

*Consultation draft*

*Draft Regulations laid before Parliament under section 33(3) of the Pensions Act 2011, for approval by resolution of each House of Parliament.*

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

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**2014 No.**

**PENSIONS**

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

*Made* - - - - - \*\*\*  
*Laid before Parliament* \*\*\*  
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**CONTENTS**

**PART 1**

1.	Citation, commencement and interpretation	5
2.	Meaning of “cash balance benefit”	6
3.	Application of Part 4 of the Act and these Regulations to the Imperial Home Décor Pension Scheme	7

**PART 2**

**Winding up**

4.	Schemes treated as money purchase schemes: winding up commencing before 6th April 2005	7
5.	Schemes providing benefits treated as money purchase benefits: winding up commencing before 6th April 2005	8
6.	Schemes treated as money purchase schemes: winding up commencing on or after 6th April 2005	8
7.	Schemes providing benefits treated as money purchase benefits: winding up commencing on or after 6th April 2005	9
8.	Schemes treated as money purchase schemes: winding up commencing on or after 28th July 2011 and completed before the appointed day	9
9.	Schemes providing benefits treated as money purchase benefits: winding up commencing on or after 28th July 2011 and completed before the appointed day	10
10.	Schemes winding up after an assessment period	11
11.	Closed schemes: further assessment periods	12

**PART 3**  
Deficiencies in the assets

12.	Interpretation	13
13.	Application of section 75 of the 1995 Act to schemes with benefits treated as money purchase benefits: relevant events on or after 6th April 1997 and before 28th July 2011	13
14.	Application of section 75 of the 1995 Act to schemes treated as money purchase schemes commencing winding up on or after 28th July 2011 and completing winding up before the appointed day	14
15.	Application of section 75 of the 1995 Act to schemes treated as money purchase schemes: period on or after 6th April 1997 until immediately before 28th July 2011	14
16.	Calculation of scheme liabilities and assets for a section 75 debt on or after 28th July 2011 until immediately before the appointed day	15
17.	Arrangements for multi-employer schemes in relation to periods on or before 27th July 2011	16
18.	Multi-employer schemes: arrangements on or after 28th July 2011 but before the appointed day	17
19.	Arrangements for multi-employers scheme approved by the Regulator: periods before the appointed day	19

**PART 4**  
Revaluation, indexation and preservation of benefits

20.	Amendment of the Pension Schemes Act 1993	19
21.	Revaluation of cash balance benefits: pensionable service before the appointed day	20
22.	Indexation of cash balance benefits: pensions in payment before the appointed day	21
23.	Amendment of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991	21

**PART 5**  
Transfers

24.	Interpretation	22
25.	Cash equivalent of cash balance benefits treated as money purchase benefits – transitional arrangements	22
26.	Statement of entitlement in relation to cash balance benefits treated as money purchase benefits: periods before the appointed day	23
27.–28.	Amendments to the Transfer Values Regulations	24

**PART 6**  
Early leavers: Cash Transfer Sums and Contribution Refunds

29.	Cash transfer sum: cash balance benefits treated as money purchase benefits	25
30.	Amendments to the Early Leavers Regulations	26

**PART 7**  
Payment of surplus funds to employer

31.	Interpretation	28
32.	Failure to comply with the requirements of section 37 or 76 of the 1995 Act: periods before 28th July 2011	28
33.	Failure to comply with the requirements of section 37 or 76 of the 1995 Act: periods after 27th July 2011	29
34.	Schemes subject to Part 3 of the 2004 Act providing cash balance benefits or pensions derived from money purchase benefits or cash balance benefits	29
35.	Amendments to the Payments to Employers Regulations	29

## PART 8

### Scheme Administration

36.	Modification of the Occupational Pension Schemes (Scheme Administration) Regulations 1996	30
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## PART 9

### The Pension Protection Fund

37.	Interpretation	30
38.	Eligibility: schemes treated as money purchase schemes	31
39.	Schemes in an assessment period before the appointed day: valuations to determine assets and protected liabilities	32
40.	Schemes which become eligible schemes: provision of valuations to determine scheme underfunding	32
41.	Provision of information	33
42.	Schemes with benefits treated as money purchase benefits: initial levy, administration levy and pension protection levies	34
43.	Schemes which become eligible schemes: administration levy and pension protection levies: periods after the appointed day	34
44.	Schemes with benefits which become non-money purchase: power to direct out-of-cycle valuations	34
45.	Waiver of Fraud Compensation Levy: periods before the appointed day	35
46.	Discharge of cash equivalent of benefits treated as money purchase	36
47.	Schemes continuing as closed schemes after an assessment period	36
48.	Discharge as money purchase liabilities: periods before the appointed day	36
49.	Discharge as money purchase liabilities: periods after the appointed day	37
50.	Closed schemes: Board's assumption of responsibility after the appointed day	37
51.	Discharge as money purchase benefits: scheme right to transfer payment or contribution refund	38
52.	Discharge of pensions in payment derived from additional voluntary contributions: periods after the appointed day	38
53.	Modification of the Pension Protection Fund (Entry Rules) Regulations 2005	39
54.	Amendments to the Pension Protection Fund (Compensation) Regulations	39
55.	Amendments to Schedule 9 of the 2004 Act (reviewable matters)	43
56.	Amendments to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005	43

## PART 10

### Scheme Funding

57.	Application of Part 3 of the 2004 Act to schemes treated as money purchase: periods before the appointed day	43
58.	Application of Part 3 of the 2004 Act to schemes providing benefits treated as money purchase benefits: periods before the appointed day	44
59.	Modification of Part 3 of the 2004 Act for schemes treated as money purchase schemes: periods on and after the appointed day	44
60.	Modification of the Scheme Funding Regulations for schemes treated as money purchase schemes: periods on and after the appointed day	44
61.	Provision of summary funding statement in relation to schemes treated as money purchase schemes: periods on and after the appointed day	45
62.	Schedule of payments in relation to schemes treated as money purchase periods: on and after the appointed day	45
63.	Application of Part 3 of the 2004 Act for schemes with benefits treated as money purchase: periods on or after the appointed day	45

## PART 11

### Financial Assistance Scheme

64.	Interpretation	46
65.	Schemes treated as money purchase schemes: non-qualifying schemes:	46
66.	Qualifying schemes with benefits treated as money purchase benefits	47

## PART 12

### Equality

67.	Amendment of the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010	48
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## PART 13

### Pension Sharing

68.	Valuations for the purposes of pension sharing etc: transitional arrangements	48
-----	---	----

## PART 14

### Cross-Border Schemes

69.	Cross-border schemes treated as money purchase schemes	49
-----	--	----

## PART 15

### Disclosure

70.	Benefits and schemes treated as money purchase before the appointed day	50
71.	Amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013	51

## PART 16

### Underpin and top-up benefits

72.	Interpretation	52
73.	Underpin benefits	52
74.	Top-up benefits	53

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 97(1), (2)(b) and (3)(c), 101AF(1), (3)(b) and (4)(b), 101I, 101L(1) and (2), 113(1), 153(2)(c), 181(1)(a) 182(2) and (3) and 183(1) of the Pension Schemes Act 1993, sections 10(3), 37(4)(a) to (c) and (e), 47(5), 73(6), (7) and (8)(a) and 124(1)(b) of the Pensions Act 1995, sections 23(1)(b), 26(1)(c), 30(1) and 83(1) and (4)(a) of the Welfare Reform and Pensions Act 1999, sections 126(1)(b) and (5), 135(4)(b)(ii), 138(10)(a), 146(1), 161(3)(b), 179(1) and (3), 189(11), 190(1) and (3), 206(2)(a) and (4), 207(1)(a) and (2), 232, 286(1) and (2), 315(2), (4) and (5), 318(1)(d) of, and paragraphs 20(7) and 33(1) of Schedule 7 to, the Pensions Act 2004, paragraph 5(2) of Schedule 7 to the Equality Act 2010(e) and sections 30(1) and (2), 31(1) 33(1) and (3) of the Pensions Act 2011.

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

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 33(3) of the Pensions Act 2011.

## PART 1

### Citation, commencement and interpretation

**1.**—(1) These Regulations may be cited as the Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014.

(2) These Regulations come into force on 6th April 2014.

(3) In these Regulations—

“the Act” means the Pensions Act 2011(f);

“the 1993 Act” means the Pension Schemes Act 1993(g);

“the 1995 Act” means the Pensions Act 1995(h);

“the 1999 Act” means the Welfare Reform and Pensions Act 1999(i);

“the 2004 Act” means the Pensions Act 2004(j);

“the 2008 Act” means the Pensions Act 2008(k)

“the applicable rules” has the same meaning as in section 94(2) (right to cash equivalent)(l) of the 1993 Act;

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

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(a) Section 181(1) is cited for the meaning it gives to “prescribe” and “regulations”.

(b) Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(c) Section 26(1) is cited for the meaning it gives to “prescribed”.

(d) Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”.

(e) 2010 c. 15.

(f) 2011 c. 19.

(g) 1993 c. 48.

(h) 1995 c. 26.

(i) 1999 c. 30.

(j) 2004 c. 35.

(k) 2008 c. 30.

(l) Section 94(2) was substituted by section 319(1) of and paragraph 13 of Schedule 12 to the Pensions Act 2004 (c. 35) (“the 2004 Act”).

“assessment period” has the same meaning as in section 132(2) to (5) (assessment periods) of the 2004 Act;

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

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

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

“the relevant provisions” means—

- (a) Part 2 (the Board of the Pension Protection Fund) (with the exception of section 172(6) (relationship with fraud compensation regime)) of the 2004 Act and any regulations made under that Part;
- (b) Part 3 (proceedings and delegation etc) of Schedule 5 and Schedule 7 (pension compensation) to the 2004 Act and any regulations 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 2008 Act and any regulations or order 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;

“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations 2005(c) and

“scheme pension” means a pension in payment under an occupational pension scheme, and does not include a pension which is a money purchase benefit by virtue of section 181B(3) (money purchase benefits: supplementary) of the 1993 Act(d).

(4) Where by virtue of paragraph 1 of Schedule 2 (sectionalised multi-employer schemes) to the Scheme Funding Regulations, Part 3 (scheme funding) of the 2004 Act applies as if a section of a scheme were a separate scheme, these Regulations apply as if references to a scheme were to a section of the scheme.

### 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 the rate of the pension is calculated by reference to a sum of money (“the available sum”) which is available under the scheme for the provision of benefits 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 the pension to be provided.

(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

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(a) Section 93A was inserted by section 153 of the Pensions Act 1995 (c. 26) (“the 1995 Act”) and was amended by section 84(1) of and paragraph 31 of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30) (“the 1999 Act”).

(b) Section 94(1) was amended by section 154(1) to (3) and (5) of the 1995 Act.

(c) S.I. 2005/3377.

(d) Section 181B was inserted by section 29(2) of the Pensions Act 2011 (c. 19) (“the Act”).

- (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 a benefit payable in respect of a deceased member will be a particular proportion of the rate or 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.

### **Application of Part 4 of the Act and these Regulations to the Imperial Home Décor Pension Scheme**

3. No provision of Part 4 of the Act or of these Regulations applies to or in relation to the Imperial Home Décor Scheme.

## **PART 2**

### **Winding up**

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

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

- (a) 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 would be or would have been required to wind up in accordance with section 73 (preferential liabilities on winding up)(a) of the 1995 Act.

(2) Where the conditions in paragraph (3) are met in relation to the scheme, section 73 of the 1995 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) cash balance benefits;
- (b) money purchase benefits;
- (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)—

- (a) “cash balance benefit” has the same meaning as in section 51ZB.”

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

- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
- (b) the scheme provided no benefits other than those specified in paragraph (a) except money purchase benefits or death benefits;

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

- (c) the trustees or managers of the scheme treated the scheme as a money purchase scheme and for that reason did not wind up or are not winding up the scheme in accordance with section 73 of the 1995 Act.

**Schemes providing benefits treated as money purchase benefits: winding up commencing before 6th April 2005**

5.—(1) This regulation applies where an occupational pension scheme to which section 73 applies or applied 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 (hybrid schemes)(a) of the Occupational Pension Schemes (Winding Up) Regulations 1996(b) has effect in relation to the scheme as if, after paragraph (2) there were inserted—

“(2A) In paragraph (2) “relevant money purchase benefits” includes—

- (a) money purchase benefits; and
- (b) cash balance benefits and pensions derived from cash balance benefits or money purchase benefits, which for the purposes of section 73, the trustees or managers of the scheme treated as if they were money purchase benefits.”

