Department
for Work &
Pensions

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

Response to Public Consultation

**July 2014**

# Contents

# Chapter One – Introduction

1. The Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014 and The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 make modifications to existing legislation and provide transitional, consequential and supplementary measures to support the commencement of section 29 of the Pensions Act 2011 ("section 29"). Section 29 clarifies the definition of money purchase benefit in pensions legislation following the Supreme Court judgment in Bridge Trustees v Houldsworth and another (2011) (Bridge).1 Section 29 will amend the definition of money purchase benefit in section 181 of the Pension Schemes Act 1993 and section 99 of the Pensions Act 2008, with retrospective effect to 1 January 1997.
2. The retrospective nature of section 29 is significantly limited by the transitional measures throughout these two sets of Regulations. Where the effect of section 29 has been modified or limited retrospectively, it is discussed more fully in the individual policy chapters.
3. On 31 October 2013 the Government published a consultation on draft Regulations and a supporting impact assessment. The consultation ended on 12 December 2013.
4. The Department received 95 formal written responses. These were from trustees, pensions industry bodies, pensions professionals (including lawyers and actuaries) and employers. These included 40 separate responses from the employers connected with a single scheme. A list of all those who responded can be found at Annex A.
5. During consultation the Department held four stakeholder forums that were attended by over 100 stakeholders. Where it became apparent that further information was needed to clarify the issues being raised at these events we approached the appropriate representative organisations. We also used social media channels to encourage as wide an audience as possible to respond to the consultation.
6. The Department would like to thank all those who responded to the consultation for their time and expertise.
7. An earlier version of the Government's formal response to the consultation was published on 6 May 2014. That is now replaced by this revised response to align with the final form of the regulations, which have been divided into two separate sets of regulations – **The Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014** ("the Regulations amending primary legislation") and **The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014** ("the Transitional Regulations") together referred to as the two sets of Regulations or these regulations in this document. This response is otherwise substantially the same. Both sets of regulations will come into force at the same time.

[1] [2011] UKSC 42.

8. Whilst these two sets of Regulations contain the same regulations that had been in the original set of Regulations, the consultation response has been revised and re-published to reflect the change of procedure, and the consequent changes in regulation numbers referred to.

9. This response explains changes made to the consultation draft of Regulations as a consequence of the responses received as well as why certain changes sought have not been made. It is a companion document to, and should be read in conjunction with the Consultation Document and the two sets of Regulations. This Document follows the subject order of the Transitional Regulations. The Regulations amending primary legislation are set out in Chapter 1A, with cross references to the relevant subject area in the Transitional Regulations. A list of the consultation questions can be found at Annex B.

10. Where the appointed day is used in this document it refers to the coming into force date of section 29.

11. The term 'non-compliant scheme' is used in this document to refer to schemes that had treated benefits which are non-money purchase as money purchase before the appointed day, and which will be required to comply with the effect of section 29 across pensions legislation once it comes into force with retrospective effect.

12. The Pensions Act 2011(Consequential and Supplementary Provisions) Regulations 2014) were laid in draft for approval before Parliament on 17 June for approval by resolution of each House, and the Pensions Act 2011(Transitional, Consequential and Supplementary Provisions) Regulations 2014 were made and laid before Parliament on 3 July. It is intended that each set of Regulations will come into force in the latter part of July 2014. This is later than was anticipated in the consultation, due to the complexity and range of the issues raised.

# Chapter One A –
# The Pensions Act 2011(Consequential and Supplementary Provisions) Regulations 2014)

13. The Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014 contain only provisions amending primary legislation consulted upon in the draft consultation regulations. Regulation 3 amends section 84 of the Pension Schemes Act 1993 on revaluation of deferred benefits, and the Government's response to submissions in this area is set out in Part 8 under the heading "Revaluation". Regulation 4 amends schedule 9 to the Pensions Act 2004 on decisions of the Board of the Pension Protection Fund that are reviewable, and the Government's response to consultation in this area is set out in Part 13. Regulation 2 is consequential to the changes in regulations 3 and 4.

# Chapter Two – Types of benefits affected by the clarified definition of money purchase benefits in section 29 of the Pensions Act 2011

14. Chapter One sets the context for the Regulations, whilst Chapter One A sets out the content of the regulations amending primary legislation.

15. This chapter sets out the Department's response to the submissions received on questions 1 to 11 in the introductory chapters of the Consultation Document. Where the submissions commented on a particular regulation or policy area, the responses are set out in detail in the relevant chapter.

## Question 1

**Is there a more cost-effective way of implementing the transitional, consequential and supplementary provisions that support the commencement of section 29?**

## Consultation response

16. Ninety per cent of the respondents supported the need for transitional measures to support the coming into force of section 29. They felt these provided much needed clarity and certainty on how section 29 would apply and be implemented over a transitional period and in relation to past events.

17. A few respondents remained of the view that there was no need to commence section 29 at all.

18. Some respondents felt that the proposed Regulations were contrary to the Government's aim to reduce unnecessary red tape and went beyond what is required to comply with European legislation.

19. A small number of respondents commented that the Department should be mindful of how the proposed Regulations would fit with future plans for Defined Ambition.

20. One respondent felt that complex legislative changes would stifle future innovation.

21. Some respondents expressed concern that Regulations were overly complex. This was because of the range of dates used in providing transitional easements on section 29 being backdated to 1 January 1997. These respondents would have preferred section 29 to have prospective effect only and considered this would make any transitional Regulations simpler and minimise the risk of any unintended consequences.

## Government response

22. We have considered all the views expressed and decided that the Regulations remain the most appropriate way to ensure protection for members entitled to benefits under an occupational pension scheme. Section 29 is retrospective in order to ensure that schemes which have behaved consistently with that definition of money purchase do not have to revisit past decisions. The Regulations will ensure that, in most cases, section 29 does not require other schemes to revisit past decisions.

23. The transitional, consequential and supplementary provisions in the Regulations are deregulatory in nature and align with the Government's challenge to reduce unnecessary red tape.

24. Protection of member benefits is in the public interest. This is reflected in the Department's objective to protect member benefits, and is consistent with it's obligations under European law. These obligations are to ensure that occupational pension schemes are sufficiently funded to provide benefits promised to scheme members and to ensure that such benefits are protected in the event of the insolvency of the sponsoring employer.

25. By providing clarity on the definition of money purchase benefits the Regulations will support the basis of Defined Ambition.

## Questions 2, 3 and 4

**Is your scheme split into sections that contain separately money purchase and non-money purchase benefits?**

**Is the scheme split into sections for other reasons?**

**Is there a cross-subsidy between the different sections of the scheme?**

## Consultation response

26. Only one respondent addressed these questions. This respondent commented that their scheme was completely sectionalised and that this enabled them to account for members' benefits in the appropriate manner.

## Government response

27. These questions were intended to allow us to develop an understanding of the common practices and structures of schemes with affected benefits. We are grateful to the scheme that provided this information. Unfortunately, a single scheme's information was insufficient for us to develop the understanding we had hoped for. Therefore the Regulations are drafted to accommodate as broad a range of scheme structures as is practical.

## Questions 5 and 6

**What is the membership size of the scheme?**

**How many members are there in each section of the scheme?**

## Consultation response

28. We received two responses that covered both questions, however, these responses gave only limited scheme level data.

## Government response

29. The consultation sought further information to enable some quantification of costs and benefits. However, insufficient information was forthcoming. While some schemes raised general concerns about the impact only a handful of respondents provided hard data. The information provided was taken into consideration but was not sufficient to allow impacts to be extrapolated across the industry.

## Questions 7 and 8

**Do you believe that splitting the Regulations into two stages would be helpful to schemes and if so why would it be helpful?**

**If so, which regulations should we delay until the second stage?**

## Consultation response

30. There was clear support for a single stage approach and no justification or clear proposal for splitting the coming into force of the Regulations into two stages. Only one response was of the view that it would be simpler if the Regulations were split into stages and incrementally implemented. Others were of the view that splitting the implementation in two different stages would introduce an additional layer of complexity to these already complex Regulations.

