share of the difference under any arrangement entered into by an employer under the Occupational Pension Schemes (Employer Debt) Regulations 2005 (S.I. 2005/678) ("Employer Debt Regulations") when departing a multi-employer scheme.

# 7.3 Other schemes and benefits that should be considered

1. Regulation 23 provides transitional easements for schemes which provide non-money purchase benefits which are not directly affected by the Supreme Court judgment in *Bridge*, but which have been treated as if they were money purchase benefits before the appointed day. These benefits are not the affected benefits described elsewhere in Part 7 and to which regulations 20 to 22 apply. While these benefit structures were not money purchase before section 29 came into force, nor considered directly in the judgment in *Bridge*, section 29 may confirm beyond doubt that they were not money purchase benefits. This category includes an annuity rate or rate of actuarial conversion promised in advance of benefits coming into payment, and may include other types of benefit structure.
2. Regulation 23 applies in three cases where benefits not affected by section 29 were treated before the appointed day as money purchase benefits. The first case is where a scheme which included benefits that are not money purchase benefits was treated as a money purchase scheme and as such, the trustees or managers did not treat a

difference between the value of the scheme’s assets and the amount of its liabilities as a debt due on the employer under section 75 (regulation 23(2)). The second case is where benefits that were not money purchase benefits were excluded from the calculation of a section 75 debt due on the employer (regulation 23(3)). The third case is where an employer’s share of the difference, if any, of a shortfall between the scheme’s assets and liabilities was determined as if benefits that were not money purchase benefits, were money purchase benefits (regulation 23(4)).

3. In these prescribed cases, the trustees or managers of the scheme must secure a valuation of the scheme’s assets and liabilities, calculated in accordance with regulation 5 of the Employer Debt Regulations, as soon as possible after the appointed day. Where the value of the scheme’s assets is less than the scheme’s liabilities, the trustees or managers must treat the difference as a section 75 debt due on the employer and designate a time to impose it on the employer.
4. The requirement to value, calculate and impose a section 75 debt on the employer in regulation 23 does not apply to schemes which are on-going, provided that they are adequately funded or have in place a recovery plan.
5. Where the trustees or managers of a scheme calculate a section 75 debt and impose it, or the scheme meets the statutory funding objective or has in force a recovery plan as prescribed in regulation 23, section 29 and the Transitional Regulations do not require the scheme to recalculate a debt that was due or calculate a debt that would have become due from the employer any time before the appointed day.
6. Regulation 24 provides that a scheme which would otherwise be required to calculate, under regulation 23, a debt due on the employer before the appointed day, would not have to do so if the employer in relation to the scheme is, or all employers in a multi-employer scheme are, insolvent.

# Chapter Eight
# How will benefits be revalued, indexed and preserved?

## 8.1 Revaluing member benefits

1. Revaluation provisions provide a measure of inflation protection for members who leave a pension scheme before reaching its normal pension age. Different requirements apply depending on whether the benefits are money purchase or not. For money purchase benefits the legislation simply requires the inclusion of investment returns, rather than any formula linked to inflation as is the case with the default (final salary) method for non-money purchase benefits. Where a scheme has put into payment benefits which have been re-valued in a way which is incompatible with the definition of money purchase benefits found in section 29 of the Pensions Act 2011, trustees or managers of schemes need be aware of the transitional measures in Part 8 of the Transitional Regulations. Part 8 means that trustees or managers may not have to revisit calculations made prior to the appointed day.

## 8.2 The “cash balance method”

1. The Pensions Act 2011(Consequential and Supplementary Provisions) Regulations 2014 amends section 84 and Schedule 3 to the Pension Schemes Act 1993 to provide an alternative method for trustees or managers to revalue cash balance benefits not based on final salary that accrue after the appointed day. This new “cash balance method” may be used where the trustees think it appropriate to do so rather than using the final salary method (which remains appropriate for final salary cash balance schemes). The method allows the sum available for a cash balance benefit for a deferred member to be re-valued by any method which is applied to the benefits of active members.
2. In regulation 3 of these Regulations the insertion of new subsection (3A) of section 84 makes provision for benefits which are attributable to pensionable service falling after the appointed day. New subsection (3B) of section 84 provides for benefits attributable to pensionable service falling after the appointed day when some service was before and some after that date.