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

- (a) the scheme provided cash balance benefits or scheme pensions derived from cash balance benefits or money purchase benefits; and
- (b) the trustees or managers of the scheme—
  - (i) treated some or all of the benefits specified in sub-paragraph (a) as if they were money purchase benefits; and
  - (ii) for that reason excluded the assets and the liabilities relating to those benefits treated as money purchase from the assets and liabilities of the scheme for the purpose of determining the order in which the assets should be applied under section 73 of the 1995 Act.

**Schemes treated as money purchase schemes: winding up commencing on or after 6th April 2005**

6.—(1) This regulation applies to an occupational pension scheme which began to wind up on or after 6th April 2005 but before 28th July 2011 (whether or not winding up has been completed by the appointed day).

(2) Where the conditions specified in regulation 5(3) are met in relation to the scheme, section 73 (preferential liabilities on winding up)(c) of the 1995 Act 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.

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(a) Regulation 13 (apart from paragraph (2)(a) (additional voluntary contributions), which also applies in relation to schemes winding up 6<sup>th</sup> April 2005) applies in relation to schemes commencing wind-up before 6<sup>th</sup> April 2005. Regulation 13 was amended by S.I.s 2002/380 and 2005/3377.

(b) S.I.1996/3126.

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



(2A) In paragraph (2) of this section—

“cash balance benefit” has the same meaning as in section 51ZB;

“cash balance scheme” means a scheme which provides—

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

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

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

**Schemes providing benefits treated as money purchase benefits: winding up commencing on or after 6th April 2005**

7.—(1) This regulation applies where an occupational pension scheme began to wind up—

- (a) on or after 6th April 2005 but before 28th July 2011; or
- (b) where the scheme has completed winding up before the appointed day, after 27th July 2011.

(2) Where the conditions specified in paragraph (3) are met, section 73 of the 1995 Act applies in relation to the winding up of the scheme as if those benefits specified in paragraph (3)(b) which were treated as money purchase benefits were money purchase benefits.

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

- (a) the scheme provided cash balance benefits or scheme pensions derived from cash balance benefits or money purchase benefits; and
- (b) the trustees or managers of the scheme—
  - (i) treated some or all of the benefits specified in sub-paragraph (a) as if they were money purchase benefits; and
  - (ii) for that reason excluded the assets and the liabilities relating to those benefits treated as money purchase from the assets and liabilities of the scheme for the purpose of determining the order in which the assets should be applied under section 73 of the 1995 Act.

**Schemes treated as money purchase schemes: winding up commencing on or after 28th July 2011 and completed before the appointed day**

8.—(1) Where an occupational scheme which commenced winding up on or after 28th July 2011—

- (a) has completed winding up before the appointed day; and
- (b) satisfies the conditions specified in paragraph (2),

section 73 of the 1995 Act applies if for subsection (2) 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 paragraph (2) of this section—

“cash balance benefit” has the same meaning as in section 51ZB;

“cash balance scheme” means a scheme which provides—

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

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

- (a) money purchase benefits or scheme pensions derived from money purchase benefits; and
- (b) no benefits other than those specified in paragraph (a) or death benefits.”.

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

- (a) the conditions specified in regulation 4(3) were met in relation to the scheme; and
- (b) either—
  - (i) all the liabilities to provide benefits to or in respect of members and beneficiaries of the scheme were satisfied in full; or
  - (ii) the former trustees or managers of the scheme are satisfied that one or both of the conditions specified in regulation 14(2) has been met.

(3) Where the condition specified in paragraph (2)(a) is met, but neither of the conditions specified in paragraph (2)(b) are met—

- (a) any discharge of the scheme’s liabilities to provide benefits to members and beneficiaries obtained under the scheme rules has no effect; and
- (b) the trustees or managers of the scheme must discharge in full all the liabilities of the scheme to members and beneficiaries which were not previously satisfied.

**Schemes providing benefits treated as money purchase benefits: winding up commencing on or after 28th July 2011 and completed before the appointed day**

**9.**—(1) This regulation applies in relation to an occupational scheme which commenced winding up on or after 28th July 2011 and has completed winding up before the appointed day.

(2) Where the conditions specified in paragraph (3) are met in relation to the scheme, section 73 of the 1995 Act applies if in subsection (10)—

(a) for the definition of “assets” were substituted—

““assets” of a scheme to which this section applies do not include any assets representing the value of any rights in respect of—

- (a) money purchase benefits; or
- (b) (i) cash balance benefits;
- (ii) pensions derived from money purchase benefits or cash balance benefits where those benefits were treated by the trustees or managers of the scheme as money purchase benefits;”; and

(b) for the definition of “liabilities” was substituted—

“liabilities” of such a scheme does not include any liabilities in respect of —

- (a) money purchase benefits; or
- (b) (i) cash balance benefits;
- (ii) pensions derived from money purchase benefits or cash balance benefits where those benefits were treated by the trustees or managers of the scheme as money purchase benefits;”.

- (3) The conditions specified in this paragraph are that—
- (a) the scheme provided cash balance benefits or scheme pensions derived from cash balance benefits or money purchase benefits;
  - (b) the trustees or managers of the scheme—
    - (i) treated some or all of the benefits specified in sub-paragraph (a) as if they were money purchase benefits;
    - (ii) for that reason excluded the assets and the liabilities relating to those benefits treated as money purchase from the assets and liabilities of the scheme for the purpose of determining the order in which the assets should be applied under section 73 of the 1995 Act; and
  - (c) either—
    - (i) all the liabilities to provide—
      - (aa) the benefits specified in sub-paragraph (b) treated as money purchase benefits; and
      - (bb) money purchase benefits
 to or in respect of members and beneficiaries of the scheme were satisfied in full; or
    - (ii) the former trustees or managers of the scheme are satisfied that one or both of the conditions specified in regulation 16(3) has been met.
- (4) Where the conditions specified in paragraph (3)(b) are met, but neither of the conditions in paragraph (3)(c) are met—
- (a) any discharge of the scheme’s liabilities to provide benefits to members and beneficiaries obtained under the scheme rules has no effect; and
  - (b) the trustees or managers of the scheme must either—
    - (i) discharge in full all the liabilities of the scheme to members and beneficiaries which were not previously satisfied; or
    - (ii) wind up the scheme in accordance with section 73 of the 1995 Act.

**Schemes winding up after an assessment period**

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

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

(2) Where the conditions specified in paragraph (3) are met, the trustees or managers of the scheme may determine that the benefits specified in paragraph (3)(b) 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 conditions specified in this paragraph are that—
- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
  - (b) some or all of the benefits specified in sub-paragraph (a) were on or before 27th July 2011 treated by the trustees or managers of the scheme as money purchase benefits; and

(c) that the Board has not previously made a determination under regulation 49(1) in relation to the treatment of those benefits.

(4) Where the Board has previously made a determination under regulation 49(1) that benefits specified in sub-paragraph (3)(b) 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 paragraph (3)(b) 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**

11.—(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 or after that day) to continue as a closed scheme under section 153(5) (closed schemes) of the 2004 Act;

(c) there is a further assessment period (within the meaning of section 159(3) (closed schemes: further assessment periods) of the 2004 Act) in relation to the scheme; and

(d) that further assessment period ends because the conditions in section 154(5)(a) of the 2004 Act are met.

(2) Where the circumstances in paragraph (3) apply, the trustees or managers of the scheme must wind up or continue the winding up of the scheme as if the benefits specified in paragraph (3)(b) treated as money purchase were money purchase benefits.

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

(a) the scheme provided cash balance benefits or scheme pensions derived from cash balance benefits or money purchase benefits; and

(b) either the trustees or managers of the scheme have —

(i) in accordance with regulation 47(2), determined that the benefits or some of the benefits specified in sub-paragraph (a) should continue to be treated as money purchase benefits; or

(ii) in accordance with regulation 47(4)(b), treated those benefits or some of those benefits as money purchase 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.

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(a) Section 154(5) was amended by section 22 and paragraph 10 of Schedule 4 to the Pensions Act 2011.

## PART 3

### Deficiencies in the assets

#### Interpretation

##### 12. In this Part—

“employer” has the same meaning as in section 124(1) (interpretation) of the 1995 Act; and  
“the Employer Debt Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations 2005(a);

“funding test” is to be construed in accordance with regulation 2(4A) (interpretation) of the Employer Debt Regulations;

“multi-employer scheme” has the same meaning as in regulation 2(1) of the Employer Debt Regulations;

“replacement employer” is to be construed in accordance with regulation 6E (flexible apportionment arrangements) of the Employer Debt Regulations; and

“scheme apportionment arrangement” has the same meaning as in regulation 2(1) of the Employer Debt Regulations.

#### Application of section 75 of the 1995 Act to schemes with benefits treated as money purchase benefits: relevant events on or after 6th April 1997 and before 28th July 2011

##### 13.—(1) This regulation applies where—

- (a) during the period beginning with 6th April 1997 and ending with 27th July 2011—
  - (i) a relevant event (within the meaning of section 75(6A)(b) (deficiencies in the assets)) of the 1995 Act has occurred in relation to an employer in relation to an occupational pension scheme;
  - (ii) a scheme begins to wind up in accordance with the rules in section 124(3A) to (3E) (c) (interpretation of Part 1) of the 1995 Act; or
  - (iii) an employer cessation event has occurred in relation to a multi-employer scheme within the meaning of regulation 6ZA(d) (employment-cessation events: general) of the Employer Debt Regulations;
- (b) benefits under the scheme included cash balance benefits or scheme pensions derived from money purchase or cash balance benefits;
- (c) the trustees or managers of the scheme treated those benefits, or some of those benefits, as money purchase benefits;
- (d) the assets and liabilities in respect of the benefits specified in sub-paragraph (c) were excluded from a valuation under regulation 5(1)(e) (calculation of the amount of scheme liabilities and value of scheme assets) of the Employer Debt Regulations, as if regulation 5(4)(d) and (9)(b) (deficiencies in assets) of those Regulations applied to those benefits;
- (e) a debt due from the employer under section 75(2) or (4)(f) of the 1995 Act has been calculated on the basis specified in sub-paragraph (d); and

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(a) S.I.2005/678. Amending instruments are S.I.s 2005/993, 2224, 3377, 3378, 2006/467, 558, 2007/60, 2008/731, 1068, 2009/1906, 2010/725, 2011/2973, 2012/1817 and 2013/627.

(b) Subsection (6A) was inserted by section 271(5) of the 2004 Act.

(c) Subsections (3A) to (3E) were inserted by section 49(2) of the Child Support, Pensions and Social Security Act 2000, subsection (3A) was amended by paragraph 69(3) and subsection (3B) was amended by paragraph 69(4) of schedule 12 to the 2004 Act.

(d) Regulation 6ZA was added by S.I. 2010/725 and amended by S.I. 2011/2973.

(e) Regulation 5 was substituted by S.I. 2008/731.

(f) Section 75(2) and (4) was substituted by section 271(2) of the 2004 Act.

- (f) all the liabilities in respect of benefits excluded from the valuation under regulation 5 of the Employer Debt Regulations which were excluded as money purchase benefits or because they were treated as money purchase benefits are able to be met in full.
- (2) Where this regulation applies—
- (a) no provision of section 29 (meaning of money purchase benefit) of the Act or of these Regulations requires the trustees or managers of the scheme to recalculate the debt due from the employer under section 75(2) or (4) (deficiencies in assets) of the 1995 Act applies; and
  - (b) section 75(a) of the 1995 Act applies as if the benefits specified in paragraph (1)(c) which were treated as money purchase benefits in the period beginning with 6th April 1997 and ending with 27th July 2011, were money purchase benefits.

**Application of section 75 of the 1995 Act to schemes treated as money purchase schemes commencing winding up on or after 28th July 2011 and completing winding up before the appointed day**

- 14.**—(1) This regulation applies where—
- (a) an occupational pension scheme began to wind up on or after 28th July 2011 and completed winding up before the appointed day;
  - (b) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
  - (c) the scheme provided no benefits other than those specified in sub-paragraph (b) except money purchase benefits or death benefits;
  - (d) the assets of the scheme were insufficient to discharge all the liabilities of the scheme in full; and
  - (e) the trustees or managers of the scheme treated the scheme as a money purchase scheme and for that reason did not designate a time for the calculation of the debt due from the employer in relation to the scheme, in accordance with section 75(2) of the 1995 Act.
- (2) Where this regulation applies in relation to a scheme, the former trustees and managers of the scheme must decide whether they are satisfied that—
- (a) the liabilities of the scheme which were not discharged in full are unlikely to be met if a debt due from the employer under section 75 of the 1995 Act were to be enforced;
  - (b) if a debt under section 75 of the 1995 Act were to be enforced, the debt would not be likely to be recovered by the scheme without disproportionate cost.
- (3) If those former trustees or managers are not satisfied that either or both of the conditions specified in paragraph (2) are met—
- (a) the former trustees or managers of the scheme are not discharged from their liability to discharge the liabilities of members and beneficiaries of the scheme in full;
  - (b) section 75 of the 1995 Act applies to that scheme; and
  - (c) those trustees or managers must designate a time for the purposes of section 75(2) of the 1995 Act.