## Government response

31. Having considered the responses, the Department remains of the view that the Regulations should be implemented in a single stage as proposed in the consultation Regulations. The policy areas covered by the Regulations are complex and heavily inter-related and we agree with respondents that it would not be practical to try to divide these Regulations into different stages.

## Questions 9, 10 and 11

**Do the proposed changes in the Regulations give rise to particular difficulties that you can identify?**

**What are these difficulties and why do the proposals give rise to them?**

**How do you think these difficulties could be addressed?**

## Consultation response

32. Nearly all of the responses to these questions raised two key concerns. These were: the effect of the retrospective nature of the Regulations; and the type of benefits provided by schemes, which some respondents felt were not covered by the transitional measures and protections in the Regulations.

## Retrospection

33. The consultation Regulations provided significant easements for schemes affected by the coming into force of section 29. They removed the requirement to revisit decisions made from 1 January 1997 to 27 July 2011 (where such decisions were made on a basis incompatible with section 29). This is the date of the Department's statement of its intention to introduce retrospective legislation following the judgment in *Bridge*.

34. The intention was to validate actions prior to 28 July 2011. Specifically, where schemes had treated as money purchase benefits:

    - cash balance benefits; and
    - pensions derived from money purchase or cash balance benefits.

35. Where schemes were not sufficiently funded to provide the benefits promised to members, they were required to revisit some decisions made after 27 July 2011. This was where an ongoing multi-employer scheme was in deficit and a sponsoring employer had departed the scheme or where the scheme was in deficit on winding-up.

36. The key concerns in responses were that:

    - the retrospective changes to legislation made by the Regulations created uncertainty and lack of clarity, which was contrary to the Department's intention;
    - the Department's statement on 27 July 2011 was not sufficient to enable trustees and others to rely on it. Until the consultation Regulations had been published, the pensions industry was unable to form a clear view of how the transitional measures would be formulated;
    - for non-compliant schemes it was considered that revisiting past decisions would be expensive and, depending on the scheme rules this cost could fall on the members in the form of reduced benefits. In many cases it was considered unlikely that revisiting past decisions would in practice be possible, and therefore there would be no advantage to members or any other party. It was felt that the Regulations should disapply section 29 for these non-compliant schemes up to commencement.

37. All responses favoured the provisions in the Regulations validating past actions. This was regardless of how the benefits provided by schemes to members had been treated up to the coming into force of section 29. This would mean that section 29 only has prospective effect for the affected benefits except in very limited circumstances.

38. Two responses suggested that the Department's statement on 27 July 2011 was sufficient assurance for schemes to act in accordance with the intention behind section 29.

## Government response – retrospection

39. Having fully considered the responses, the Department has changed its policy on retrospection for non-compliant schemes. Decisions taken by schemes between 1 January 1997 and the coming into force of section 29 will be validated, except in two limited circumstances relating to winding up and employer debt where there is

a risk to member benefits. The Regulations have been changed to reflect this and further detail is provided in the individual policy chapters.

## Consultation response – definition of benefits

40. A number of responses argued that the types of benefits subject to transitional easements in the Regulations needed to be extended to include other commonly used types. These were the benefit types that were not affected by the judgment in Bridge but which some schemes had treated as money purchase benefits. These benefits clearly fell outside the definition of money purchase benefits in section 181 of the Pension Schemes Act 1993, as amended by section 29, but were not:

- cash balance benefits; or
- scheme pensions derived from cash balance or money purchase benefits;

as provided for in the transitional easements contained in the consultation draft.

41. These were the benefit types that the Supreme Court found could be money purchase.

42. This would mean that schemes which provided benefits that were outside the consultation Regulations would not have transitional protection and would be required to re-visit past decisions, in some cases as far back as 1 January 1997 once section 29 is commenced. They felt this exercise would be impractical and at considerable cost, without any obvious advantage or benefit to members. In some cases revisiting past actions would be impossible where the scheme had already wound up; transfers between schemes had already occurred; or where the former sponsoring employers had ceased to exist.

43. Some respondents argued that all decisions made by schemes in respect of all benefits treated as money purchase prior to the coming into force of section 29 should be validated. This was because of the financial implications for the sponsoring employers [[and, or]] the administrative burden it would have on schemes. Responses on this matter included a number received from employers in connection with one scheme.

44. Some respondents commented that the references to cash balance benefits in different parts of the Regulations were inconsistent.

## Government response – types of benefits affected

45. The Department was persuaded to widen the scope of the transitional and other measures in the Regulations. These will now include the types of benefits raised in the consultation listed below. This is in addition to cash balance benefits and pensions derived from these or money purchase benefits. More information is given in the relevant chapters.

46. The benefits now protected for particular purposes in the Regulations are:

- defined benefits minima in relation to money purchase or cash balance underpin benefits as defined in regulation 1 and Part 2 of the Transitional Regulations (Chapter Three);
- top-up benefits defined in regulation 1 and Part 2 of the Transitional Regulations (Chapter Three);

- protected rights provided for in regulation 7 of the Transitional Regulations (Chapter Four);
- additional voluntary contributions provided for in regulation 57 of the Transitional Regulations (Chapter Twelve).

47. We accept that non-compliant schemes could face disproportionate costs in complying with the pension protection regime retrospectively. These costs would occur where schemes considered that certain benefits which were capable of developing a deficit were nevertheless treated as money purchase benefits.

48. In widening the scope for the type of benefits covered by the Transitional Regulations we recognise that the judgment in Bridge did not give clarity and certainty in law about the types of benefits falling within the meaning of money purchase benefit. Section 29 will provide this clarity and certainty.

49. There is a limit as to the type of benefits that are to be transitionally protected from the effects of section 29, up to the commencement date. Only those benefits and schemes which could conceivably have been affected by the judgment in *Bridge Trustees* are covered. We do not accept the proposal made by a few respondents that the Regulations should provide a blanket exemption for schemes that provided benefits with any element of a guarantee or promise attached (such as final or average salary benefits), but which treated these benefits as money purchase when there was no justification for doing so. The Department considers that this gives rise to an unacceptable level of risk to member benefits, and ultimately to the taxpayer.

50. However the Department has been persuaded that, where there is negligible risk to member benefits, it would be unduly burdensome to require schemes to revisit past decisions. This would give rise to expensive administrative costs that could deplete scheme assets and therefore, the ability to fund members’ benefits.

51. Nevertheless, where there is a real risk to member benefits, it is right that the legislation provides that employers fund a scheme deficit if a scheme is underfunded on wind-up, or if the scheme is unable to put in place a recovery plan.

52. To this end, regulation 23 and 24 of the Transitional Regulations validate the actions of trustees or managers in respect of these non-money purchase benefits (where they have treated these as money purchase) up to the commencement date, except in two limited cases where the scheme is in deficit and unable to fully fund members benefits. These cases are dealt with fully in Chapter Seven.

## Consultation response

53. Some respondents questioned whether the requirements throughout the Regulations to have 'treated' the specified benefits as money purchase benefits was sufficiently clear. The condition (or one of the conditions) for the relevant transitional provisions to apply is that trustees have treated the specified benefits or a scheme as money purchase.

54. One respondent considered that the use of 'treated' was appropriate in the circumstances as it gave trustees (and the Board of the Pension Protection Fund) discretion to apply any relevant provisions as appropriate in the particular circumstances.

55. One respondent questioned whether the requirement, again in various provisions

in the consultation Regulations, for trustees to have treated the scheme or benefits as money purchase 'at all times' would mean that, in cases where the benefits had been treated in different ways over different periods of times, the transitional provisions would not achieve the right results.