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

1. Regulation 25 of the Transitional Regulations makes similar transitional arrangements in relation to affected benefits treated as money purchase benefits in respect of pensionable service before the appointed day.
2. Trustees or managers have discretion to revalue affected benefits attributable to pensionable service before the appointed day, using the money purchase method. The money purchase method requires the trustees to apply investment yield and bonuses arising from contributions paid by and on behalf of the member towards the provision of benefits, in the same way that they would have applied had the member not left pensionable service. This regulation extends the definition of the money purchase method, for this period and this purpose only, to include notional as well as actual investment returns.

# 8.4 Indexation of cash balance benefits etc: pensionable service before the appointed day

1. Regulation 26 makes transitional arrangements for schemes which, before the appointed day, provided non-indexed pensions derived from affected benefits which have been treated as money purchase where the scheme rules do not require the pension to be: increased each year or to be increased at a rate below that required by section 51 of the 1995 Act. In these cases, the regulation dis-applies the requirement in section 51 of the Pensions Act 1995 to index pensions put into payment before the appointed day, where the pension is derived from affected benefits. These are cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) and top-up benefits which have been treated as money purchase benefits.
2. The transitional arrangements apply if the:
    - pensionable service in relation to which the benefits accrued was not contracted-out employment; and
    - the scheme did not require the pension to be increased annually or the required increase was below the rate required by section 51.
3. Note that indexation is not necessary for money purchase benefits put into payment after 6 April 2005, or to most cash balance benefits put into payment after 3 January 2012.

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

1. Regulation 27 makes amendments to the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (S.I. 1991/167) to clarify that the uniform accrual requirements in section 74(6) of the Pension Schemes Act 1993 do not apply to money purchase benefits.
2. It also amends the wording of regulation 10 of these Regulations to make it clear that trustees should take actuarial advice in calculating any scheme pension derived from money purchase benefits rather than when calculating the money purchase benefits themselves.

# 8.6 Amendment of the Occupational Pension Schemes (Revaluation) Regulations 1991

1. Regulation 28 makes a consequential amendment to the Occupational Pension Schemes (Revaluation) Regulations 1991 (S.I. 1991/168) to clarify the meaning of a hybrid benefit where there is a comparison between two benefits that accrue over the same period of a member's pensionable service.

# Chapter Nine
# How will the transfer of benefits not yet in payment be affected?

## 9.1 Transfers

1. Members who leave a scheme before the normal pension age may transfer the value of their rights in that scheme to another pension scheme or an insurance provider. Usually the member must be more than one year away from the scheme's normal pension age. The rules for transferring pension rights are different depending on whether the benefits are money purchase or not. Part 9 of the Transitional Regulations deals with transfers.

## 9.2 Cash equivalent of benefits treated as money purchase for transfers taking place before the appointed day

1. Where a member's pensionable service terminates before the appointed day and affected benefits have been treated as money purchase for transfer purposes, trustees or managers may need to consider the transitional arrangements in regulations 30 and 31.
2. These provide for calculating transfer values relating to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits) or top-up benefits treated as money purchase benefits in relation to pensionable service terminated before the appointed day. The treatment of these benefits as money purchase benefits is validated by these provisions, but the provisions do not affect a transfer value calculated on the basis that the benefits were not money purchase benefits.

## 9.3 Amendment of the Transfer Values Regulations

1. Where the transfer of benefits takes place after the appointed day, trustees or managers should consider the Occupational Pension Schemes (Transfer Values)

Regulations 1996 (S.I. 1996/1847). Regulation 32 amends these Regulations to provide for the calculation of transfer values in relation to cash balance benefits after the appointed day. Members who have benefits other than money purchase benefits will still be able to apply for a statement of entitlement and the guarantee period remains the same.

2. Regulations 7A and 7B of the Transfer Regulations (as amended by regulation 32 of the Transitional Regulations) now apply to salary-related benefits and final-salary cash balance benefits. For cash balance benefits which are not calculated by reference to final salary, the transfer value should be calculated in accordance with revised regulation 7C. This includes any notional interest, guarantees, bonuses or discretionary payments. However, the amendments to regulation 7D make it clear that the transfer value calculated in this way may be reduced in certain circumstances if the scheme is underfunded.