**Application of section 75 of the 1995 Act to schemes treated as money purchase schemes: period on or after 6th April 1997 until immediately before 28th July 2011**

- 15.**—(1) This regulation applies in relation to an occupational pension scheme where, during the period beginning with 6th April 1997 and ending with 27th July 2011—

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(a) Section 75 was amended by section 271 of the 2004 Act.

- (a) an event which, if this regulation did not apply, would have been a relevant event (within the meaning of section 75(6A) of the 1995 Act) has occurred in relation to the employer in relation to the scheme;
- (b) the scheme begins to wind up in accordance with the rules in section 124(3A) to (3E) of the 1995 Act; or
- (c) an event has occurred which, if this regulation did not apply, would be an employer cessation event in relation to a multi-employer scheme within the meaning of regulation 6ZA of the Employer Debt Regulations.

(2) Where the conditions in paragraph (3) are satisfied, section 75(2) or (4) of the 1995 Act does not apply where an event specified in paragraph (1) has occurred during the period beginning with 6th April 1997 and ending with 27th July 2011.

(3) The conditions specified in this paragraph are that on or before 27th July 2011—

- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase or cash balance benefits;
- (b) the scheme provided no benefits other than those specified in sub-paragraph (a), death benefits or money purchase benefits;
- (c) the trustees or managers of the scheme treated the scheme as a money purchase scheme at all times when the conditions specified in paragraphs (a) and (b) were met; and
- (d) for that reason, the trustees or managers treated the scheme as if section 75 of the 1995 Act did not apply.

**Calculation of scheme liabilities and assets for a section 75 debt on or after 28th July 2011 until immediately before the appointed day**

**16.**—(1) Paragraph (2) of this regulation applies in relation to an occupational pension scheme where—

- (a) on or after 28th July 2011 but before the appointed day—
  - (i) a relevant event (within the meaning of section 75(6A) of the 1995 Act) has occurred in relation to the employer in relation to the scheme;
  - (ii) the scheme begins to wind up in accordance with the rules in section 124(3A) to (3E) of the 1995 Act; or
  - (iii) an employer cessation event has occurred in relation to a multi-employer scheme within the meaning of regulation 6ZA of the Employer Debt Regulations;
- (b) benefits under the scheme include or included cash balance benefits or scheme pensions derived from money purchase or cash balance benefits;
- (c) the trustees or managers of the scheme treated those benefits, or some of those benefits, as money purchase benefits before the appointed day;
- (d) for that reason, the assets and liabilities in respect of those benefits treated as money purchase benefits were excluded from a valuation made in accordance with regulation 5 of the Employer Debt Regulations, as if regulation 5(4)(d) and (9)(b) of those Regulations applied to those benefits;
- (e) a debt due from the employer under section 75(2) or (4) of the 1995 Act excluded liabilities relating to the benefits specified in sub-paragraph (d); and
- (f) the scheme has not entered into an arrangement—
  - (i) under regulations 6B(a) (scheme apportionment arrangements), 6C(b) (withdrawal arrangements) or 6E(c) (flexible apportionment arrangements) of the Employer Debt Regulations;

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(a) Regulation 6B was inserted by S.I. 2008/731 and substituted by S.I. 2010/725.

(b) Regulation 6C was inserted by S.I. 2008/731.

(c) Regulation 6E was inserted by S.I. 2011/2973.

- (ii) which has been approved by the Regulator under regulation 7(a) (approved withdrawal arrangements) of the Employer Debt Regulations; or
  - (iii) which has been approved by the Regulator, and the Board has not objected to, under regulation 7A(b) (regulated apportionment arrangements) of the Employer Debt Regulations.
- (2) Unless the conditions specified in paragraph (3) are met in relation to the scheme—
- (a) the trustees or managers must, as soon as reasonably possible, secure a new calculation (“the new calculation”) of the scheme’s assets and liabilities which—
    - (i) includes the assets and liabilities in respect of the benefits specified in paragraph (1)(c); and
    - (ii) is made in accordance with regulation 5 (calculation of the amount of scheme liabilities and value of scheme assets) of the Employer Debt Regulations;
  - (b) a certificate issued by an actuary under Schedule 1(c), 1A(d), 1C(e) or 1D(f) to the Employer Debt Regulations before the new calculation is to be supplemented by a certification of the scheme’s assets and liabilities that includes the assets and liabilities in respect of benefits specified in paragraph (1)(c) which were treated as money purchase; and
  - (c) any additional debt on the employer arising from the new calculation is due under section 75 of the 1995 Act.
- (3) The conditions specified in this paragraph are that trustees or managers of the scheme are satisfied that—
- (a) members of the scheme are not more likely to receive their full entitlement to or in respect of benefits under the scheme if a determination, calculation and verification under regulation 5 of the Employer Debt Regulations were to include the benefits specified in paragraph (1)(c); or
  - (b) any additional debt due to the trustees or managers of the scheme under section 75(2) or (4) of the 1995 Act from the inclusion of the benefits in paragraph (1)(b) in the determination, calculation and verification under regulation 5 of the Employer Debt Regulations is unlikely to be recovered by the scheme without disproportionate cost, or within a reasonable time.

**Arrangements for multi-employer schemes in relation to periods on or before 27th July 2011**

**17.—**(1) This regulation applies where—

- (a) the trustees or managers of a multi-employer scheme providing defined benefits and money purchase benefits—
  - (i) entered into an arrangement specified in sub-paragraph (a), (b) or (c) of paragraph (3) on or before 27th July 2011; or
  - (ii) entered into an arrangement specified in paragraph 3(d) which the Regulator approved on or before 27th July 2011 and to which the Board has not objected;
- (b) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
- (c) the trustees or managers of the scheme on or before 27th July 2011 treated those benefits or some of those benefits as money purchase benefits, and

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(a) Regulation 7 was substituted by S.I. 2008/731.  
 (b) Regulation 7A was substituted by S.I.s 2008/731 and 2008/1068.  
 (c) Schedule 1 was substituted by S.I.s 2008/731, 2010/725, 2011/973 and 2012/1817.  
 (d) Schedule 1A was inserted by S.I. 2005/2224 and substituted by S.I. 2008/731.  
 (e) Schedule 1C was inserted by S.I. 2008/731.  
 (f) Schedule 1D was inserted by S.I. 2008/731.



- (d) for that reason the benefits treated as money purchase benefits were excluded from the scheme's liabilities for the purposes of an arrangement specified in paragraph (3).
- (2) Where this regulation applies, no provision of section 29 of the Act or these Regulations affects the validity of any arrangement specified in paragraph (3).
- (3) The arrangements in this paragraph are—
- (a) a scheme apportionment arrangement under regulation 6B of the Employer Debt Regulations;
  - (b) a withdrawal arrangement under regulation 6C of the Employer Debt Regulations;
  - (c) an approved withdrawal arrangement under regulation 7 of the Employer Debt Regulations; or
  - (d) a regulated apportionment arrangement under regulation 7A(a) of the Employer Debt Regulations.

**Multi-employer schemes: arrangements on or after 28th July 2011 but before the appointed day**

- 18.**—(1) This regulation applies in relation to a multi-employer scheme where—
- (a) the trustees or managers of the scheme entered into an arrangement specified in sub-paragraph (a), (b) or (c) of paragraph (2) on or after 28th July 2011 but before the appointed day;
  - (b) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
  - (c) the trustees or managers of the scheme treated the benefits or some of the benefits specified in sub-paragraph (b) as money purchase benefits, and
  - (d) for that reason those benefits were excluded from the calculation of the scheme's assets and liabilities in relation to a debt due under section 75 of the 1995 Act for the purposes of an arrangement specified in paragraph (2).
- (2) The arrangements specified in this paragraph are—
- (a) a scheme apportionment arrangement made under regulation 6B of the Employer Debt Regulations;
  - (b) a withdrawal arrangement made under regulation 6C of, or a replacement withdrawal arrangement made under paragraph 7 of Schedule 1A to, those Regulations; or
  - (c) a flexible apportionment arrangement made under regulation 6E of those Regulations.
- (3) The trustees or managers of a multi-employer scheme to which this regulation applies must, as soon as reasonably possible, determine whether, when any additional liabilities are included in the liabilities of the scheme, the funding test is likely to be met by those remaining employers, guarantors or replacement employers who were party to an arrangement specified in paragraph (1)(a).
- (4) Where the trustees and managers of the scheme determine in accordance with paragraph (3) that the funding test is not likely to be met, they may enter into a new arrangement in respect of the additional liabilities with the remaining or replacement employers and any guarantors, provided that the funding test is met in relation to that arrangement.
- (5) Where the trustees or managers of the scheme determine that the funding test is not met, and do not enter into a new arrangement in respect of the additional liabilities—
- (a) paragraph (6), (7) or (8) (as the case may be); and
  - (b) paragraph (10),
- apply in relation to the scheme.

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(a) Regulation 7A was substituted by S.I.s 2008/731 and 2008/1068.

(6) Where the arrangement referred to in paragraph (1)(a) (“the original arrangement”) was a scheme apportionment arrangement made under regulation 6B of the Employer Debt Regulations—

- (a) the additional liabilities are to be apportioned to the scheme apportionment arrangement share of each remaining employer in the same proportions as under the original arrangement, as if the liabilities in respect of the benefits specified in paragraph (1)(c) were included in the calculation of the scheme’s assets and liabilities at the time that arrangement was entered into; and

(7) Where the original arrangement was—

- (a) a withdrawal arrangement under paragraph 6C of the Employer Debt Regulations; or
- (b) an amended withdrawal arrangement under paragraph 7 of Schedule 1A(a) to the Employer Debt Regulations,

the additional liabilities are to be apportioned to the withdrawal arrangement share of the cessation employer and to each guarantor in the same proportions as under the original arrangement, as if the liabilities in respect of the benefits specified in paragraph (1)(c) were included in the calculation of the scheme’s assets and liabilities at the time that arrangement was entered into.

(8) Where the original arrangement was a flexible apportionment arrangement made under regulation 6E of the Employer Debt Regulations—

- (a) any legally enforceable agreement providing for a replacement employer to take responsibility for all the liabilities in relation to the scheme (within the meaning of regulation 6E(2)(b)(i) of those Regulations) has effect as if the additional liabilities are included in the liabilities of the scheme for which the replacement employer has assumed responsibility; and
- (b) the replacement employer is to be treated for all purposes as being responsible for meeting the additional liabilities.

(9) Where paragraph (6), (7) or (8) applies, the scheme rules and the Employer Debt Regulations apply as if the additional liabilities were included in the liabilities to which the original arrangement related.

(10) A certificate issued by an actuary in respect of an arrangement specified in paragraph (1)(a) in accordance with Schedule 1, 1A, 1C or 1D to the Employer Debt Regulations may be replaced by a new certificate if the trustees consider this is necessary.

(11) If the trustees or managers of the scheme —

- (a) do not enter into a new agreement with respect to the additional liabilities in accordance with paragraph (5); and
- (b) determine that they are unable to secure payment or arrange for payment to be made, within a reasonable time, of the debt due in respect of the additional liabilities) in accordance with paragraph (6), (7) or (8) from—
  - (i) each remaining employer, where the original arrangement was a scheme apportionment arrangement;
  - (ii) the cessation employer and each guarantor, where the arrangement was a withdrawal arrangement or an amended withdrawal arrangement; or
  - (iii) the remaining employers, where the original arrangement was a flexible apportionment arrangement,

regulation 6ZA(b) of the Employer Debt Regulations applies as if an employer cessation event had occurred on the date that the original agreement was entered into, came into force, or took effect, as the case may be.

(12) In this regulation “the additional liabilities” means the difference between—

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(a) Schedule 1A was inserted by S.I. 2005/2224 and substituted by S.I. 2008/731.  
(b) Regulation 6ZA(1)(c) was inserted by S.I. 2010/725 and paragraph (1) amended by S.I. 2011/2973.