## Government response

56. We have considered the responses and as appropriate made some technical changes for consistency in how the provisions are framed, but have retained use of 'treated' in the Regulations. The Department is of the view that the terminology gives sufficient flexibility to allow trustees to deal with the various scenarios for which the Regulations provide transitional measures and to reach the right result. We do not consider it appropriate to specify a time as to when the benefits or scheme in a particular case has to be 'treated' as a money purchase benefit in each provision. This is because the provisions will not apply in the same way in all cases.

57. In some cases, it makes more sense to look at what the benefits were treated as where there is a single event, such as a transfer or an employer debt arrangement.

58. In other cases, such as for the purposes of deciding whether a scheme is an eligible scheme, a longer period might be appropriate. Each provision has been framed to ensure that the right result is reached in each case.

# Chapter Three – Part 2: Money purchase underpin benefits and top-up benefits

59. The consultation Regulations included provisions for underpin benefits and top-up arrangements specifically in relation to the Pension Protection Fund. This provided clarity for trustees and managers in deciding how these benefits should be treated over a transitional period if the scheme was in an assessment period in respect of the Pension Protection Fund over this time.

60. An underpin benefit is currently defined in regulation 13 of the Occupational Pension Schemes (Winding Up) Regulations 1996 as a money purchase benefit which will only be paid if it is greater than another benefit which is not a money purchase benefit.

61. A top-up benefit is not defined in legislation but is part of some benefit designs. It is calculated by the difference between a benefit that is treated under the scheme rules as a money purchase benefit and a pre-set level or value: for example, the reference scheme test for the purposes of contracting-out.

62. The consultation focused on the treatment of underpins and top-up benefits in the Pension Protection Fund assessment period. In the case of underpin or top-up arrangements, when a scheme enters the assessment period at the appointed insolvency date, the accrued defined benefit is tested against the money purchase amount in each individual’s arrangement.

63. Any money purchase underpin benefit in respect of the individual’s arrangement that is greater than the defined benefit minimum guarantee offered by the scheme continues to be a money purchase benefit. This money purchase benefit would be discharged if the scheme enters the Pension Protection Fund or winds up with insufficient assets. Similarly, for a top-up arrangement, if the defined benefit minimum guarantee is of a lower value than the amount of the money purchase benefits, the benefit remains money purchase and will be discharged as such.

64. The consultation also considered the scenario where members ‘lose’ some of their money purchase benefits when the underpin test is applied. This can occur where the money purchase amount at the point that the underpin or top-up is tested is less than the defined benefit amount, but is more than the Pension Protection Fund compensation level. In this situation the member would receive Pension Protection Fund compensation based on their rights to the defined benefit minimum rather than on the notional money purchase benefit.

## Question 48

**Are there any alternative approaches to the treatment of members whose money purchase amount exceeds compensation levels?**

## Consultation response

65. Only eleven of the responses addressed this issue. While all considered that

these assets should be discharged as money purchase benefits, there was little comment on other approaches.

## Government response

66. In the light of these responses, the Department has been considering this issue for some time. On balance, it has decided that no additional provision needs to be made to the Regulations at this time. The broad principle underlying the Pension Protection Fund legislation is that all schemes and members in the same situation are treated according to the same principles. Thus any scheme incapable of meeting its commitments has all its assets valued against all of the commitments when considering whether the scheme should be transferred to the Pension Protection Fund. This is consistent across schemes, regardless of the form the commitment took. Any reallocation approach, as suggested, would mean that this consistency of treatment would disappear. The Government believes this is an important principle which should not be undermined.

## General response – money purchase underpin benefits, top-up benefits and a defined benefit minimum

67. Both the written responses and the stakeholder forums gave a broadly consistent opinion that some schemes considered defined benefits subject to money purchase underpins and top-up benefits to be money purchase benefits and this was sometimes written into the scheme rules. One response also suggested that the transitional provisions should be extended to cover schemes which offered the better of a ‘cash balance’ underpin and another defined benefit.

68. This view held that the current law was not clear on this point, and would not be until section 29 was commenced. This raised the concern that if the transitional provisions in the Regulations did not recognise these common practices, trustees would have to revisit past decisions in the light of section 29.

69. All who responded on this matter saw revisiting past events as offering no advantage to members, and would be neither reasonable nor proportionate in the circumstances. Instead, benefits would be at risk of reduction because of the administrative costs involved that are likely to be funded from the scheme’s assets.

70. This could also necessitate re-opening past Pension Protection Fund valuations and levy calculations, employer debt calculations, cash equivalent transfer values and certain other benefit calculations relating to underpins and top-ups. Even if it were possible to do this, it would be at considerable cost to the industry.

## Government response

71. The Department has considered the respondents’ views. While underpin and top-up benefits were not considered by the Supreme Court in the Bridge case, the Department accepts that the Regulations should be expanded to include these types of benefits. Part 2 of the Transitional Regulations now defines money purchase underpin and top-up benefits, and these terms are used in the transitional, consequential and supplementary measures throughout these Regulations. Therefore we have made the following changes to these Regulations.

72. Regulation 3 of the Transitional Regulations now applies to Part 2 in relation to any period after 1 January 1997, subject to any contrary transitional provision in the

Regulations.

73. Regulation 4 of the Transitional Regulations makes it clear that section 29 does not change the money purchase character of money purchase underpin benefits, where the value of those benefits exceeds the value of other benefits under the scheme which are not money purchase benefits, or exceeds the amount of a minimum promise under the scheme.

74. Regulation 1 of the Transitional Regulations provides that a money purchase underpin benefit provided by a scheme is a money purchase benefit to which a member only has rights if their amount exceeds a defined benefit minimum.

75. Regulation 5 similarly clarifies that where a top-up benefit is payable in a case where a money purchase benefit is less than a specified minimum amount or value, the existence of that contingent promise (provided it is not triggered) does not prevent the benefit from being money purchase.

76. Top-up benefit is defined in regulation 1 of the Transitional Regulations for the purpose of these Regulations to mean an amount greater than nil, and to which a member only has rights where there is a shortfall between the amount of the money purchase benefit accrued in respect of a member and a defined benefit minimum promised to that member.

77. Defined benefit minimum in regulation 1 means either:

- benefits which are not money purchase but which can or may accrue over the same period of a member’s pensionable service as money purchase underpin benefits; or
- a promise to a member that their money purchase benefits will be at least equal to a specified minimum value or amount under the scheme.

78. The transitional, consequential and supplementary measures in the rest of the Regulations will (unless there are contrary provisions) apply to schemes that under Part 2 of the Transitional Regulations provide underpin benefits and top-up benefits. This means that in most circumstances where the non-money purchase elements of underpin benefits or top-up benefits have been treated by the trustees or managers of schemes as money purchase benefits, the Regulations will now validate this in respect of periods before the commencement of section 29.

79. Prospectively, the definitions of money purchase underpin and top-up benefits continue to apply for the purposes of section 29 and these Regulations.

# Chapter Four – Part 4: Protected rights

80. There were no provisions in respect of contracted-out protected rights in the consultation Regulations but a number of respondents said that transitional protection should be provided in respect of these rights.

## Background to protected rights

81. Until 6 April 2012, contracting-out was permitted for occupational pension schemes on a money purchase (also known as defined contribution) basis, and is still permitted on a salary-related (also known as defined benefit) basis. Contracting-out has provided an alternative to the additional State Pension, with members able to contract out of it provided certain conditions are met.

82. In an occupational pension scheme contracted-out on a defined contribution basis, the employer and employees paid a reduced rate of National Insurance Contributions, whilst Her Majesty's Revenue and Customs made annual age-related rebates of National Insurance Contributions into the scheme. The benefits accruing in these schemes were known as protected rights and consisted of:

- the amount of an individual's pension fund derived from this rebate;
- payments from the employer (minimum payments) to reflect the employer paying less National Insurance;
- the investment return from both the rebate and the minimum payment; and
- any tax relief on the rebate.