# Chapter Ten
# What will happen if a member leaves the scheme before becoming entitled to a preserved pension?

## 10.1 Early leavers: cash transfer sums and contribution refunds

1. Members who leave a scheme after more than three months but before two years have a choice of a cash transfer to another scheme or a refund of their own contributions. Section 36 of the Pensions Act 2014, which has not yet been commenced, will reduce the pensionable service required for a preserved pension to 30 days in cases where all of a member's benefits are money purchase benefits.
2. The transfer value for a money purchase benefit is based on the amount of the fund that the member has accrued, taking into account scheme rules and including any payments of interest which are due. For a non-money purchase benefit, the scheme has to arrange for the calculation, using actuarial advice, of a cash equivalent value of the pension rights, which may take into account the funding position of the scheme. Part 10 of the Transitional Regulations deals with cash transfer sums for members who leave a scheme without a preserved pension.

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

1. Regulation 34 provides transitional measures for scheme members who have a right to a cash transfer sum or contribution refund under Chapter 5 of Part 4 of the Pension Schemes Act 1993. This applies where the benefits in respect of these were affected benefits that have been treated by the trustees or managers of the scheme as money purchase benefits before the appointed day. The affected benefits are cash balance

benefits, a defined benefit minimum (in relation to money purchase underpin benefits) or top-up benefits. The treatment of these benefits as money purchase benefits is validated by these provisions, but the provisions do not affect a transfer value calculated on the basis that the benefits were not money purchase benefits. The validation only applies if the right to a cash transfer value arose before the appointed day.

# 10.3 Amendment of the Early Leavers Regulations

1. Regulation 35 makes similar amendments to the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006 (S.I. 2006/33) as were made to the Transfer Values Regulations.
2. For transfers which take place after the appointed day, the amendments to regulations 2A and 2B of the Early Leavers Regulations (which cover salary-related benefits) now exclude cash balance benefits unless those cash balance benefits are calculated by reference to final salary. Cash balance benefits which are not calculated by reference to final salary are covered by amended regulation 2C which requires the transfer value to be calculated at the current value of the fund, including any notional interest, guarantees, bonuses or discretionary payments. However, regulation 4 provides for the value to be reduced in certain circumstances if the scheme is underfunded.

# Chapter Eleven
# What about the payment of any surplus funds?

## 11.1 Payment of surplus funds to employers

1. Payments of surplus funds from an occupational pension scheme can be made to an employer providing that certain conditions are met. The conditions for a scheme to make these payments are more stringent for funds related to non-money purchase benefits than they are for money purchase benefits. For a non-money purchase fund the scheme must arrange an actuarial valuation to assess the affordability and amount of any payments. Part 11 of the Transitional Regulations deal with payment of surplus funds from schemes to employers.

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

1. Regulation 37 provides that section 37 (for schemes not in winding up) or 76 (for schemes in winding up) of the Pensions Act 1995 does not apply where trustees or managers have paid a surplus from scheme funds to employers before the appointed day, and have not complied with the requirements in those provisions because the scheme provided affected benefits and was treated as if it were a money purchase scheme.

## 11.3 Non money-purchase schemes providing cash balance benefits etc

1. Regulation 38 prevents an actuarial valuation made on the basis that some or all of the affected benefits were money purchase benefits from being used to satisfy

conditions for the payment of surplus funds to an employer after the appointed day. The affected benefits are cash balance benefits, a defined benefit minimum (in relation to money purchase or cash balance underpin benefits), top-up benefits and pensions derived from these. The requirements for an actuarial valuation in the payment of surplus to employers are set out in section 37(3)(a) of the Pensions Act 1995 and regulation 4(1) or (2) of the Occupational Pension Schemes (Payments to Employer) Regulations 2006 (S.I 2006/806). Regulation 39 also makes a consequential amendment to those Regulations.

# Chapter Twelve
# Will a scheme need to appoint an actuary?

## 12.1 Scheme administration

1. Occupational pension schemes with non-money purchase benefits are required to appoint an actuary but money purchase schemes are not. Part 12 of the Transitional Regulations modifies the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 2006/1715) for transitional purposes in cases where trustees or managers of a scheme have treated the scheme as if it were a money purchase scheme.

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

1. Regulation 40 makes provision for cases where the trustees or managers of a scheme with non-money purchase benefits have treated the scheme as if it were a money purchase scheme, and exempt from the section 47 of the Pensions Act 1995 requirement to appoint a scheme actuary. The regulation provides that such an exemption shall have effect as if the scheme were a money purchase scheme until 6 October 2014. The scheme must appoint an actuary by this date.