- (a) the amount of the liabilities of the scheme relating to the benefits specified in paragraph (1)(c), calculated on the assumption that those liabilities will be discharged by the purchase of annuities of the kind described in section 74(3)(c) of the 1995 Act (discharge of liabilities; annuity purchase); and
- (b) the amount of the liabilities relating to same benefits, calculated on a money purchase basis.

**Arrangements for multi-employers scheme approved by the Regulator: periods before the appointed day**

**19.—**(1) This regulation applies where before the appointed day the Regulator has issued in respect of an occupational pension scheme—

- (a) a notice of approval for an approved withdrawal arrangement under regulation 7 of the Employer Debt Regulations (approved withdrawal arrangements); or
- (b) a notice of approval to a regulated apportionment arrangement or any amendments to it under regulation 7A(a) of the Employer Debt Regulations (regulated apportionment arrangements) and the Board has not objected to that arrangement.

(2) Where the conditions specified in paragraph (3) are met, no provision of section 29 of the Act or of these Regulations affects the validity of an arrangement specified in paragraph (1)(a) or (b).

(3) The conditions in this paragraph are that—

- (a) the scheme provides or provided cash balance benefits or scheme pensions derived from benefits which were money purchase benefits or cash balance benefits; and
- (b) the trustees or managers of the scheme treated all or some of those benefits as money purchase benefits on or before the appointed day.

## PART 4

### Revaluation, indexation and preservation of benefits

**Amendment of the Pension Schemes Act 1993**

**20.—**(1) The 1993 Act is amended as follows.

(2) In section 84 (basis of revaluation)(b)—

- (a) in subsection (2)(b), before “flat rate method” insert “cash balance and”;
- (b) after subsection (3) insert—
  - “(3A) If—
  - (a) any such benefit as is mentioned in section 83(1) is a cash balance benefit which is not calculated by reference to final salary;
  - (b) the benefit is attributable to periods of pensionable service falling on or after the day on which section 29 of the Pensions Act 2011 comes into force; and
  - (c) it appears to the trustees or managers of the scheme under which it is payable that it is appropriate to revalue the benefit by the cash balance and flat rate method,
 then the benefit shall be revalued using that method.”;

(3B) Where a cash balance benefit which is not calculated by reference to final salary—

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(a) Regulation 7A was substituted by S.I.s 2008/731 and 2008/1068.  
 (b) Section 84 was amended by sections 151, 177 of, paragraph 62 of Schedule 5 to and Part III of Schedule 7 to the 1995 Act; section 281 of the 2004 Act, section 19(1), (2) and (3) of the Pensions Act 2011 (c. and S.I. 2005/2053).

- (a) is attributable to periods of pensionable service falling partly before and partly on or after the day on which section 29 of the Pensions Act 2011 comes into force; and
  - (b) it appears to the trustees or managers of the scheme under which it is payable that it is appropriate to revalue so much of the benefit as is attributable to the member's pensionable service falling on or after that day by the cash balance and flat rate method,  
then so much of the benefit as is attributable to the member's pensionable service falling on or after that day shall be revalued using that method.
- (3C) In subsection (3A) and (3B)—
- (a) “final salary”, in relation to a member to or in respect of whom rights to benefits accrue, 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
  - (b) “pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated”;
- (c) in subsection (4)—
- (i) after the definition of ““average salary benefit”” insert—  
““cash balance benefit” has the same meaning as in section 51ZB of the Pensions Act 1995;”;
  - (ii) in the definition of ““average salary method””, ““final salary method””, ““flat rate method”” and ““money purchase method””, after ““flat rate”” insert “and cash balance”.
- (3) In paragraph 3(5) of Schedule 3 (methods of revaluing accrued pension benefits)(a)—
- (a) in the heading (““the flat rate method””) after ““flat rate”” insert “and cash balance”;
  - (b) after ““flat rate”” insert “and cash balance”.

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

**21.—(1) Where—**

- (a) a member of an occupational pension scheme has, under the applicable rules, accrued rights to cash balance benefits which are not calculated by reference to final salary;
- (b) those rights are attributable to periods of pensionable service falling before the appointed day; and
- (c) the trustees or managers of the scheme have before that day treated those cash balance benefits as if they were money purchase benefits,

if the trustees or managers think it appropriate, the benefits shall be revalued by the money purchase method.

**(2) Where—**

- (a) the conditions in paragraph (1)(a) and (c) are satisfied; and
- (b) the accrued rights to cash balance benefits are attributable to periods of pensionable service falling partly before and partly on or after the appointed day,

if the trustees or managers think it appropriate, so much of the benefit as is attributable to periods of pensionable service falling before that day shall be revalued by the money purchase method.

**(3) In this regulation—**

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(a) Schedule 3 was amended by section 101 of and Part 1 of Schedule 2 to the Pensions Act 2008 and by section 19(4) to (6) of the Act.

- (a) “final salary”, in relation to a member to or in respect of whom rights to benefits accrue, 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 same meaning as in Schedule 3 (methods of revaluing accrued pension benefits)(a) to the 1993 Act, except that it also includes the application to the benefits of a guaranteed notional interest rate or investment yield, in accordance with the rules of the scheme; 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 as if paragraph (1) of that section were omitted.

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

**22.**—(1) Section 51 of the 1995 Act (annual increase in rate of pension)(b) does not apply to a pension or part of a pension which meets the conditions specified in paragraph (2) or paragraph (3).

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

- (a) the pension is derived from cash balance benefits which were attributable to a member’s pensionable service on or after 6th April 1997 and first came into payment before the appointed day (see regulation 1(3));
- (b) the trustees or managers of the scheme before the appointed day treated those benefits as if they were money purchase benefits;
- (c) the member’s pensionable service to which those benefits were attributable was not, by virtue of satisfying section 9(2) (requirements for certification of schemes: general) of the 1993 Act(c), contracted-out employment;
- (d) the pension is not, under the scheme, required to be increased each year; and
- (e) the pension has not, since coming into payment, been so increased.

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

- (a) is derived from money purchase benefits which were attributable to pensionable service on or after 6th April 1997;
- (b) first came into payment on or after 5th April 2005;
- (c) is not, under the scheme, required to be increased each year; and
- (d) has not, since coming into payment, been so increased.

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

**23.**—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991(d) are amended as follows.

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

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(a) Schedule 3 was amended by section 101 of and Part 1 of Schedule 2 to the Pensions Act 2008 and by section 19(4) to (6) of the Act.  
 (b) Section 51 was amended by section 84(1) of and Schedule 12 to the 1999 Act, section 51(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19), sections 278(1), (2)(b) and (c), (3), (5) and (6)(a) and (b) of the 2004 Act, sections 19(7) and (8), 21(1) and (2) and (3) of the Act and S.I.2006/745.  
 (c) Section 9(2) was substituted by section 136(3) of the Pensions Act 2007 (c. 22).  
 (d) S.I.1991/167.

“(a) calculate 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) calculate a scheme pension derived from the money purchase benefits on the basis of actuarial advice.”

(2) Omit regulation 14 (computation of benefit – money purchase schemes)(a).

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

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

14A. Section 74(6) of the 1993 Act (uniform accrual requirements) does not apply to money purchase benefits.”.

## PART 5

### Transfers

#### Interpretation

24. In this Part—

“salary-related scheme” has the same meaning as in regulation 1A of the Transfer Values Regulations; and

“the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations 1996(c).

#### Cash equivalent of cash balance benefits treated as money purchase benefits – transitional arrangements

25.—(1) This regulation applies where—

(a) a member of an occupational pension scheme has accrued rights to cash balance benefits under the applicable rules; and

(b) the pensionable service of the member has terminated before the appointed day.

(2) Where the conditions specified in paragraph (3) are met in relation to a scheme—

(a) the cash equivalent of the member’s cash balance benefits (if not already so calculated) 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) (right to cash equivalent)(d) of the 1993 Act 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) and (3) (ways of taking cash equivalent)(e) of the 1993 Act;

(d) an application to use the cash equivalent in accordance with paragraph (c) must be made to the trustees or managers of the scheme in writing and is subject to the

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

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

(c) S.I 1996/1847.

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

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

provisions of sections 96 to 99 (provisions concerning exercise of options) of the 1993 Act; and

- (e) a member may withdraw an application made in accordance with paragraph (d) by giving the trustees or managers of the scheme notice in writing in accordance with the provisions of section 100 (withdrawal of application) of that Act<sup>(a)</sup>.
- (3) The conditions specified in this paragraph are that before the appointed day—
- (a) the trustees or managers of the scheme have treated the cash balance benefits accrued by a member as if they were money purchase benefits; and
  - (b) the member has been treated as acquiring a right to the cash equivalent of those benefits in accordance with section 94(1)(a) (right to cash equivalent) of the 1993 Act (including where section 94(1)(a) of that Act is modified by regulation 19(2)(b) (hybrid schemes) of the Transfer Values Regulations).
- (4) Where—
- (a) the conditions specified in paragraph (3) are met; and
  - (b) the trustees or managers have (at any time) used the cash equivalent of cash balance benefits treated as money purchase benefits in any of the ways specified in section 95(2) or (3) 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) (trustees duties after exercise of option)<sup>(b)</sup> of that Act applied.

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

- 26.—(1) Where the conditions specified in paragraph (2) are met—
- (a) section 93A(1) (salary-related schemes: right to statement of entitlement)<sup>(c)</sup> of the 1993 Act does not, in relation to any period before the appointed day, require the trustees or managers to provide a statement of entitlement in respect of cash balance 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) (guaranteed statements of entitlement) of the Transfer Values Regulations 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 made in the circumstances specified in paragraph (2)(a).
- (2) The conditions specified in this paragraph are that before the appointed day—
- (a) the trustees or managers of a salary-related occupational 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 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 cash balance benefits were treated by the trustees or managers as money purchase benefits.

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(a) Section 100 was amended by section 84(1) of and schedule 2 to the Welfare Reform and Pensions Act 1999.

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

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

## Amendments to the Transfer Values Regulations

- 27.—(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 same meaning as in section 51ZB of the Pensions Act 1995(b);”;  
and
  - (b) after the definition of “effective date” insert—  
““final salary”, in relation to a member to or in respect of whom rights to benefits accrue under a pension scheme, 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  
“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)(c)—
- (a) in paragraph (1)(a)(i), after “salary related benefits” insert “other than cash balance benefits not calculated by reference to final salary”;
  - (b) in paragraph (1)(a)(ii) after “money purchase benefits” insert “and cash balance benefits 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 not calculated by reference to final salary”.
- (5) In regulation 7B (initial cash equivalents 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 not calculated by reference to final salary”.
- (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”;

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

(b) Section 51ZB was inserted by section 21 of the Pensions Act 2011 (c. 19).

(c) Regulations 7 to 7E were substituted for regulations 7 and 8 by S.I. 2008/1050.



- (b) in paragraph (1) after “For” insert “cash balance benefits 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 benefits;
      - (ii) any guarantee which in accordance with the scheme rules applies to 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 paragraph (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 6

### Early leavers: Cash Transfer Sums and Contribution Refunds

**28.** In this Part—

- “cash transfer sum” has the same meaning as in section 101AB(3) of the 1993 Act; and
- “the Early Leavers Regulations” mean the Occupational Pensions (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006(c).

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

**29.**—(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 (right to cash transfer sum and contribution refund)(d) of the 1993 Act is (if not already so calculated) to be calculated as if it related to money purchase benefits.

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

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(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.

- (a) before the appointed day—
    - (i) the pensionable service of a member of an occupational pension scheme has terminated;
    - (ii) 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; and
  - (b) at any time—
    - (i) the trustees or managers of the scheme have, in accordance with section 101AC (notification of right to cash transfer sum or contribution refund) of the 1993 Act, 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;
    - (ii) the statement specifying the amount of the cash transfer sum relates to cash balance benefits which the trustees or managers have treated as money purchase benefits;
    - (iii) the cash transfer sum relating to cash balance benefits specified in the statement has been calculated as if the benefits were money purchase benefits; and
    - (iv) the trustees or managers have been notified in accordance with section 101AD (exercise of right under section 101AB) of that Act that the member wishes to take the option under section 101AB(1) as a cash transfer sum.
- (3) Where—
- (a) the conditions 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)(b)(iii); and
  - (c) the trustees or managers 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 are discharged from any obligation in respect of any rights (including conditional rights) of or in respect of the member to relevant benefits under the applicable rules, 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).