83. Protected rights were required by legislation to be money purchase benefits.

84. Following the recommendation of an independent Pensions Commission in 2005, the Government decided to abolish contracting-out for pension schemes which contracted out on a defined contribution basis. The Commission found that contracting-out rules on defined contributions were too complex and poorly understood, and that it was increasingly difficult for individuals to determine whether it was better to contract out or remain in the additional State Pension. Contracting–out for defined contribution schemes was abolished from 6 April 2012, with the payment of rebates for the period up to this date continuing in certain circumstances.

## Consultation response

85. Responses to the consultation have revealed that some schemes, contracted-out on a defined contribution/money purchase basis, held protected rights as cash balance underpin benefits, top-up benefits or underpin benefits. Schemes treated these benefits as money purchase benefits and considered that by doing so they complied with the requirement in section 31 of the Pension Schemes Act 1993 that protected rights should be money purchase benefits.

## Government response

86. Given the requirements related to protected rights (including the application of interest to members' benefits) the Department did not consider that protected rights could be cash balance benefits; underpin benefits or top-up benefits. Therefore no provision was made for protected rights in the draft consultation Regulations.

87. Having considered detailed responses and representations the Department is persuaded that transitional measures are required in this area. In reaching this conclusion the Department recognises that requiring schemes to revisit decisions that were based on the understanding that these benefits were money purchase would impose considerable burdens. The costs of these burdens would have a detrimental impact on the scheme's assets and ability to fully fund member benefits.

88. The Department understands that in many cases the schemes would have great difficulty in identifying and isolating these benefits from the rest of the benefits the scheme provides. This is especially the case where these benefits were held in a notional fashion rather than in formal accounts.

89. The Department has therefore decided that transitional provisions are appropriate to ensure that treatment of these benefits as money purchase is validated. This will mean that schemes that have acted in this way will not be in breach of section 31 of the Pension Schemes Act 1993.

90. Regulation 7 of the Transitional Regulations makes provision for schemes that have provided contracted-out protected rights in the form of cash balance benefits, underpin benefits (if the defined benefit minimum is greater than the money purchase underpin) and top-up benefits.

91. Regulation 7 validates the actions of these schemes for the purposes of Part 3 of the Pension Schemes Act 1993, (which contains the provisions in relation to protected rights) in relation to periods before, as well as after 6 April 2012 when contracting out was abolished.

# Chapter Five – Part 5: Modification of schemes

92. There were no provisions concerning scheme modifications in the consultation Regulations. However, the Department included a short chapter in the consultation document on this issue, and asked for responses on whether action was required in this area.

93. This was done because it was possible that schemes, in making changes to their scheme benefits, may be in breach of section 67 of the Pensions Act 1995 once section 29 is commenced. Section 67 sets out the requirements that must be satisfied when an occupational pension scheme replaces or converts benefits to which members have a right or are entitled to under the scheme, with other benefits.

94. Although the Department knew of no schemes in breach of section 67, this was raised by some respondents as a possible problem.

## Question 49

**What action by the Government do you believe is necessary in respect of this issue?**

## Consultation response

95. Two respondents commented that the commencement of section 29 would allow changes which, prior to section 29, were ‘protected modifications’ requiring member consent, but which as a result of section 29 would be detrimental modifications. The significance of this is that a ‘protected modification’ requires member consent before it can be made, whereas a ‘detrimental modification’ does not.

96. An example of the concern raised is where a traditional final salary benefit could still be changed to a pension pot with a guarantee once the Regulations are in force. This change, because it would be considered a change from one non-money purchase benefit to another non-money purchase benefit, would be classified as a ‘detrimental modification’ with no member consent required rather than a ‘protected modification’ which does require member consent.

## Government response

97. Whilst accepting that this might be possible, the Department considers that the ‘detrimental modification’ requirements provide adequate protection for members’ subsisting rights. A ‘detrimental modification’ requires trustee approval, and requires the trustee to report the change to members. However, importantly, it is also necessary for the benefits after the change to be actuarially more than or at least equal to the value of the benefits before the change.

98. Where a scheme did not meet these requirements; the change would be subject to a decision made by the Pensions Regulator to void the actions taken. The Department therefore does not consider that any provisions are necessary in

respect of these responses.

## Consultation response

99. Respondents suggested that there could be schemes which have inadvertently changed their benefits from non-money purchase to money purchase, for example by removing a guarantee from a cash balance scheme. The change would have been made in accordance with their interpretation of the law in force at the time.

100. In particular, four responses asked for transitional provisions to avoid schemes being retrospectively in breach of the legislative requirements for scheme modifications. This could occur where schemes had made changes as ‘detrimental modifications’ under section 67, which would, without transitional protection, be protected modifications once section 29 is commenced.

## Government response

101. Having considered the responses in this area, the Department accepts that there should be transitional protection where the benefits subjected to modification will clearly be non-money purchase once section 29 is commenced. The changes protect schemes from the administrative burden and cost of a requirement to revisit decisions taken prior to the commencement of section 29 and the coming into force of these Regulations.

102. Regulation 8 of the Transitional Regulations validates changes made as ‘detrimental modifications’ before these Regulations come into force where the prescribed benefits (that have been treated as if they were money purchase benefits) have been replaced with, or converted to, money purchase benefits.

103. This is subject to the requirements for a detrimental modification set out in sections 67(2) (b) and (c) and 67C of the Pensions Act 1995 having been satisfied.

104. This part provides transitional protection for schemes which would otherwise be in breach of section 67 once section 29 is commenced. The benefits in question are cash balance benefits, the defined benefit minimum of underpin benefits, and top-up benefits that have been converted to or replaced with money purchase benefits before section 29 is commenced, subject to the specified requirements in section 67 being satisfied.

105. Regulation 9 of the Transitional Regulations deals with changes made at any time after these Regulations come into force in respect of money purchase underpin benefits or top-up benefits. It provides that where a modification might adversely affect the defined benefit minimum in an underpin benefit, or a defined benefit top-up; the change is to be treated as a detrimental modification. The regulation also provides for these benefit types to be subsisting rights for the purposes of section 67, thus enabling them to be subject to the requirements in section 67.

106. Both regulations 8 and 9 of the Transitional Regulations effectively validate past changes where member consent has not been obtained. Members are protected by the fact that the actuarial value of the replacement rights would have to be equal to or greater than the value of the benefits before the change. If this was not the case, the change could be made void by the Pensions Regulator as outlined in paragraph 97.

# Chapter Six – Part 6: Winding up

107. Pension schemes complete wind-up when all their assets and liabilities are discharged or transferred. If the scheme assets are insufficient to fund all member benefits in full then money purchase benefits are discharged first. The discharge of non-money purchase benefits follows the priority order set out in section 73 of the Pensions Act 1995 (section 73).

108. The consultation Regulations made separate provision for schemes treated as money purchase, and hybrid schemes providing benefits treated as money purchase, depending in each case on the date winding up commenced.

## Question 12

**Will the proposed wind-up Regulations cause any difficulties?**

## Consultation response

109. Comments focused on the distinction in the consultation Regulations between winding up commenced on or after 28 July 2011, and before this date. This is the day after the Department released a statement outlining its intention to introduce retrospective legislation to reverse the Supreme Court's judgment in *Bridge* on 27 July 2011.

110. Most respondents who commented on this matter were of the view that the statement made by the Department would not necessarily have been sufficient in law for schemes to rely on when making decisions about priorities in winding up. One respondent thought the statement was reconcilable with the current law.

111. Respondents explained that it would be difficult for schemes to revisit decisions where the priority order had been applied to discharge affected benefits treated as money purchase benefits. Where winding up is still underway at the coming into force of the Regulations, the process might need to be started again, causing a reallocation of assets, at considerable cost to the scheme and of little or no benefit to members.

112. Respondents mentioned that the proposals would present communication issues, particularly given that the wind-up would have been completed in accordance with their interpretation of the law as it stood at the time.