## 12.3 Scheme accounts

1. Regulation 41 provides that the Transitional Regulations and section 29 of the Pensions Act 2011 do not affect the validity of scheme accounts prepared before the appointed day if the scheme included money purchase and non-money purchase benefits, and the trustees or managers of a scheme have treated some of the non-money purchase benefits as if they were money purchase benefits in the preparation of the accounts.

# Chapter Thirteen
# How will the changes affect eligibility for the Pension Protection Fund and the levy?

## 13.1 The Pension Protection Fund

1. The Pension Protection Fund protects members with non-money purchase benefits if the sponsoring employer of their pension scheme has become insolvent on or after 6 April 2005. Part 13 of the Transitional Regulations and regulation 4 of the Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014 relate to the Pension Protection Fund.

## 13.2 Eligibility: schemes treated as money purchase schemes

1. In determining eligibility for the Pension Protection Fund, trustees or managers should consider regulation 43. This provides that a scheme treated as a money purchase scheme that would otherwise be eligible under Part 2 of the Pensions Act 2004 for entry into the Pension Protection Fund on the appointed day, is not an eligible scheme before 1 April 2015.
2. In addition such a scheme is not eligible at all if an employer in relation to the scheme is insolvent before 1 April 2015, or the scheme falls within regulation 2 of the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590). A scheme is also not eligible if the trustees or managers of the scheme enter into a legally enforceable agreement between the appointed day and 1 April 2015 to reduce the amount of any debt due under section 75 of the Pensions Act 1995 from the employer to the scheme.

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

1. Where a scheme has entered into a Pension Protection Fund assessment period before the appointed day the trustees or managers should be aware of regulation 44. This regulation validates decisions made by the Board of the Pension Protection Fund ('the Board'), and valuations and accounts prepared for the Board in relation to any period before the appointed day in respect of schemes with affected benefits. It dis-applies Part 4 of the Pensions Act 2011 and the Transitional Regulations in respect of these benefits before the appointed day.
2. Regulation 44 applies where the trustees or managers of the scheme have treated the affected benefits as if they were money purchase benefits and the scheme entered an assessment period (as described in section 132 of the Pensions Act 2004) before the appointed day. The affected benefits are cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), top-up benefits, and pensions derived from these benefits or from money purchase benefits.

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

1. Regulation 45 sets out when and how a scheme which becomes an eligible scheme on 1 April 2015 must provide to the Board of the Pension Protection Fund or the Pensions Regulator a valuation, to determine scheme under-funding for the purpose of calculating the risk-based pension protection levy under section 179 of the Pensions Act 2004 (often referred to as a 'section 179 valuation'). The trustees or managers must obtain and provide the Board with the first such valuation on or before 31 March 2015, and obtain any subsequent valuation within 3 years from this date. The relevant time (i.e. the date as at which the assets and liabilities of the scheme are calculated) for the purposes of the valuation must fall in the period from the appointed day to 31 March 2015.

# 13.5 Provision of information: schemes and benefits treated as money purchase

1. Regulation 46 requires trustees or managers of schemes which contain benefits which are not money purchase benefits, but have been treated as such, to inform the Regulator of this fact. This regulation also provides that the Board or the Pensions Regulator, on the Board's behalf, may direct the trustees or managers of a scheme to provide specified information relevant to the calculation of levies. This applies to schemes which provide affected benefits and are eligible for Pension Protection Fund entry on the appointed day. It also applies to schemes with affected benefits that were treated by the trustees or managers as money purchase schemes, and which would not be eligible for Pension Protection Fund entry under regulation 43 until 1 April 2015.

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

1. Regulation 47 provides that Part 4 of the Pensions Act 2011 (which includes section 29) and the Regulations do not affect valuations with a relevant time (i.e. the date as at which the assets and liabilities of the scheme are calculated) before the appointed day. Similarly, where levy calculations have been made and levy bills have been raised in relation to a financial year before 1 April 2015, the calculation or bill is not affected by the coming into force of this legislation. Trustees and managers are not required to repeat valuations etc in relation to a financial year before that date. Regulation 47 is subject to a direction by the Board or the Pensions Regulator on the Board's behalf, for the scheme to undertake an out-of-cycle valuation under regulation 49 - which may result in a levy increase in respect of a financial year beginning on or after 1 April 2015.