### **Amendments to the Early Leavers Regulations**

- 30.**—(1) The Early Leavers Regulations are amended as follows.
- (2) In regulation 1(2) (citation, commencement and interpretation)(a)—
- (a) after the definition of “actuary”, insert—
    - ““cash balance benefit” has the same meaning as in section 51ZB of the Pensions Act 1995(b);”; and
  - (b) after the definition of “discount rates” insert—
    - ““final salary”, in relation to a member to or in respect of whom rights to benefits accrue, 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
    - “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)(c)—

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(a) Relevant amendments were made to regulation 1(2) by S.I.s 1997/1613, 2003/1727, 2007/60 and 2008/1050.  
 (b) Section 51ZB was inserted by section 21 of the Pensions Act 2011 (c. 19).  
 (c) Regulations 2 and 2A 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 not calculated by reference to final salary”;
- (b) in paragraph (1)(a)(ii) after “money purchase benefits” insert “and cash balance benefits not calculated by reference to final salary”; and
- (c) for paragraph (7) substitute—
  - “(7) Where a portion of the initial 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 not calculated by reference to final salary”.
- (5) In regulation 2B (initial cash transfer sums 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 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 not calculated by reference to final salary 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 benefits;
        - (ii) any guarantee which in accordance with the scheme rules applies to 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) in paragraph (1), after “if” insert—
      - “(a) the cash transfer sum relates to salary-related benefits; and

- (b)”;
  - (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 7

### Payment of surplus funds to employer

#### Interpretation

**31.**—(1) In this Part—

“employer” has the same meaning as in section 124(1) of the 1995 Act; and

“the Payments to Employers Regulations” means the Occupational Pension Schemes (Payments to Employers) Regulations 2006(a).

(2) Where the provisions of a trust scheme meet the conditions set out in regulation 18 (schemes with more than one employer) of the Payments to Employers Regulations, 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 28th July 2011**

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

(a) section 37 (payment of surplus to employer)(b) of the 1995 Act; nor

(b) section 76 (excess assets on winding up)(c) of that Act,

(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 28th July 2011;

(b) the trustees have failed to comply with any or all of 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; and

(c) at the time that the payment was made to the employer—

(i) the scheme provided—

(aa) cash balance benefits; or

(bb) scheme pensions derived from money purchase benefits or cash balance benefits; and

(cc) no benefits other than those specified in sub-paragraph (aa) or (bb) or money purchase benefits;

(ii) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme; and

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(a) S.I. 2006/802.

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

(c) Section 76 was amended by sections 319(1) and 320 of and Schedule 12 to the Pensions Act 2004 and by S.I 2006/745.

- (iii) for that reason the trustees or managers did not comply with the requirements of section 37 or section 76 (as the case may be) before exercising the power to make a payment to the employer.

#### **Failure to comply with the requirements of section 37 or 76 of the 1995 Act: periods after 27th July 2011**

**33.**—(1) Where the conditions specified in paragraph (2) are met, sections 14 (restitution), 37(6) and (7) of the 1995 Act do not apply to or in respect of the exercise or purported exercise of a power under the scheme rules to make a payment to the employer.

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

- (a) the trustees of a trust scheme have after 27th July 2011 but before the appointed day exercised a power under the scheme rules to make a payment to an employer in relation to the scheme out of funds held for the purposes of the scheme;
- (b) the conditions specified in regulation 32(2)(c) are met; and
- (c) the payment to the employer is an authorised surplus payment for the purposes of regulation 3 of the Registered Pension Schemes (Authorised Surplus Payments) Regulations (payments falling outside section 37 or 76 of the Pensions Act 1995)(a).

#### **Schemes subject to Part 3 of the 2004 Act providing cash balance benefits or pensions derived from money purchase benefits or cash balance benefits**

**34.**—(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 in section 37(3)(a) of the 1995 Act or regulation 4(1) or (2) (schemes that are subject to Part 3 of the 2004 Act – determination of assets and liabilities) of the Payments to Employers Regulations; 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 27th July 2011.

(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 cash balance benefits or pensions derived from money purchase benefits or cash balance benefits; and
- (c) the trustees propose to use an actuarial valuation made on the basis that some or all of the benefits specified in sub-paragraph (b) were money purchase benefits for the purpose of meeting the condition specified in section 37(3)(a) of the 1995 Act.

#### **Amendments to the Payments to Employers Regulations**

**35.** For the definition of “money purchase benefits” in regulation 2 (interpretation) of the Payments to Employers Regulations 2006 substitute—

“money purchase benefits” has the same meaning as in section 181(1) of the Pension Schemes Act 1993 (General interpretation)(b).

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(a) S.I. 2006/574.

(b) 1993 c. 48. Relevant amendments were made to section 181(1) by section 29 of the Act.

## PART 8

### Scheme Administration

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

- 36.**—(1) This regulation applies where—
- (a) before the appointed day—
    - (i) an occupational pension scheme provided cash balance benefits or scheme pensions derived from money purchase or cash balance benefits;
    - (ii) the scheme provided no benefits other than benefits falling within paragraph (i), money purchase benefits or death benefits; and
  - (b) during any period when the conditions specified in sub-paragraph (a) were met, the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme; and
  - (c) for that reason, treated the scheme as if it was exempted by regulation 3(2)(a) (exemption from the professional advisors requirements for money purchase schemes)(b) of the Occupational Pension Schemes (Scheme Administration) Regulations) (“the Scheme Administration Regulations”) from the requirement to appoint an actuary in relation to the scheme in accordance with section 47(1)(b) (professional advisors) of the 1995 Act.
- (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) the trustees or managers of the scheme must on or before 6<sup>th</sup> July 2014 appoint an actuary in accordance with section 47(1)(b) of the 1995 Act.

## PART 9

### The Pension Protection Fund

#### Interpretation

- 37.**—(1) In this Part—

“administration levy” has the same meaning as in section 117(1) (administration levy) of the 2004 Act;

“admissible rules” has the same meaning as in paragraph 35(2) (scheme rules, admissible rules etc)(c) of Schedule 7 to the 2004 Act

“assessment date” has the same meaning as in section 142(1) (sections 140 and 141: interpretation)(d) of the 2004 Act;

“eligible scheme” has the same meaning as in section 126(1) of the 2004 Act;

“employer” has the same meaning as in regulation 1(4) of the Pension Protection Fund (Entry Rules) Regulations 2005(e);

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(a) S.I. 1996/1715.

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

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

(d) Section 141(1) was amended by section 22 of and Schedule 4 to the Pensions Act 2011.

(e) S.I. 2005/590.

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

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

“insolvency event” has the same meaning as in section 121 (insolvency event, insolvency date and insolvency practitioner)(a) of the 2004 Act;

“levy” (except in regulation 45) includes—

- (a) the administration levy imposed under section 117 of the 2004 Act; and
- (b) any pension protection levy imposed in accordance with section 175 of the 2004 Act;

“pension protection levy” has the same meaning as in section 175(1) of the 2004 Act; and

“the Valuation Regulations” means the Pension Protection Fund (Valuation) Regulations 2005(b).

### **Eligibility: schemes treated as money purchase schemes**

**38.**—(1) Where the Board is satisfied that the conditions specified in paragraph (2) are met and subject to paragraph (3)—

- (a) an occupational pension scheme which would otherwise be an eligible scheme is not an eligible scheme in relation to any period falling before 1st April 2015;
- (b) the scheme becomes an eligible scheme on 1st April 2015; and
- (c) the relevant provisions apply in relation to the scheme with effect from that date.

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

- (a) immediately before the appointed day—
  - (i) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits; and
  - (ii) the scheme provided no benefits other than benefits falling within paragraph (i), money purchase benefits or death benefits; and
- (b) during the period beginning with 6th April 2005 and ending with 27th July 2011, at all times when the conditions specified in sub-paragraph (a) were met, 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 specified in regulation 2(1) (schemes which are not eligible schemes)(c) of the Entry Rules Regulations;
- (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 immediately after 27th July 2011 and ending immediately before the appointed day, entered into a legally enforceable agreement the effect of which (at any time) is to reduce the amount of any debt due to the scheme by the employer under section 75 (deficiencies in the assets)(d) of the 1995 Act which may be recovered by, or on behalf of, the trustees or managers of the scheme.

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

(b) S.I.2005/672.

(c) Regulation 2 was amended by S.I.s 2005/93, 2005/2153, 2006/580, 2007/782, 2008/731, 2009/1906, 2010/196, 2010/725 and 2011/2973.

(d) Subsections (1) to (4) and (4A) to (4C) were substituted by section 271 of the 2004 Act.

### **Schemes in an assessment period before the appointed day: valuations to determine assets and protected liabilities**

**39.**—(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, in relation to any period before the appointed day, of—
  - (i) a valuation obtained by the Board in accordance with section 143(2)(b) (Board’s obligation to obtain valuation of assets and protected liabilities)(**a**), section 152(9) or (10A) (duty to assume responsibility following reconsideration)(**b**) or section 158(3)(b) (duty to assume responsibility for closed schemes)(**c**) of the 2004 Act;
  - (ii) a determination made by the Board under section 143(2)(a), section 152(3)(d) or section 158(3)(a) of that Act;
  - (iii) a protected benefits quotation accompanying an application made in accordance with section 151(1) (application for reconsideration) of that Act;
  - (iv) the Board’s approval of a valuation made with respect to a scheme in accordance with section 144(2)(a) (approval of valuation)(**e**) of that Act; or
  - (v) a valuation provided by the trustees or managers of an occupational pension scheme to the Board in accordance with section 156 (valuations of closed schemes) of that Act; or
- (b) affects the validity of a transfer notice given (at any time) by the Board to the trustees or manager of the scheme; or
- (c) affects the validity of the discharge of benefits specified in paragraph (2)(b)(ii) treated as money purchase benefits.

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

- (a) an assessment period in relation to the scheme began before the appointed day; and
- (b) the Board is satisfied that during the period beginning with 6th April 2005 and ending with 27th July 2011—
  - (i) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits; and
  - (ii) at all times when the condition specified in paragraph (i) was met, the trustees or managers of the scheme treated those benefits or some of those benefits as if they were money purchase benefits.

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

**40.**—(1) Where the conditions in regulation 38(2) are met in relation to an occupational pension scheme, for the purposes of enabling risk-based pension protection levies to be calculated in respect of the scheme, the trustees or managers of the scheme must obtain and provide an actuarial valuation of the scheme (“the first valuation) to the Board or to the Regulator on the Board’s behalf on or before 31st March 2015.

(2) The effective date of the first valuation must be within the period beginning with 31st December 2014 and ending with 31st March 2015.

(3) For the purposes of that and any subsequent valuation, the assets and the protected liabilities of the scheme relating to cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits, must be calculated as if the scheme were an eligible scheme, in accordance with—

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- (a) Section 143(2) was substituted by section 22 of and Schedule 4 to the Pensions Act 2011.
  - (b) Section 152(10A) was inserted by section 22 of and Schedule 4 to that Act.
  - (c) Section 158(3) was substituted by section 22 of and Schedule 4 to that Act.
  - (d) Section 152(3) was amended by section 22 of and Schedule 4 to that Act.
  - (e) Section 144(2) was amended by section 22 of and Schedule 4 to that Act.



- (a) regulations 5 (valuation of assets)(a) and 6 (valuation of protected liabilities)(b);
- (b) regulation 7 (alternative valuation of assets and protected liabilities in specific cases)(c) of the Valuation Regulations,.

(4) The effective date of any subsequent actuarial valuation, under section 179 of the 2004 Act, must be no more than 3 years after the effective date 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 under 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 effective date of the previous 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) if the scheme were an eligible scheme for which the Board were to assume responsibility.

### Provision of information

**41.**—(1) Where an occupational pension scheme—

- (a) provides cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits; and
- (b) during the period beginning immediately after 27th July 2011 and ending immediately before the appointed day, the trustees or managers of the scheme treated those benefits or some of those benefits as if they were money purchase benefits,

the trustees or managers of the scheme must, on or before 31st March 2015, inform the Regulator that the scheme provides benefits which are of the description specified in sub-paragraph (a) and which have been treated as money purchase benefits.

(2) Where—

- (a) a scheme is an eligible scheme on the appointed day; and
- (b) the circumstances specified in paragraph (1) apply,

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

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

- (i) accounts in relation to the scheme;
- (ii) actuarial reports in relation to the scheme; and
- (iii) actuarial valuations in relation to the scheme.