113. Respondents also commented that the provision in the consultation Regulations dealing with the Pension Protection Fund for the discharge of pensions in payment from additional voluntary contributions, was not consistent with winding up provisions.

## Government response

114. The Department's view is that the statement made on 27 July 2011 provided necessary reassurance to schemes which had been acting inconsistently with the Supreme Court's judgment in *Bridge*. However, the Department also recognises that it would not necessarily have been sufficient in law for schemes which had

taken the same view as the Supreme Court to rely on the Department's statement between 27 July 2011 and the commencement date.

115. The Department's intention is not to burden schemes with onerous requirements where little or no benefit to members would result. Consequently the Regulations now treat schemes that commenced winding up before and after 28 July 2011 in the same way.

116. Regulations 11, 12, 13 and 14 of the Transitional Regulations now provide transitional protection for schemes treated as money purchase schemes and hybrid schemes with benefits treated as money purchase benefits, where winding up started before the commencement date of section 29, whether or not winding up is completed by this date. This will remove the need to re-open past decisions.

117. Changes have also been made from the consultation version of the Regulations, to widen the scope of the type of benefits covered and to modify whatever version of section 73 was in force at the time the winding up of the scheme started.

118. Regulation 13 of the Transitional Regulations validates the actions of trustees who treated schemes as money purchase schemes and did not apply section 73 when winding up the scheme, if the winding up started between 6 April 2005 and the commencement date of section 29. The scheme must have provided cash balance benefits or pensions derived from this or money purchase benefits, and no other benefits other than money purchase benefits or death benefits.

119. Regulation 14 of the Transitional Regulations validates the actions of trustees of hybrid schemes who treated any of the specified benefits provided by the scheme as money purchase benefits and as a consequence, excluded them from section 73 in winding up the scheme, if the winding up started between 6 April 2005 and the commencement date of section 29.

120. Regulation 15 of the Transitional Regulations provides transitional measures for a scheme that is in a Pension Protection Fund assessment period before the appointed day. If the scheme exits assessment, the trustees may continue to treat the specified benefits (which will fall outside the definition of money purchase benefit once section 29 comes into force), as money purchase benefits for the purposes of winding up the scheme under section 73. This is subject to any direction to the contrary by the Board of the Pension Protection Fund.

121. Regulation 16 of the Transitional Regulations makes provision for schemes that are in an assessment period before the appointed day and which are authorised to continue as a closed scheme, and there is a further assessment period in relation to the scheme. If the scheme exits assessment to wind-up, the trustees must treat the specified benefits (which will fall outside the definition of money purchase benefit once section 29 comes into force), as money purchase benefits.

122. Past decisions will only need to be revisited if a scheme is still winding up on commencement, and there is a risk to members' entitlement because the scheme assets are insufficient to fully cover all the benefits under the scheme.

123. Regulation 17 of the Transitional Regulations now provides for the discharge of pensions in payment derived from additional voluntary contributions and any of the specified benefits that were treated as money purchase benefits in schemes commencing winding up on or after the appointed day. This will ensure members are treated in the same way whether the scheme enters the Pension Protection

Fund or winds up outside it.

## Consultation response

124. At least one respondent noted that it was not entirely clear how the Regulations applied to sections of sectionalised schemes.

## Government response

125. Changes have been made throughout the Regulations to clarify this point. Regulation 10 of the Transitional Regulations now provides that Part 6 of these Regulations on winding up applies to multi-employer sectionalised schemes as if each section were a separate scheme.

## Questions 13 and 14

**At what stage would you consider a wind-up to be almost at the point of being completed?**

**How can it be objectively determined that a wind-up has been completed?**

## Consultation response

126. Responses varied on this. Some suggested that in practical terms a wind-up was completed when the scheme is no longer responsible for the payment of any benefits, there are no trust assets and there is no potential for future benefits to become due. Others were of the view that a scheme is never fully wound up because beneficiaries may emerge years after trustees believed the scheme's liabilities had been fully discharged.

## Government response

127. As these Regulations no longer require schemes to revisit winding up decisions the Department considers that there is no need to define the completion of wind-up for this purpose.

# Chapter Seven – Part 7: Deficiencies in the assets (employer debt)

128. The consultation Regulations made transitional modifications so as to disapply the effect of section 29 for schemes treating benefits in a manner inconsistent with section 29 in respect of debt events on or before 27 July 2011. The Regulations provided some transitional modifications for debt events occurring between that date and the commencement day, but meant that trustees may have needed to revisit employer debt decisions taken between this date and the coming into force of the Regulations.

## Question 15 and 16

**Will the proposals in the Regulations cause problems for schemes that are considering revisiting debt events following the coming into force of section 29?**

**If so, what alternative would you suggest that will mitigate problems and also address risks to employers and scheme members remaining in the scheme following a debt event?**

## Consultation response

129. Only one respondent thought it reasonable to assume that trustees and employers would have acted in a manner which was consistent with the Department's statement of 27 July 2011. That respondent's view was that the statement of intention to legislate with retrospective effect was clear. The respondent therefore felt it was appropriate to expect schemes to revisit past debt events between 27 July 2011 and the coming into force of the Regulations.

130. All other responses were of the opinion that requiring schemes which had not already been complying with the intent of section 29, to comply with the provision retrospectively from 28 July 2011 would cause difficulty and increase cost, and that scheme members could be affected in the form of reduced benefits.

## Government response

131. Having considered responses the Department is persuaded that the impact of the proposal would have a disproportionate effect on schemes and have little or no benefit to members. This is particularly in the light of the strongly held views by the industry that member benefits would not in the main be affected if there was no retrospective requirement for winding-up and employer debt.

132. These Regulations now provide that section 29 for employer debt purposes will come into force with prospective effect for non-compliant schemes except in two limited circumstances (set out below) provided for in regulation 23. These are where the debt event concerns benefits which are not money purchase under current law, and are not affected by the judgment of the Supreme Court. Even in these cases, trustees will not be required to revisit past debt events. They will,

however, need to obtain a new valuation of the scheme's assets and liabilities. If that valuation shows a deficit (on a scheme funding basis), trustees would need to calculate a new debt on the employer in relation to the scheme unless the trustees put in place a recovery plan within 6 months of the effective date of the valuation. Regulation 24 of the Transitional Regulations disapplies this requirement, where the employer in relation to the scheme (or all the employers in relation to a multi-employer scheme) are insolvent.

133. **Circumstance 1**: the scheme is winding up underfunded on commencement (see Chapter Six) and the trustees of the scheme have treated benefits which are not affected by the Bridge judgment as money purchase. These benefits are outside the existing definition of money purchase benefits under section 181 of the Pension Schemes Act 1993 (both before and after section 29 is brought into force).

134. **Circumstance 2**: a multi-employer scheme provides benefits which have been treated as money purchase, which are not affected by the decision in Bridge and do not fall under the existing definition of money purchase benefits; and

- an employer has departed the scheme before commencement and the scheme is in deficit;
- the scheme is not otherwise able to meet its statutory funding objective on an effective date that is within 12 months of commencement; and
- the scheme is not able to put a recovery plan in force within six months from the effective date.

135. The Government's view is that the Regulations should only require re-examination of the funding position of the scheme or reopening of past employer debt events where there is a real risk to members' benefits and there is a solvent employer able to provide additional funding. Even then, trustees will not be required to look back to the original section 75 debt event, but will be able to calculate the debt based on the scheme funding position at the time of the latest valuation.