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

1. Regulation 48 makes provision for schemes that become eligible schemes on 1 April 2015 (by virtue of regulation 43(1)) to pay the administration levy and the pension

protection levy from that date. Late payment of the pension protection levy, as in other circumstances, may incur interest.

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

1. Regulation 49 provides that the Board may direct a scheme with affected benefits that is an eligible scheme on the appointed day to undertake a valuation under section 179 of the Pensions Act 2004. This discretion may be exercised by the Board in relation to a financial year beginning with 1 April 2015, 2016 and 2017, regardless of when the scheme's last valuation was undertaken. The Board may calculate or recalculate the pension protection levy based on this valuation, with payment due within 28 days of the scheme being notified. Trustees or managers should refer to the Pension Protection Fund website at [DN insert link] for information about how this discretion will be exercised.

# 13.9 Waiver of Fraud Compensation Levy: periods before the appointed day

1. Regulation 50 validates a waiver by the Board of the Pension Protection Fund of payment of any fraud compensation levy imposed under section 189 of the Pensions Act 2004 due before the appointed day, in respect of a scheme that has been treated as a money purchase scheme by the trustees or managers before that date.

# 13.10 Discharge of liabilities

1. Regulations 51 and 53 to 57 validate the treatment, and discharge of liabilities in respect of affected benefits as money purchase benefits in relation to periods before the appointed day, and after the appointed day where the specified conditions are met.
2. Regulation 51 gives the Board of the Pension Protection Fund discretion to discharge the cash equivalent of a member's rights to the benefits specified in regulation 30(1) as money purchase benefits, where such benefits were treated by the trustees or managers as if they were money purchase benefits.
3. Where the Board of the Pension Protection Fund or the trustees or managers of the scheme have discharged affected benefits as money purchase benefits before the appointed day under the provisions found in Part 2 of the Pensions Act 2004, regulation 53 validates this action.

4. Regulation 54 provides that where a scheme has entered an assessment period before the appointed day, the Board has discretion to discharge after this day any affected benefits as money purchase benefits. The discretion applies where the affected benefits have been treated as money purchase benefits by the trustees or managers immediately before the assessment period began, and it is reasonable to discharge them as money purchase under Part 2 of the Pensions Act 2004.
5. Regulation 56 gives the Board of the Pension Protection Fund discretion to discharge as money purchase benefits, a member's rights to a transfer payment or cash payment in respect of affected benefits, which have been treated as money purchase benefits before the assessment period.
6. Regulation 57 gives the Board of the Pension Protection Fund discretion to direct the trustees or managers of a scheme to discharge a member's pension in payment as money purchase benefits. The pension must be derived from additional voluntary contributions ("AVCs") and affected benefits and have been treated by the trustees or managers as money purchase benefits. The discretion applies where the pension derived from AVCs comes into payment on or before 1 April 2015.

# 13.11 Closed schemes transitional measures

1. Regulations 52 and 55 provide transitional measures for closed schemes with affected benefits. Where a scheme is in assessment before the appointed day and exits assessment to continue as a closed scheme, regulation 52 provides that the trustees or managers may continue to treat the affected benefits as money purchase benefits, unless the Board determines otherwise. Regulation 55 makes provision for the Board, where it assumes responsibility for a closed scheme, to discharge liabilities for the affected benefits which have been treated as money purchase before the appointed day, as money purchase benefits.

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

1. Regulation 58 makes consequential amendments to the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) for schemes which become eligible schemes on 1 April 2015.

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

1. Regulation 59 modifies the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670) ("Compensation Regulations") to provide that where a scheme does not make provision for payment of a survivor's pension upon the death of the member, there is no such compensation due from the Pension Protection Fund in respect of that member.

# 13.14 Amendment of the Pension Protection Fund (Compensation) Regulations 2005

1. Regulation 60 amends, with prospective effect, the Compensation Regulations, which modify Schedule 7 to the Pensions Act 2004. It provides for indexation and revaluation in respect of a member's rights to compensation where affected benefits have been treated as money purchase benefits, and provides a method of converting a cash balance benefit into a rate of compensation. The Board may also determine, having regard to the scheme's admissible rules and all the relevant circumstances, how much of the member's pensionable service should be treated as falling before or after the relevant dates in respect of indexation and revaluation requirements.