(4) The Board or the Regulator on the Board's behalf may revoke or vary any direction given under paragraph (2).

(5) Where a direction under paragraph (2) given to the trustees or managers of a scheme is not complied with, section 10 (civil penalties)(d) of the 1995 Act applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

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(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) 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 1999 Act.

**Schemes with benefits treated as money purchase benefits: initial levy, administration levy and pension protection levies**

42.—(1) Where the conditions specified in paragraph (2) are met, and subject to paragraph (3), no provision of Part 4 of the Act or of these Regulations—

- (a) affects the validity of an actuarial valuation—
  - (i) the effective date of which is before the appointed day; and
  - (ii) provided to the Board (whether before 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 any period before 1st April 2015;
- (c) affects the validity of any calculation or determination by the Board in relation to the amount of a levy or initial levy imposed on a scheme in respect of any period before 1st April 2015;
- (d) permits the Board or the Regulator on the Board's behalf to increase the amount of a levy payment which has been notified to the trustees or managers of a scheme in respect of a period before 1st April 2015; or
- (e) prevents recovery by the Board or the Regulator on the Board's behalf of a debt due in respect of a levy or initial levy which—
  - (i) has arisen in accordance with section 181(6) to (8)(a) (calculation, collection and recovery of levies) of the 2004 Act; and
  - (ii) relates to an amount payable in respect of a period before 1st April 2015.

(2) The conditions specified in this paragraph are that the Board is satisfied that during the period beginning with 6th April 2005 and ending with 27th July 2011—

- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
- (b) at all times when the condition specified in sub-paragraph (a) was met, the trustees or managers of the scheme treated those benefits or some of those benefits as if they were money purchase benefits; and
- (c) the amount of a levy or initial levy due in respect of the scheme has been calculated on the basis that those benefits or some of those benefits were money purchase benefits.

(3) 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 valuation under regulation 44(1) (schemes with 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**

43.—(1) The trustees or managers of an occupational pension scheme which becomes an eligible scheme on 1st April 2015 in accordance with regulation 38(1)(b) are liable to pay the levies in respect of that scheme with effect from that date.

(2) The trustees or managers of the scheme must pay the amount of the levy notified by the Board or 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.

**Schemes with benefits which become non-money purchase: power to direct out-of-cycle valuations**

44.—(1) Where the conditions specified in regulation 42(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 to obtain and provide an out-of-cycle valuation, the Board may, having regard to that valuation, calculate or recalculate a 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 levy notified by the Board or 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) Where the amount of the 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 within the period 28 days beginning with the date on which the Board or the Regulator gives the subsequent notification of the amount of the levy to the trustees or managers.

(5) 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 effective date of any subsequent actuarial valuation under section 179 of the 2004 Act must be within the period of three years beginning immediately after the effective date of the out-of-cycle valuation.

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

(7) 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 such trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

(8) In this regulation, an "out-of-cycle valuation" means a valuation which—

- (a) has an effective date which is within the period of three years beginning immediately after the effective date of the last actuarial valuation under section 179 (whether the effective date of that valuation was before or after the appointed day); and
- (b) is required to be obtained and provided by the trustees or managers of the scheme in advance of the date by which the first actuarial valuation under section 179 valuation after the appointed day would have been provided (in accordance with regulation 2(4) and (5) of the Valuation Regulations).

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

**45.**—(1) Where the Board is satisfied that the conditions specified in paragraph (2) are met, a waiver by the Board (in accordance with regulation 7 of the Fraud Compensation Levy Regulations) of payment due in relation to any fraud compensation levy imposed under section 189 of the 2004 Act (fraud compensation levy) 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 falling before the appointed day;
- (b) during that period—
  - (i) the scheme provided cash balance benefits or scheme pensions derived from money purchase or cash balance benefits;
  - (ii) the scheme provided no benefits other than benefits falling within sub-paragraph (a), money purchase benefits or death benefits; and
  - (iii) the trustees or managers treated the scheme as if it were a money purchase scheme; and

- (c) the trustees or managers of the scheme confirmed in writing to the Board that the conditions specified in regulation 7(1) (waiver) of the Fraud Compensation Levy Regulations were met.

(3) Where the Board is not satisfied that the conditions specified in paragraph (2) are met, no provision of these Regulations prevents recovery by the Board or by the Regulator on the Board's behalf of a debt arising under section 189(9) to (11)(a) (fraud compensation levy) of the 2004 Act.

(4) In this regulation—

- (a) “fraud compensation levy” has the same meaning as in section 189(1) of the 2004 Act; and
- (b) “the Fraud Compensation Levy Regulations” means the Occupational Pension Schemes (Fraud Compensation Levy) Regulations 2006(a).

### **Discharge of cash equivalent of benefits treated as money purchase**

**46.** Where—

- (a) before the appointed day, the circumstances specified in regulation 25(2) (cash equivalent of cash balance benefits treated as money purchase) apply in respect of a member of an occupational pension scheme; and
- (b) an assessment period begins in relation to the scheme,

the Board may discharge the cash equivalent of the cash balance benefits treated as money purchase benefits accrued by or in respect of the member as if they were money purchase benefits.

### **Schemes continuing as closed schemes after an assessment period**

**47.**—(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 or after the appointed day) to continue as a closed scheme under section 153(5) (closed schemes) of the 2004 Act.

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

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

- (a) the scheme provides cash balance benefits or scheme pensions derived from cash balance benefits or money purchase benefits; and
- (b) the trustees or managers of the scheme on or before 27th July 2011 treated those benefits or some of the benefits as if they were money purchase benefits.

(4) Where the Board has made a determination or a direction under any of the relevant provisions or of these Regulations—

- (a) paragraph (2) does not apply; and
- (b) the trustees or managers of the scheme must treat the benefits specified in paragraph (3)(b) in accordance with the direction or determination of the Board.

### **Discharge as money purchase liabilities: periods before the appointed day**

**48.**—(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 cash balance benefits or a scheme pension in payment derived from cash balance benefits or money purchase benefits, that discharge is to be regarded as having been made—

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(a) S.I. 2006/558

- (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 (discharge of liabilities in respect of money purchase benefits during the assessment period) of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations(b).

(2) Where paragraph (1)(a) or (b) applies, the relevant 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**

49.—(1) Where—

- (a) an 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 cash balance benefits or scheme pensions in payment derived from cash balance benefits or money purchase benefits;

the Board may determine that those benefits are to be discharged as money purchase benefits in the circumstances specified in paragraph (2).

(2) The circumstances specified in this paragraph are where the Board is satisfied—

- (a) that the benefits have before 28th July 2011 been treated by the trustees or managers of the scheme as money purchase benefits; and
- (b) that it is reasonable in the circumstances to treat the benefits as money purchase benefits for the purposes of the relevant provisions.

(3) Where the Board makes a determination in accordance with paragraph (1) that benefits are to be discharged as money purchase benefits, the relevant provisions apply in relation to those benefits as if they were money purchase benefits.

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

50.—(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 or after the appointed day) to continue as a closed scheme under section 153(5) (closed schemes) of the 2004 Act;
- (c) there is a further assessment period within the meaning of section 159(3) (closed schemes: further assessment periods) of the 2004 Act 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 circumstances in paragraph (3) apply, the Board may discharge liabilities in relation to benefits specified in paragraph (3)(b) treated as money purchase as if they were money purchase benefits.

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

- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits; and
- (b) either—

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(a) Section 170(3) was omitted by, and section 170(4) amended by, SI 2011/1730.  
 (b) S.I 2005/449.

- (i) the trustees or managers of the scheme have determined in accordance with regulation 47(2) that the benefits or some of the benefits specified in sub-paragraph (a) should continue to be treated as money purchase benefits; or
- (ii) the trustees or managers of the scheme have, in accordance with regulation 47(4)(b), treated those benefits or some of those benefits as money purchase in accordance with a determination or a direction made by the Board.

(4) Where the Board, in accordance with paragraph (2), discharges liabilities for benefits specified paragraph (3)(b) as if they were money purchase benefits, the relevant provisions apply in relation to the benefits discharged as if those benefits were money purchase benefits.

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

**51.** Where the Board is satisfied that—

- (a) on the appointed day a member of an eligible scheme 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;
- (b) the member does not have relevant accrued rights to benefit (within the meaning of section 101AA(4)(a) of the 1993 Act;
- (c) the rights specified in sub-paragraph (a) relate to cash balance benefits; and
- (d) the trustees or managers of the scheme treated those cash balance benefits as if they were money purchase benefits,

the Board may determine that those benefits are to be discharged as money purchase benefits.

**Discharge of pensions in payment derived from additional voluntary contributions: periods after the appointed day**

**52.—**(1) In the circumstances specified in paragraph (2), the Board may determine that a scheme pension or part of a scheme pension should be discharged as if it were money purchase benefits.

(2) The circumstances are that—

- (a) the assessment date in relation to an eligible scheme is on or after the appointed day;
- (b) the scheme pension or part of a scheme pension is derived from—
  - (i) additional voluntary contributions; and
  - (ii) money purchase benefits;
- (c) the scheme pension or part of a scheme pension comes into payment on or before 1st April 2015;
- (d) scheme pensions in payment with the same characteristics were before 28th July 2011 treated by the trustees or managers of the scheme as money purchase benefits; and
- (e) the Board is satisfied that it is reasonable in the circumstances to treat the scheme pension or part of a scheme pension as money purchase benefits.

(3) Where the Board determines in accordance with paragraph (1) to discharge a scheme pension or part of a scheme pension as money purchase benefits, the relevant provisions apply as if the scheme pension or part of the scheme pension discharged was a money purchase benefit and the discharge made in accordance with section 170 of the 2004 Act.

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

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

**53.**—(1) The Pension Protection Fund (Entry Rules) Regulations 2005 are amended as follows.

(2) In regulation 1(3) (citation, commencement and interpretation), after the definition of “the Authority”, insert—

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

(3) After regulation 2(3)(c) (disapplication of paragraph (2): schemes which are not eligible schemes)(b) insert—

“(d) (i) the scheme became an eligible scheme in accordance with regulation 38(1)(b) of the Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014; and

(ii) on or before 27th July 2011, the trustees or managers of the scheme entered into a legally enforceable agreement, the effect of which is (at any time) to reduce the amount of the debt due to the scheme under section 75 of the 1995 Act.”.

(4) In regulation 21 (refusal to assume responsibility – schemes which become eligible schemes)(c)—

(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 38(1)(b) of the Pensions Act 2011 (Transitional and Consequential 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 that date 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.”

### **Amendments to the Pension Protection Fund (Compensation) Regulations**

**54.**—(1) Regulation 25 (cash balance schemes: modification of paragraphs 5, 15 and 19 of Schedule 7 to the Act)(d) of the Pension Protection Fund (Compensation) Regulations 2005(e) is amended as follows.

(2) (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 sub-paragraph (2) substitute—

“(2) In their application to cash balance benefits or to a scheme 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—

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(a) S.I. 2005/590.

(b) Regulation 2(3)(c) was amended by S.I. 2005/2153.

(c) Regulation 21 was amended by S.I.s 2005/993 and 2010/196.

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

(e) S.I. 2005/670.

- (i) in sub-paragraph (3), after “The annual rate of the periodic compensation is” there were inserted “subject to paragraph (3A)”; and
  - (ii) after sub-paragraph (3) there were inserted—
    - “(3A) In a case where—
      - (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.”
- (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)”; and
  - (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)”; and
  - (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)”; and
- (c) paragraph 8 (active members over normal pension age 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)”; and
  - (ii) after sub-paragraph (3) there were inserted—
    - “(3A) In a case where—



- (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 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 notional pension; or
- (b) in a case where the commencement of periodic compensation under this paragraph has been so postponed, 100% of the aggregate of the protected notional pension 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) 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

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

(d) paragraph 10 has effect as if—

(i) for sub-paragraph (4) 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 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.”

- (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 subparagraph (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 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 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 annual rate of pension mentioned in sub-paragraph (3)(a), the Board may, having regard to the admissible rules, determine the initial annual rate of the compensation in accordance with actuarial factors published by the Board.”;
- (j) paragraph 37 has effect as if after “In this Schedule” there were inserted—
 

““cash balance benefit” has the meaning given in regulation 2 of the Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014;”
- (d) after regulation 25(2), insert—
 

“(3) In this regulation—

- (a) “cash balance benefit” has the meaning given in regulation 2 of the Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014; and
- (b) “cash balance scheme” means a scheme which provides cash balance benefits, whether or not the scheme also provides other benefits.”.