## Question 17 and 18

**What impact will the requirement for the actuary to issue a fresh valuation certificate have on schemes and employers?**

**Are there alternative ways to deal with this issue?**

## Consultation response

136. Although comments were not received specifically on these two issues comments were received on several related issues. Some respondents were of the view that in the consultation Regulations, orphan liabilities2 of schemes affected by section 29 would be counted as benefits that could no longer be treated as money purchase benefits. However, these liabilities had previously been considered to be money purchase benefits. Concerns were raised that this would mean that, for

[2] Orphan liabilities happen where a member's benefits have not accrued through service with the scheme's current employers. Where these liabilities cannot be assigned to any particular employer they are known as orphan liabilities. These liabilities are divided among the remaining employers in accordance with regulation 2(1) of the Occupational Pension Schemes (Employer Debt) Regulations 1995.

affected schemes, employer debts triggered after the coming into force of these Regulations could be greater than trustees had otherwise thought. This would require an actuary to look again at the valuation.

137. Respondents also suggested that the retrospective nature of the consultation Regulations would impose a new debt obligation on former employers.

138. They further suggested that the legislation would need amendment if the Department’s policy was to enable trustees to require, where reasonable, the payment of a further debt. This situation would occur if the scheme were required to revisit past debt events. It was suggested that it would be very difficult to require further payment particularly where the calculation had been certified by an actuary and the former employer’s debt had been discharged. Respondents felt that many actuaries would be reluctant to issue a second actuarial valuation.

## Government response

139. We have considered all responses and are persuaded that to require schemes to re-visit past employer debt events would be impracticable and would have a disproportionate impact on schemes and employers with little discernible benefit to members.

140. For employer debt purposes, section 29 will not have retrospective effect for non-compliant schemes that treated non-money purchase benefits as money purchase benefits, except in the limited circumstances set out in paragraph 131 above.

## Question 19

**Do you think the proposals in the Regulations for a multi-employer scheme with a scheme apportionment arrangement, withdrawal arrangements or flexible apportionment arrangement would cause particular difficulties for the following?**

- **the Pension Protection Fund if the scheme has entered a Pension Protection Fund assessment period after 27 July 2011;**
- **members;**
- **employers; or**
- **trustees and scheme managers.**

## Consultation response

141. Legal professionals who responded said that where an employment cessation event (calculated on the minimum funding requirement basis) had been triggered in the period before September 2005 schemes would face difficulties. They stated that for schemes in this position it would be usual for no deficit to exist at the point of employer departure and, therefore, no calculation of a section 75 debt would have been carried out.

142. Responses agreed that if this remained the case such schemes would need to carry out a valuation (at additional costs) before they could benefit from the transitional protection.

## Government response

143. The Government accepts that some of the requirements in the draft Regulations could prove onerous for schemes and of little benefit to members. These regulations have been simplified and extended to cover any debt events prior to the appointed day, except where a particular benefit design was not affected by section 29 or by the Supreme Court judgment. In these cases the Government's view is that it is reasonable to expect employers to fund existing obligations.

# Chapter Eight – Part 8: Revaluation, indexation and preservation of benefits

## Revaluation

144. Where a member has left a scheme prior to normal pension age, schemes are required to revalue many deferred benefits when the member reaches the pension age of the scheme.

145. When section 29 is commenced, there may be schemes which have revalued benefits in a way incompatible with the clarified definition of money purchase benefits. This would occur where cash balance benefits previously treated as money purchase benefits become non-money purchase benefits under section 29. These cash balance benefits would therefore be subject to a revaluation method appropriate to non-money purchase schemes under section 84 of the Pension Schemes Act 1993.

146. Schemes could face administrative costs if they were obliged to revisit calculations made prior to the commencement of section 29. In keeping with the principle within these Regulations to avoid burdens for pension schemes where possible, the Department therefore included transitional provisions in the draft consultation Regulations to protect schemes in this position.

## Consultation question 20 and 21

**Do you agree that schemes should not have to revisit benefits already in payment?**

**If schemes did have to, can you give any indication of the costs and practical issues involved?**

## Consultation response

147. Every consultation response to these questions agreed that schemes should not be required to revisit benefits which had already been revalued. Although no figures were given, all respondents agreed it would be difficult, time consuming and expensive to attempt to do so.

## Government response

148. We now provide, through regulation 25 of the Transitional Regulations protection for schemes which used the money purchase method to revalue deferred cash balance benefits relating to pensionable service before section 29 comes into force. It extends the definition of the money purchase method, for this period only, to include notional as well as actual investment returns. This now specifically includes the provisions for top-up and underpin benefits, which were not covered by the consultation Regulations.

## Question 22 and 23

**Do you see any risk that the value of benefits accrued in relation to past periods of service will be adversely affected?**

**Do you see any problems with this approach that only applies the new method to future accruals?**

149. For benefits accrued after section 29 comes into force, the consultation Regulations included a new method of revaluing cash balance benefits for early leavers by extending the flat rate method to include cash balance benefits. If trustees or managers decided that it was appropriate to use this method, deferred members would be treated in the same way as if they had still been in pensionable service.

## Consultation response

150. Few consultation responses commented on the risk to the value of previously accrued benefits or the new method for future accruals. On the value of benefits, responses were split between those who did not think there would be any material effect and those who were cautious about offering an opinion because of the many variables involved.

151. Regarding the fact that the new method only applies to future accruals, those who did respond noted that affected schemes would have to identify accruals before and after the commencement of the change separately. However, they did not consider that this would be particularly onerous for schemes.

## Government response

152. On the basis of these responses the Department considers no change is necessary. Regulation 3 of the Regulations amending primary legislation makes amendments to section 84 of the Pension Schemes Act 1993 which introduce the revised method of revaluation.

# Indexation

153. Indexation is the amount by which a pension in payment is increased each year to take into account the effect of inflation. Schemes are required to increase non-money purchase benefits accrued after 1997 by a minimum of Limited Price Indexation. Money purchase benefits have not been subject to indexation requirements since 2005 nor have pensions resulting from cash balance benefits put into payment after 3 January 2012.

154. The Department’s understanding was that there were schemes where the benefits had been treated as money purchase benefits and, therefore, no provision had been made for indexation when the benefits were put into payment. However, indexation might be due when section 29 was commenced.

155. The effect of the consultation Regulations was to validate benefits which have been treated as money purchase benefits and put into payment without provision for indexation in a manner not compatible with new section 29.

## Question 24 and 25

**Do you know of any cash balance type schemes which did not provide for indexation on annuities/scheme pensions put into payment prior to January 2012?**

**If so, how many schemes and members are involved?**

## Consultation response

156. Several responses confirmed the Department's belief that there are schemes which have not provided indexation on cash balance-type benefits but gave little idea of the overall numbers.

## Government response

157. On the basis of these responses, no change to the provision within the Regulations has been made.

## Question 26, 27 and 28

**Will the arrangements made for these schemes cover all methods of indexation used by these schemes?**

**Do you agree that schemes should not have to revisit benefits already in payments?**

**If schemes did have to do so, can you give any indication of the costs and practical issues involved?**

## Consultation response

158. The consultation Regulations did not include transitional modifications for those schemes which had indexed pensions, since it was not the intention to override scheme rules or cases where the member had opted for indexation. Some respondents pointed out that schemes may have provided for indexation, but at less than Limited Price Indexation. This would mean that the consultation Regulations would not validate this course of action, and schemes would therefore be obliged to revisit the benefits in payment.

159. All consultation responses agreed that pensions in payment should not be revisited. The responses were adamant that attempting to revisit and recalculate pensions in payment would be difficult, time consuming and expensive. They also felt that it was unclear whether external annuities could be amended, and whether the scheme (and sponsoring employer) would have to pay for the indexation instead. An unindexed scheme pension or annuity derived from money purchase benefits is normally paid at a higher initial rate than one which provides for indexation.

## Government response

160. The consultation responses have confirmed the Department's initial view that it will be difficult, if not impossible, to unpick scheme pensions and annuities which are already in payment.

161. The Department accepts however, that there may be schemes which have provided some indexation and regulation 26 of the Transitional Regulations has been amended so that it also applies to any scheme which has provided for indexation, but at less than Limited Price Indexation.