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

1. Regulation 61 makes consequential and supplementary amendments to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I. 2005/669) to reflect that Schedule 9 to the Pensions Act 2004 includes as reviewable matters a determination, direction or discharge by the Board of any of the affected benefits as money purchase benefits, or the failure to do so. Schedule 9 of the Pensions Act 2004 was amended by regulation 4 of the Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014 to include these matters as reviewable matters.

# Chapter Fourteen
# How will actuarial valuations for scheme funding purposes be affected?

1. The trustees or managers of schemes that provide non-money purchase benefits are required to obtain actuarial valuations of the assets and liabilities in respect of these benefits at least every three years. If the valuation shows a deficit, a recovery plan must be put in place to remedy the funding deficit. The Transitional Regulations allow a scheme that has not previously undertaken a valuation to be treated as a newly created scheme from the appointed day.

## 14.1 Application of Part 3 of the 2004 Act to schemes treated as money purchase

1. Part 14 of the Transitional Regulations relates to Part 3 of the Pensions Act 2004 on scheme funding. Part 3 does not apply to money purchase schemes and the approach here is to ‘validate’ actions in relation to any defined benefit scheme treated as money purchase before the appointed day. Regulation 63 dis-applies Part 3 of the Pensions Act 2004 in cases where schemes which are not money purchase schemes have been treated as such before the appointed day.

## 14.2 Actuarial valuations and reports, and provision of summary funding statement in relation to schemes treated as money purchase

1. Regulations 65 to 68 make transitional modifications to Part 3 of the Pensions Act 2004 and to the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (S.I. 2005/3377) for schemes treated as money purchase before the appointed day. Regulations 65 and 66 provide that the effective date of the scheme’s first actuarial valuation under section 224 of the Pensions Act 2004 must be within a year of the

appointed day, and that the scheme's first statement of funding principles, any recovery plan and schedule of contributions must be prepared within 15 months from this date. Regulation 67 requires that the trustees or managers of the scheme must provide members and beneficiaries with a summary funding statement within a reasonable period after receipt of the first actuarial valuation. Regulation 68 provides that the scheme's most recent schedule of payments before the appointed day prepared under section 87 of the Pensions Act 1995 continues to have effect until the first schedule of contributions under section 227 of the Pensions Act 2004 has been certified.

# 14.3 Application of Part 3 of the 2004 Act to schemes including benefits treated as money purchase benefits

1. Regulation 64 validates the treatment before the appointed day of schemes with benefits treated as if they were money purchase benefits for the purposes of Part 3 of the Pensions Act 2004. Regulation 69 provides that the scheme's first actuarial valuation after the appointed day must not be more than 3 years after the scheme's last such valuation, and first actuarial report after the appointed day must not be more than one year after the scheme's last such report.

# Chapter Fifteen
# Financial Assistance Scheme

## 15.1 Qualifying for the Financial Assistance Scheme

1. The Financial Assistance Scheme provides assistance for occupational pension schemes that are not money purchase and which began winding up underfunded before 1st April 2005. It is administered by the Pension Protection Fund. Part 15 of the Transitional Regulations makes transitional provision in relation to the Financial Assistance Scheme.

## 15.2 Schemes treated as money purchase schemes: non-qualifying schemes

1. Regulation 71 provides that a scheme treated as a money purchase scheme immediately before the scheme began winding up, which would otherwise be a qualifying scheme under regulation 9(1) of the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) (“FAS Regulations"), is not a qualifying scheme.

## 15.3 Qualifying schemes including benefits treated as money purchase benefits

1. Regulation 72 dis-applies Part 4 of the Pensions Act 2011 (which includes section 29) and the Transitional Regulations before the appointed day in relation to the discharge of affected benefits treated as money purchase benefits under section 135(4A)(f) of the Pensions Act 2004 (as modified by the FAS Regulations). Regulation 72 validates decisions made by the scheme manager (which is the Board of the Pension Protection Fund) before the appointed day. It also validates accounts obtained by the trustees or managers of schemes for the purpose of these valuations.