#### **Amendments to Schedule 9 of the 2004 Act (reviewable matters)**

**55.**—(1) Schedule 9 to the 2004 Act (reviewable matters) is amended as follows.

(2) after paragraph 16F (recovery of a charge from a person under regulation 18 of the Pension Protection Fund (Pension Compensation Sharing and Attachment on Divorce etc) Regulations 2011)(a) insert—

“16G. Any determination by the Board under—

- (a) regulation 49(1) (discharge as money purchase liabilities: periods after the appointed day) of the Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014;
- (b) regulation 52(1) (discharge of liabilities for pensions in payment derived from additional voluntary contributions: periods after the appointed day) of those Regulations; or
- (c) regulation 50(2) (closed schemes: Board’s assumption of responsibility after the appointed day) of those Regulations,  
that benefits should be discharged as money purchase benefits, or the failure to make such a determination.”

#### **Amendments to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005**

**56.**—(1) The Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005(b) are amended as follows.

(2) In the Schedule to the Regulations, in the first column of paragraph 16C (paragraphs 16C, 16D, 16E and 16F)(c) of the table—

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

## **PART 10**

### **Scheme Funding**

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

**57.**—(1) Part 3 of the 2004 Act does not apply, in relation to any period before the appointed day, to a scheme that meets the conditions specified in paragraph (2).

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

- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
- (b) the scheme provided no benefits other than benefits falling within paragraph (a) except money purchase benefits or death benefits; and

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

- (c) during any period when the conditions specified in sub-paragraphs (a) and (b) were met, 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 providing benefits treated as money purchase benefits: periods before the appointed day**

**58.**—(1) In relation to any period before the appointed day during which an occupational pension scheme met the conditions specified in paragraph (2), Part 3 of the 2004 Act applies in relation to that period as if the benefits specified in paragraph (2)(c) 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;
- (b) the scheme provided cash balance benefits or scheme pensions derived from money purchase or cash balance benefits; and
- (c) at all times before the appointed day when the conditions specified in sub-paragraphs (a) and (b) were met, the trustees or managers of the scheme treated those benefits or some of those benefits as if they were money purchase benefits.

**Modification of Part 3 of the 2004 Act for schemes treated as money purchase schemes: periods on and after the appointed day**

**59.** Where the conditions specified in regulation 57(2) are met in relation to an occupational pension scheme, section 224 of the 2004 Act (actuarial valuations and reports) has effect as if for paragraph (3)(a) and (b) were substituted—

- “(a) the effective date of the first actuarial valuation must not be more than one year after the day appointed for the coming into force of section 29 of the Pensions Act 2011; and
- (b) the effective date of any actuarial report must not be more than one year after the effective date of the last actuarial valuation, or, if more recent, the last actuarial report.”.

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

**60.**—(1) Where the conditions specified in regulation 57(2) are met in relation to an occupational pension scheme, the Scheme Funding Regulations are modified as follows.

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

(3) Regulation 8(1)(a) (recovery plan) applies in relation to the first recovery plan under section 226(1) (recovery plan) of the 2004 Act to be prepared after the appointed day, as if after “the first actuarial valuation” were inserted “after the day appointed for the coming into force of section 29 of the Pensions Act 2011”;

(4) Regulation 9(1) (schedule of contributions) applies in relation to the first schedule of contributions under section 227 (schedule of contributions) of the 2004 Act to be prepared after the appointed day as if for “following the establishment of the scheme” were substituted “after the day appointed for the coming into force of section 29 of the Pensions Act 2011”.

(5) Regulation 13 (period for obtaining employer’s consent) applies in relation to the requirement under section 229(1) of the 2004 Act to obtain the agreement of the employer as if for “an actuarial valuation” was substituted “the first actuarial valuation after the day appointed for the coming into force of section 29 of the Pensions Act 2011”.

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

#### **61. Where—**

- (a) the conditions specified in regulation 57(2) are met in relation to an occupational pension scheme; and
- (b) the trustees or managers of the scheme are, on or after the appointed day, 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<sup>(a)</sup>,

the trustees or managers of the scheme must provide the first summary funding statement to all members and beneficiaries of the scheme on, or within a reasonable period after, the date by which they are required under regulation 7(2) of the Scheme Funding Regulations to ensure that they receive the first actuarial valuation.

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

**62.** Where the conditions specified in regulation 57(2) are met in relation to an occupational pension scheme, notwithstanding the commencement of section 29 of the Act, until the trustees or managers of the scheme have prepared the first schedule of contributions in accordance with regulation 9(1) of the Scheme Funding Regulations—

- (a) the most recent schedule of payments prepared before the appointed day under section 87 of the 1995 Act<sup>(b)</sup> 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 (schedules of payments to money purchase schemes), 88 (schedules of payments to money purchase schemes: supplementary)<sup>(c)</sup> and 89 (application of further provisions to money purchase schemes)<sup>(d)</sup> of the 1995 Act and Part IV of the Occupational Pensions Schemes (Scheme Administration) Regulations 1996<sup>(e)</sup> continue to apply to the scheme.

### **Application of Part 3 of the 2004 Act for schemes with benefits treated as money purchase: periods on or after the appointed day**

**63.—**(1) Where the conditions specified in regulation 2(2) are met in relation to an occupational pension scheme, section 224 of the 2004 Act (actuarial valuations and reports) applies as if—

- (a) the effective date of the scheme's first actuarial valuation 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 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 2(2) are met in relation to an occupational pension scheme, no provision of section 29 of the Act or of these Regulations affects the validity of—

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(a) S.I. 2013/2734.

(b) Section 87 was amended by paragraphs 34 and 36 of schedule 12 and part 1 of schedule 13 to the Pensions Act 2004.

(c) Section 88 was amended by section 269(2), paragraphs 34 and 65 to schedule 12 and Part 1 of schedule 13 to the Pensions Act 2004, paragraph 12(4) of schedule 5 to the Child Support, Pensions and Social Security Act 2000, and section 10(2) of the Welfare Reform and Pensions Act 1999.

(d) Section 89 was amended by paragraphs 34, 66(a)(i) and 66(b) of schedule 12 to the Pensions Act 2004.

(e) S.I. 1996/1715.

- (a) a statement of funding principles prepared, or revised, as the case may be, under section 224 of the 2004 Act (actuarial valuations and reports) before the appointed day;
- (b) the latest actuarial valuation obtained under section 224 of the 2004 Act before the appointed day which has been certified by the actuary under section 225 of the 2004 Act (certification of technical provisions);
- (c) the latest actuarial report obtained under section 224 of the 2004 Act before the appointed day which has been assessed by the actuary under regulation 7(5) (certification of technical provisions) of the Scheme Funding Regulations;
- (d) any recovery plan prepared by the trustees or managers of a scheme under section 226 of the 2004 Act (recovery plan) immediately before the appointed day; and
- (e) the schedule of contributions certified by the actuary under section 227 of the 2004 Act immediately before the appointed day.

## PART 11

### Financial Assistance Scheme

#### Interpretation

**64.** In this Part—

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

“notional pension” has the same meaning as in regulation 27(1) (scheme manager calculations after a valuation)(b) of the Financial Assistance Scheme Regulations;

“qualifying pension scheme” has the same meaning as in regulation 9(1) (qualifying pension schemes)(c) of those Regulations; and

“scheme manager” has the same meaning as in regulation 5 (scheme manager)(d) of those Regulations;

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

**65.**—(1) Where the scheme manager is satisfied that the circumstances specified in paragraph (2) apply, an occupational pension scheme which would otherwise be a qualifying pension scheme is not a qualifying pension scheme.

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

- (a) the scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
- (b) the scheme provided no benefits other than benefits falling within sub-paragraph (a), money purchase benefits or death benefits; and
- (c) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme.

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(a) S.I. 2005/1986.

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

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

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

## Qualifying schemes with benefits treated as money purchase benefits

**66.**—(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 (as modified by paragraph 3B(d)(a) of Schedule 1 to the Financial Assistance Scheme Regulations);
- (b) affects the validity of an actuarial valuation—
  - (i) the effective date of which is before the appointed day; and
  - (ii) which is or has been obtained by the trustees or managers of a qualifying pension scheme (whether before or after the appointed day) in accordance with regulation 22 (scheme manager to obtain a valuation of assets and liabilities)(b) of the Financial Assistance Scheme Regulations;
- (c) requires the trustees or managers of a qualifying scheme to obtain or provide a further or revised actuarial 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 (scheme manager calculations after a valuation)(c) or 28 (determination of certain asset shares, notional pensions and survivor notional pensions) of those Regulations 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 (in accordance with regulation 27(2)) of the Financial Assistance Scheme Regulations that a determination in accordance with regulation 21(1) (application of this Part)(d) of those 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 scheme in accordance with regulation 29(1) (transfer notice) (e) of the Financial Assistance Scheme Regulations; 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)(f).

(2) The conditions specified in this paragraph are that the scheme manager is satisfied that—

- (a) the liabilities of a qualifying scheme include or included liabilities in relation to cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits; and
- (b) the trustees or managers of the scheme treated those benefits or some of those benefits as if they were money purchase benefits.

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

(b) Regulation 22 was inserted by S.I. 2010/1149.

(c) Regulations 27 and 28 were inserted by S.I. 2010/1149.

(d) Regulation 21 was inserted by S.I. 2010/1149.

(e) Regulation 29 was inserted by S.I. 2010/1149.

(f) Regulation 31 was inserted by S.I. 1010/1149.

(3) Where the conditions in paragraph (2) are met, the scheme manager may determine on or after the appointed day that any provision of section 286 of the 2004 Act or of the Financial Assistance Scheme Regulations applies as if those benefits were money purchase benefits.

## PART 12

### Equality

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

**67.** Regulation 4 of the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010(a) is amended as follows—

- (a) in paragraph (2)(c), before “money purchase benefits” insert “a periodical pension which is paid by the trustees or managers of an occupational pension scheme and which is derived from”; and
- (b) after paragraph (2)(c) insert
  - “(ca) a periodical pension which—
  - (i) is paid by the trustees or managers of an occupational pension scheme; and
  - (ii) is derived from cash balance benefits within the meaning of regulation 2 of the Pensions Act 2011 (Transitional and Consequential Provisions) Regulations 2014.”.

## PART 13

### Pension Sharing

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

**68.**—(1) Where, before the appointed day, a person responsible for a pension arrangement has provided a valuation of the benefits accrued under a pension arrangement for the purposes of pension sharing or attachment on divorce or dissolution of a civil partnership, 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 circumstances specified in paragraph (3) apply, 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, may make a subsequent valuation of the member’s benefits on the same basis.

(3) The circumstances 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);
- (b) the benefits valued in the earlier valuation included—
  - (i) cash balance benefits; or
  - (ii) a scheme pension in payment derived from money purchase benefits or cash balance benefits; and

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(a) S.I. 2010/2132.



- (c) a subsequent valuation of the same benefits is to be made for the purposes of Part IV (pension sharing) of the 1999 Act or Part IVA (requirements relating to pension credit benefit)(a) of the 1993 Act in the same or connected proceedings.

(4) 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 the earlier proceedings.

## PART 14

### Cross-Border Schemes

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

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

- (a) the trustees or managers of an occupational 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 under section 288(1) (general authorisation to accept contributions from European employers) of the 2004 Act in relation to any period before the appointed day;
- (b) the Regulator’s authorisation of the scheme under section 288(2)(a) of that Act is valid in respect of any period before the appointed day;
- (c) that authorisation of the scheme 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) (occupational pension scheme receiving contributions from European employer) of the 2004 Act (civil penalties) does not apply in relation to a failure to apply for authorisation under section 288(1) in the form prescribed for a scheme which is not a money purchase scheme.

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

- (a) an occupational pension scheme provided cash balance benefits or scheme pensions derived from cash balance benefits or money purchase benefits;
- (b) the scheme provided 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) the trustees or managers of the scheme made an application for authorisation to accept contributions from a European employer under section 288(1) of the 2004 Act;
- (e) that application was made in the form prescribed for a money purchase scheme in accordance with the following provisions of the Occupational Pension Schemes (Cross-border Activities) Regulations 2005(b) (‘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) of;
  - (ii) regulation (5)(2)(a) (applications for general authorisation to accept contributions from European employers: established schemes which are carrying on cross-border activity)(c);
  - (iii) regulation 5(3)(b)(ii)(aa)(a);

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(a) Part IVA was inserted by section 37 of the 1999 Act.

(b) S.I. 2005/3381.