162. The consultation draft of the Regulations provided transitional measures for money purchase pensions which had not been indexed. It was pointed out by respondents that it is clear under current legislation that no indexation of money purchase pensions is required.

163. The Department accepted this, and regulation 26 does not make provision for scheme pensions derived from money purchase benefits, because section 29 does not change the nature of these benefits, and there is no requirement since April 2005 to index scheme pensions derived from money purchase benefits if they were put into payment after that date. Section 51 of the Pensions Act 1995 clearly provides that the minimum indexation requirement does not apply to pensions in payment derived from money purchase benefits. That is, if a benefit is money purchase at the point of decumulation, there is no requirement for any pension or annuity purchased with or derived from those benefits to be indexed.

164. These regulations provide transitional measures only for legislative provisions which are affected by the Bridge case or section 29. These are pensions derived from benefits which would be non-money purchase under section 29 (cash balance benefits, money purchase underpin benefits and top-up benefits), but which have been treated as money purchase and may not have allowed for indexation.

## Consultation response

165. One respondent also expressed concern that the cash balance indexation easement did not apply to cash balance benefits held within schemes which also included contracted out benefits.

## Government response

166. The Department does not consider that these Regulations are the appropriate place to consider this issue.

# Preservation

167. The consultation Regulations repealed regulations 14 and 14A of the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 from the date the consultation Regulations would have come into force. The consultation regulations inserted a regulation which stated that the uniform accrual requirements in section 74(6) of the Pension Schemes Act 1993 do not apply to money purchase benefits. The purpose of this change was to remove an anomaly in the legislation thereby clarifying the position for trustees.

168. The Regulations also made a technical change to the wording of regulation 10(2) of the Preservation of Benefit Regulations to clarify how benefits should be calculated.

## Consultation response

169. No specific consultation questions were asked about the preservation changes and very few respondents made any comment on the subject. One response specifically asked for clarification as to how the revised regulation 10(2) of the Preservation of Benefit Regulations would work.

## Government response

170. In response to this comment the revised wording in regulation 27 of the Transitional Regulations will make it clear that trustees will use actuarial advice to calculate a scheme pension derived from money purchase benefits rather than calculate the money purchase benefits themselves.

# Chapter Nine – Part 9: Transfers

171. During the accumulation phase, a member of a pension scheme can transfer the value of their pension to another scheme or an insurance provider subject to certain conditions. For non-money purchase benefits, transfer values take account of the projected preserved pension that would be payable at the scheme's normal retirement age and the value of the fund needed to provide that pension. In addition, transfer values may reflect any deficit within the overall fund. With money purchase benefits, the transfer amount is the current cash value of the fund.

172. The consultation Regulations introduced a new provision to enable the transfer value of non-money purchase benefits which were cash balance benefits calculated other than by reference to final salary, to be calculated at the current value of the fund. This would include any notional interest, guarantees, bonuses or discretionary payments but these would be subject to an adjustment if the scheme is underfunded. This provision applied for transfers which occurred from the date that the Regulations come into force.

173. The consultation Regulations provided that for transfers before the coming into force of section 29, the provisions ensured that a scheme which was providing cash balance benefits which were treated as money purchase benefits and transferred as such would not be required to revisit these completed transfers.

## Question 29 and 30

**Do you agree that schemes should not have to revisit transfers which have already taken place?**

**If schemes did have to do so, can you give any indication of the costs and practical issues involved?**

## Consultation response

174. Consultation responses unanimously agreed that schemes should not have to revisit transfers which have already taken place, indicating the costs involved would be disproportionate and substantial, although few provided any specific figures. Responses also suggested that in many cases it would be impractical to unwind past transfers as the relevant information may no longer be available.

175. A small number of responses raised technical queries about the consultation Regulations and suggested confusion might arise in determining to which types of schemes the new provisions would apply.

## Government response

176. Although the overall approach has not been changed, regulation 2 of the Transitional Regulations in Part 1 has been redrafted to provide more clarity on how it will apply to cash balance schemes. This is to make it clear that the new method is not intended to apply to any cash balance benefits which are calculated by reference to final salary.

177. We have also clarified that the validation of previous transfer values only applies where an application was made prior to section 29 coming into force. This is set out in regulation 30 of the Transitional Regulations.

# Part 10: Early leavers: Cash Transfer sums

178. There were no questions asked on this subject in consultation.

179. The consultation Regulations included provisions in respect of early leavers who left a scheme after three months but before two years. As early leavers, these members have a choice of a cash refund of their contributions or a transfer of the pension value. Similar issues apply to these transfers as to transfers of preserved pensions so the consultation did not ask separate questions.

## Consultation response

180. No response raised the subject of Cash Transfer sums separately.

## Government response

181. The only changes to the drafting of the consultation Regulations are of a minor technical nature. Therefore the provisions will ensure that transfers of this nature which occurred before these Regulations come into force, and where cash balance benefits were treated as money purchase benefits, will not have to be revisited.

182. For transfers which take place after the Regulations come into force, the regulations will enable cash balance benefits calculated other than by reference to final salary to be calculated at the current value of the fund. This will include any notional interest, guarantees, bonuses or discretionary payments but these will be subject to an adjustment if the scheme is underfunded.

# Chapter Ten – Part 11: Payment of surplus funds to employer

183. The consultation Regulations provided that the clarified definition of money purchase benefits in section 29 would apply after 27 July 2011 in respect of surplus payments to employers, rather than being retrospective to 1 January 1997. The Regulations provided a further easement that where surplus payment decisions were made between 28 July 2011 and when these Regulations come into force, no retrospective application of section 29 would be applied where there was a surplus in scheme funds.

184. No specific question was asked in the consultation document for this area.

## Consultation response

185. Those who responded were broadly in agreement with the proposals in the consultation Regulations. They welcomed the intention not to require schemes to revisit decisions made in respect of surplus payments prior to 28 July 2011, where the decision might have been affected by section 29.

186. One respondent raised a concern that if a scheme was minded to make a payment to an employer on or after 28 July 2011 they would need to obtain a fresh valuation to reflect the change in the classification of benefits. This respondent also questioned how any retrospective unpicking of surplus payment decisions would be carried out.

## Government response

187. The Department does not consider the requirement in regulation 38 of the Transitional Regulations to obtain a fresh valuation to be unreasonable, bearing in mind the change in status of the benefits the scheme is providing. However, following the consultation, the Department has amended the date from which section 29 will apply in these circumstances from the period after 27 July 2011 to the date that the Regulations come into force. This can be found in regulation 37 of the Transitional Regulations. This means that any surplus payment decisions made prior to these Regulations coming into force will be validated, with no requirement to revisit them.

188. After the Regulations come into force, schemes providing benefits affected by section 29 will need to ensure that an actuarial valuation used in respect of any surplus payment decisions reflects the non-money purchase nature of the scheme’s benefits.

## Consultation response

189. Another response suggested that death benefits should be added to the benefits listed as being money purchase for the purposes of transitional provisions in the draft Regulations.

## Government response

190. The Department agrees that death benefits need to be added to the list of benefits in what is now regulation 37(2)(c) of the Transitional Regulations and has accordingly made that change.

# Chapter Eleven – Part 12: Scheme administration

191. When section 29 comes into force any scheme which had been considered to be a money purchase scheme and that will now be treated as providing at least some non-money purchase benefits, could be in breach of the requirement in section 47 of the Pensions Act 1995. This requires occupational pension schemes to appoint an actuary. This requirement does not apply to money purchase schemes.

192. The consultation Regulations provided that schemes which will move from being treated as money purchase to non-money purchase schemes would be treated as money purchase schemes for the purposes of section 47 for any period before the Regulations come into force. However, they would need to meet the requirement to appoint an actuary on or before 6 July 2014 (three months after the Regulations are expected to be in force).