# Chapter Sixteen
# Equality

## 16.1 Actuarial Factors

1. Trustees or managers of schemes which apply different actuarial factors for men and women when converting affected benefits which have been treated as money purchase benefits to a rate of scheme pension, may need to be aware of the provisions in Part 16 of the transitional Regulations. Part 16 makes transitional modifications and consequential and supplementary amendments to equal treatment and equality legislation in relation to affected benefits provided by a scheme.

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

1. Regulation 73 retrospectively modifies regulation 15 of the Occupational Pension Schemes (Equal Treatment) Regulations 1995 (S.I. 1995/183). It validates the use of different actuarial factors for men and women in the treatment of affected benefits as money purchase benefits before 1 October 2010 (when these Regulations were revoked).

## 16.3 Retrospective modification and amendment of the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010

1. Regulation 74 modifies regulation 42(2)(c) of the Equality Act (Sex Equality Rule) (Exemptions) Regulations 2010 (S.I. 2010/2132) so that it has the same effect as regulation 73 in respect of periods after 1 October 2010 and before the appointed day for affected benefits treated as money purchase. Regulation 75 makes consequential amendments to these Regulations.

# Chapter Seventeen
# What about pensions sharing on divorce?

## 17.1 Pension Sharing

1. Where a couple are divorcing, or dissolving a civil partnership, the value of the pension rights are included as an asset in arriving at a financial settlement. An initial valuation is required to enable the couple to come to a financial settlement. The pension can either be shared, or its value can be offset against other assets. If a pension sharing order is granted, a second valuation takes place before the order is implemented. Money purchase benefits are calculated differently to non-money purchase benefits for the purposes of these valuations. Trustees or managers of schemes may need to consider Part 17 of the Transitional Regulations for pension sharing activity before the appointed day.

## 17.2 Valuations for the purposes of pension sharing etc: transitional arrangements

1. Regulation 76 validates a valuation of affected benefits as money purchase in respect of pension sharing arrangements before the appointed day. It provides that in the same or connected proceedings in relation to such pension sharing arrangements, a subsequent valuation after the appointed day may be made on the same basis as if the affected benefits were money purchase.

# Chapter Eighteen
# How will the changes affect cross-border schemes?

## 18.1 Requirements for cross-border schemes

1. Occupational pension schemes which are based in the UK are able to take contributions from European employers. There are different requirements for authorisation in relation to money purchase benefits and for non-money purchase benefits. Trustees or managers of schemes operating across borders with affected benefits which have been treated as money purchase schemes before the appointed day, may need to consider Part 18 of the Transitional Regulations.

## 18.2 Cross-border schemes treated as money purchase schemes

1. Regulation 77 makes transitional provision for schemes operating across borders with affected benefits which have been treated by the trustees or managers of the scheme as money purchase schemes before the appointed day. It validates applications for approval or authorisations made before the appointed day in respect of these schemes under Part 7 of the Pensions Act 2004 where they have been made in accordance with specified provisions in the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381).
2. Regulation 77(3) provides that where such schemes intend to accept contributions from European employers after the appointed day, they must, within a year from this day, further apply to the Pensions Regulator for authorisation or approval to operate as a cross-border scheme. The existing money purchase authorisation will remain valid until the Pensions Regulator either grants or refuses the fresh application.

# Chapter Nineteen
# What about the disclosure of information to scheme members?

## 19.1 Disclosure requirements

1. Trustees or managers of a scheme are required to give information to their members, the content of which can be different dependent on whether benefits are money purchase or not. The disclosure of information requirements can be found in the (revoked) Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (S.I. 1996/1655) and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734). Trustees or managers may need to consider Part 19 of the Transitional Regulations in relation to benefits and schemes which were treated as money purchase before the appointed day.

## 19.2 Benefits and schemes treated as money purchase before the appointed day

1. Regulation 78 dis-applies the specified provisions of the 1996 Regulations and 2013 Regulations before the appointed day. This regulation applies in cases where the trustees or managers of schemes with affected benefits have treated those benefits as money purchase and therefore not provided the information required under the legislation for non-money purchase benefits.

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

1. Regulation 79 makes consequential and supplementary amendments to the 2013 Regulations. It inserts new regulation 16A which requires trustees or managers to

provide at the member’s request, a statement of benefits for cash balance benefits in the manner prescribed under Schedule 6, as amended. Trustees or managers are also required to provide a member who has rights to cash balance benefits with information about the options, including any annuity options, available to the member under the scheme when they reach normal pension age.