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

- (iv) regulation 5(4)(a)(b); or
- (v) regulation 6(2)(a) (applications for general authorisation to accept contributions from European employers: new schemes); and
- (f) the Regulator has granted that application in accordance with section 288(2)(a) of the 2004 Act.

(3) Where the trustees or managers of the scheme intend to accept contributions from European employers after the appointed day they must make a further application for authorisation under section 288(1)—

- (a) within the period of one year beginning with the appointed day; and
- (b) in the form prescribed for a scheme which is not a money purchase scheme in accordance with regulation 5(2)(a) of the Cross-border Regulations;

(4) In this regulation “European employer” has the same meaning as in regulation 3(1) (meaning of “European employer” and “host members State” in Part 7 of the Act) of the Cross-Border Regulations.

## PART 15

### Disclosure

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

**70.**—(1) Where the conditions specified in either paragraph (2) or (3) 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 the information required under the provisions specified in paragraph (2)(c) or (3)(d), as the case may be; and
- (b) regulation 11 (civil penalties)(c) of the Occupational Pension Schemes (Disclosure of Information Regulations) 1996(d) (‘the Disclosure Regulations’) does not apply in relation to a failure relating to a period before the appointed day to provide the information required under the provisions specified in paragraph (2)(c) or (3)(d).

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

- (a) members of an occupational pension scheme—
  - (i) have accrued rights to cash balance benefits; or
  - (ii) are entitled to a scheme pension derived from cash balance benefits or money purchase benefits;
- (b) the trustees or managers of the scheme treated some or all of the benefits specified in sub-paragraph (a) as money purchase benefits; and
- (c) for that reason, the trustees or managers did not supply to those members of the scheme any of the information specified in the following provisions of the Disclosure Regulations —
  - (i) paragraph 4 of Schedule 2 (information to be made available to individuals)(e), in accordance with regulation 5(4) (information to be made available to individuals)(f);
  - (ii) paragraph 16 of Schedule 2, in accordance with regulation 5(12)(a); or
  - (iii) paragraphs 17 to 22 of Schedule 2(a), in accordance with regulation 5(12ZA)(b) and subject to regulation 5(16)(c).

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

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

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

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

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

(f) Paragraph (4) of regulation 5 was amended by S.I. 2000/2691.

- (3) The conditions specified in this paragraph are that before the appointed day—
- (a) an occupational pension scheme provided cash balance benefits or scheme pensions derived from money purchase benefits or cash balance benefits;
  - (b) the scheme provided no benefits other than benefits specified in sub-paragraph (a), money purchase benefits or death benefits; and
  - (c) at all times before the appointed day when the conditions specified in sub-paragraph (a) and (b) were met, the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme; and
  - (d) for that reason did not supply to members of the scheme the information specified in the following provisions of the Disclosure Regulations—
    - (i) regulation 6(1)(b) to (d) (availability and content of annual report)(**d**);
    - (ii) regulation 7(1)(a) to (ca) and (e) (availability of other documents)(**e**).

**Amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013**

**71.**—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(**f**) are amended as follows.

- (2) In regulation 2 (interpretation), after the definition of “beneficiary” insert—
- ““cash balance benefit” has the same meaning as in regulation 2 of the Pensions Act 2011 (Transitional and Consequential 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 and 9 to 14, 16A and 17 of Schedule 6.

(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) (i) in relation to rights or entitlements to benefits other than money purchase benefits, the information mentioned in Part 2 of Schedule 8; and
- (ii) in relation to rights or entitlements to money purchase benefits or money purchase pensions, the information mentioned in paragraph 10 of Schedule 8.”

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(a) Paragraphs 17 to 22 of Schedule 2 were inserted by S.I. 2005/337.  
 (b) Paragraph (12ZA) of regulation 5 was inserted by S.I. 2005/337 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 2005/337.  
 (e) Paragraph (1) of regulation 7 was amended by S.I.s 2005/337 and 2006/1733.  
 (f) S.I. 2013/2734.

(6) In Schedule 2 (information to be given by occupational pension schemes that fall with in paragraph 1 of Schedule 1)—

(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 cost of buying an annuity at the time the pension becomes payable) which may be different from any assumptions made.”.

## PART 16

### Underpin and top-up benefits

#### Interpretation

**72.** In this Part “specified value or amount” includes in particular a value, rate or amount which is determined by reference to external criteria, such as a value, rate or amount which is required in order to comply with statutory minimum requirements.

#### Underpin benefits

**73.—(1)** Where an occupational pension scheme provides money purchase underpin benefits in respect of a member the entire amount of those benefits is money purchase.

(2) “Money purchase underpin benefits” are money purchase benefits which under the scheme will only be provided in respect of a member if their value exceeds—

(a) the value of other benefits in respect of that member under the scheme which are not money purchase benefits; or

(b) a specified value or amount.

## Top-up benefits

74.—(1) Where, under the scheme, a top-up benefit is payable to or in respect of a member, the value of the money purchase benefits (by reference to which the top-up benefit is calculated) and the top up benefit must be aggregated to form a single benefit ('the single benefit') which is not to be treated as a money purchase benefit for the purposes of—

- (a) section 73 of the 1995 Act; and
  - (b) the relevant provisions.
- (2) A "top-up benefit" is a benefit, the value of which—
- (a) is greater than nil; and
  - (b) is calculated under the scheme by reference to a shortfall between the value of money purchase benefits payable to or in respect of a member and a specified value or amount, including a specified minimum value, rate or amount.

## Application of this Part: periods before the appointed day

75.—(1) Subject to paragraph (2), this Part applies to any occupational pension scheme—

- (a) which has commenced winding up on or after 6th April 2005; or
- (b) in relation to which an assessment period has begun.

(2) Where—

- (a) a scheme which began winding up or entered an assessment period on or after 6th April 2005 has before the appointed day completed winding up or transferred to the PPF in accordance with section 161 of the 2004 Act; and
- (b) the trustees or managers have applied the assets of the scheme towards satisfying the liabilities of the scheme according to the priority order set out in section 73(4) of the 1995 Act, except in that top-up benefits and money purchase benefits by reference to which the value of the top-up benefit is calculated have not been aggregated to form a single benefit,

the application of the assets of the scheme in that manner is to be regarded as having been made in accordance with section 73 of that Act and (where the scheme has transferred to the Pension Protection Fund) the relevant provisions apply accordingly.

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

Address  
Date

*Steve Webb*  
Minister of State  
Department for Work and Pensions

## 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 amends the definition of "money purchase benefits" in section 181 of the Pension Schemes Act 1993 and other Acts. Section 29 has retrospective effect to 1<sup>st</sup> January 1997 and these Regulations make transitional, consequential and supplementary provision to support its commencement.

Part 1 of these Regulations provides for citation, commencement and interpretation. Regulation 3 exempts the Imperial Home Décor pension scheme (which was the subject of the Supreme Court's judgment in *Houldsworth and another v Bridge Trustees Ltd and another*) from Part 4 of the Act and from these Regulations.

Part 2 makes transitional arrangements for schemes which have wound up, or are in the process of winding up, and which provided benefits affected by the coming into force of section 29 (“affected benefits”). Affected benefits are cash balance benefits and scheme pensions derived from cash balance or money purchase benefits which the trustees or managers of the scheme treated as money purchase benefits. Regulations 4 and 6 make arrangements for schemes treated as money purchase schemes and regulations 5 and 7 apply to schemes which provide affected benefits, as well as other defined benefits. Regulations 8 and 9 apply where a scheme has commenced winding up after 28th July 2011 and completed winding up before the day appointed for the coming into force of section 29 of the Act (“the appointed day”). Regulation 10 applies where schemes have been involved with the Pension Protection Fund (‘PPF’).

Part 3 deals with the application of section 75 (deficiencies in the assets) of the 1995 Act. Regulations 13, 15 and 17 apply to schemes with affected benefits, where a relevant event occurred with respect to the employer in relation to the scheme (“a relevant event”), or the scheme began winding up, before 28th July 2011. Regulations 14, 16 and 18 make provision in relation to schemes which provide affected benefits where a relevant event has occurred on or after 28<sup>th</sup> July 2011 but before the appointed day. Regulation 19 is for a multi-employer scheme providing affected benefits where the scheme has entered into a prescribed arrangement which has been approved by the Regulator before the appointed day.

Part 4 makes supplementary and transitional arrangements for revaluation, indexation and preservation of benefits. Regulation 20 allows trustees or managers of a scheme to revalue cash balance benefits not calculated by reference to final salary, as an alternative to the ‘final salary method’, by the ‘cash balance method’. Regulation 21 makes transitional arrangements for schemes with cash balance benefits which have before the appointed day been revalued by the application of notional interest. Regulation 22 makes transitional arrangements for schemes which before the appointed day provided non-indexed pensions derived from cash balance benefits. Regulation 23 makes consequential amendments to the Occupational Pension Schemes (Preservation of Benefits) Regulations 1991 (S.I. 1991/167).

Part 5 provides transitional arrangements for calculating transfer values relating to cash balance benefits treated as money purchase benefits. Regulation 27 amends the Occupational Pension Schemes (Transfer Values) Regulations 1996 to provide for the calculation of cash balance benefits.

Part 6 makes transitional provision in relation to members of schemes who have acquired a right to a cash transfer sum or contribution refund under Chapter 5 of Part IV (protection for early leavers), where the benefits were treated as money purchase benefits before the appointed day. Regulation 30 amends the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations 2006.

Part 7 makes transitional provision for schemes treated as money purchase schemes for the purposes of making a payment to the employer before the appointed day under section 37 or 76 of the 1995 Act.

Part 8 modifies the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (S.I. 2006/1715) for transitional purposes in cases where trustees or managers have treated a scheme as if it were a money purchase scheme.

Part 9 provides transitional, consequential and supplementary arrangements for schemes involved with the PPF. Regulation 38 provides for a scheme treated as a money purchase scheme to be ineligible for the PPF before 1<sup>st</sup> April 2015. Regulation 39 validates decisions etc made before the appointed day. Regulation 42 makes transitional provision in relation to previous levy calculations. Regulations 40, 41, 43 and 44 set out the 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 46, 47, 48, 49, 50, 51 and 52 permit affected benefits to be discharged as money purchase benefits where certain conditions are met, in particular that the benefits were treated as money purchase benefits before the appointed day.

Regulation 53 makes transitional amendments to the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590) and regulation 54 makes consequential and supplementary amendments to the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670), which modify Schedule 7 to the Pensions Act 2004 (c. 35) (“the 2004 Act”). Regulations 55 and 56 make consequential and supplementary amendments to, respectively, Schedule 9 of that Act and the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I. 2005/669).

Part 10 sets out transitional arrangements in relation to Part 3 (scheme funding) of the 2004 Act. Regulation 57 deals with schemes which were treated as money purchase schemes before the appointed day, but will not be money purchase schemes on the commencement of section 29 of the Act. Regulations 58, 59 and 60 provide transitional modifications in relation to schemes providing affected benefits before the appointed day.

Regulations 61 and 62 make provision for the transition from provision of a schedule of payments to a schedule of contributions for schemes that becomes subject to Part 3 of the 2004 Act on the appointed day. Regulation 63 sets out the arrangements for actuarial valuations in relation to schemes providing affected benefits.

Part 11 makes transitional provision in relation to the Financial Assistance Scheme. Regulation 65 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 66 ensures that decisions or actions made before the appointed day in relation to eligible schemes do not have to be revisited.

Part 12 makes consequential and supplementary amendments to the Equality Act (Sex Equality Rule) (Exceptions) Regulations 2010 (S.I. 2010/2132.).

Part 13 provides transitional arrangements in relation to pension sharing activity before the appointed day.

Part 14 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 15 covers disclosure of information in relation to benefits and schemes which were treated as money purchase before the appointed day. Regulation 70 disapplies specified provisions of the Occupational Pension Schemes (Disclosure) Regulations 1996 (S.I. 1996/1655), in relation to periods before the appointed day, so as to ensure that trustees or managers are not required to provide information in relation to a schemes or benefits regarded as money purchase in respect of that period. Regulation 71 makes consequential and supplementary amendments to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734).

Part 16 is supplementary to Part 4 of the Act and clarifies the treatment of ‘underpin’ or ‘top-up’ benefits in relation to the period after 5th April 2005 for the purposes of section 73 of the 1995 Act and the Pension Protection Fund. Regulation 75 ensures that in cases where such benefits have not been treated in accordance with regulations 73 and 74 before the appointed day, no unpicking of arrangements is necessary.