193. There was no specific question asked on this area in the consultation document.

## Consultation response

194. Respondents' concerns related to three specific areas:

    1. the three month period allowed in regulation 40(2)(b) of the Transitional Regulations would not be enough time in which to appoint an actuary;
    2. if a scheme provided benefits affected by section 29 when the Regulations come into force but no longer had any affected benefits by 6 July 2014, it should not have to appoint an actuary; and
    3. all the exemptions in regulation 3(2) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996 (Scheme Administration Regulations) should apply in terms of which schemes are exempt from appointing an actuary, rather than just money purchase schemes. This would mean providing this exclusion for schemes which are not the focus of these Regulations, for example, those with Crown Guarantees.

## Government response

195. With regard to point 1 above, the consultation Regulations have been amended to address the fact that the Regulations were not in force by April 2014. The date by which schemes affected by section 29 are required to have appointed an actuary is now 6 October 2014. This was to reflect the intention for the Regulations to come into force in early July, but because these Regulations will now come into force in the latter part of July, the period from then until 6 October will be less than three months.

196. The Department does not consider this period to be unreasonable in the circumstances here. The consultation document, along with the draft Regulations, was published in October 2013, significantly in advance of the coming into force date. This means that, although, at this stage the Regulations are still in draft form,

197. On point 2 above, the Department understands that a retrospective requirement to appoint an actuary where a scheme no longer provides any affected benefits on 6 October 2014 could lead to an unnecessary burden. Regulation 40(2) of the Transitional Regulations, supplemented by a new provision in regulation 40(3) disapplies this requirement.

198. In relation to point 3 above, the Department also recognises that the drafting in the consultation version of the Regulations did not reflect the existing exemptions in regulation 3 of the Scheme Administration Regulations. The new provision at regulation 40(3) addresses this concern.

# Chapter Twelve – Part 13: The Pension Protection Fund

199. When section 29 comes into force some pension schemes that were previously treated as money purchase, and as such not eligible for the Pension Protection Fund, may become non-money purchase. The consultation Regulations provided that any scheme which becomes eligible for the Pension Protection Fund in these circumstances should not to be treated as having eligibility prior to 1 April 2015.

200. Schemes that are already eligible for the Pension Protection Fund may offer some benefits that have been treated as money purchase benefits in the past but under section 29 are non-money purchase. The consultation Regulations provided that such schemes would not need to revisit valuations for levy purposes prior to 1 April 2015.

## Question 31

**Do you consider the transitional arrangements for valuations and levies will work in practice for any scheme that is newly eligible or for existing schemes that include benefits that can no longer be considered money purchase?**

## Consultation response

201. Two respondents questioned the deferral of eligibility for the Pension Protection Fund until 1 April 2015 and were of the view that schemes should be protected from the coming into force of section 29. One respondent commented that it was unclear why eligibility is not from 6 April 2014 but noted that this was balanced by no levy being due until 2015.

202. One respondent understood the need to give schemes falling within this category the time to make arrangements to comply with the requirements of the Pension Protection Fund but questioned whether this would put the UK in breach of its obligations under the Insolvency Directive (Directive 2008/94/EC). They asked what measures the Department intended to put in place to ensure that individuals in this position were protected in the interim.

203. Five respondents commented that the requirement for newly eligible schemes to have an effective date for their first pension protection levy calculation (section 179 valuation) between 31 December 2014 and 31 March 2015 was restrictive and difficult to achieve in practice. One respondent felt that the date of the first 179 valuation should be consistent with the requirement for scheme funding valuations.

204. One respondent questioned whether historic levy payments would need to be revisited for hybrid schemes which have provided benefits which were considered to be money purchase, but are no longer treated as such, but which neither fall within cash balance benefits or money purchase scheme pensions.

## Government response

205. At the time of going out to consultation the Department was not aware of any scheme that would become newly eligible for the Pension Protection Fund as a

result of the draft Regulations. No consultation response has directly identified a scheme that could be in this position. However it has become evident that some schemes may have held a different interpretation of whether benefits were money purchase prior to the judgment in Bridge than that held by the Department.

206. A scheme that is eligible for the Pension Protection Fund is required to pay an annual pension protection levy. The Department considers that treating schemes as eligible from 1 April 2015, the first full levy year after the coming into force, is a pragmatic approach that will allow schemes time to correctly determine whether they are eligible for the Pension Protection Fund.

207. This approach is consistent with treating all levy payers in an equitable manner.

208. Under regulation 45 of the Transitional Regulations any scheme that becomes eligible for the Pension Protection Fund will be required to submit their first valuation under section 179 of the Pensions Act 2004 by 31 March 2015. The relevant date of this valuation as defined in the Regulations must fall between the coming into force and 31 March 2015. This period has been extended and is a change to regulation 40 of the consultation Regulations which specified that the valuations should be completed between 31 December 2014 and 31 March 2015.

209. It is necessary for information to be available by 31 March 2015 in order for the Pension Protection Fund to calculate the amount of pension protection levy payable. This means that the first section 179 valuation has been de-coupled from arrangements for scheme funding valuations for the purpose of these Regulations. However the Regulations do provide for subsequent section179 valuations to fit with scheme valuations.

210. Regulation 47 of the Transitional Regulations now widens the benefit designs that can be treated as money purchase for the purpose of transitional protection so that levy payments for years prior to 2015/16 will not need to be revisited.

## Question 34

**Do you know of any schemes which would have been considered money purchase before the coming into force of section 29 and which will not be money purchase after, where the employer has suffered an insolvency event?**

## Consultation response

211. No schemes were identified through consultation and the Department is not aware of any that have suffered such an event since the consultation closed.

# Comments on discharge of pensions and benefits

212. The consultation Regulations provided for the discharge of benefits for schemes that have entered a Pension Protection Fund assessment period prior to the coming into force of section 29.

213. One respondent expressed concern that the Pension Protection Fund is not bound to secure a pension outside the Pension Protection Fund if it is satisfied that the conditions for treatment of money purchase benefits are met, but exercises its discretion to determine that the pension should not be externally discharged. It was felt that this lacked reassurance for members and could lead to inconsistent

treatment.

## Government response

214. The Department's view is that the provision in regulation 54 of the Transitional Regulations enables the Board of the Pension Protection Fund to make a determination based on all relevant information that it holds in relation to a scheme. Determinations made under this and related regulations are included in regulation 4 of the Regulations amending primary legislation and 61 of the Transitional Regulations as matters that can be subject to review.

## Question 32

**Do you know of any scheme where money purchase contributions have been made other than from additional voluntary contributions to increase pension entitlement and paid from scheme funds on retirement?**

## Consultation response

215. Four respondents said they had heard of schemes where money purchase contributions had been made other than from additional voluntary contributions to increase pension entitlement and paid from scheme funds on retirement. The examples given were: augmentations, transfers, enhancement of benefit resulting from special employer contributions or redundancy arrangements provided on a money purchase basis, and defined contribution sections of hybrid schemes that converted from defined benefit.

216. In general respondents welcomed the provision for such money purchase additional voluntary contributions to be treated by the Pension Protection Fund as money purchase benefits if an assessment period starts after the coming into force of section 29 and the purchase occurred by the 1 April 2015. Although one respondent noted that it is likely that in most cases where such benefits have been internally annuitised with main scheme non-money purchase benefits, the additional voluntary contributions would have been treated, and funded, as non-money purchase benefits.

217. A number of respondents pointed out that there was no such provision in the consultation Regulations for schemes winding up outside the Pension Protection Fund and requested that there should be an even playing field in this respect.

218. One respondent felt that the member voluntary contributions should also be defined for the purpose of the Regulations. It was also raised at a consultation event that in some cases additional voluntary contributions are made through salary sacrifice arrangements but there was no specific mention of such arrangements in the Regulations.

## Government response

219. The arrangements for additional benefit described above and for defined contribution sections of hybrid schemes that converted from defined benefit are provided for by existing legislation. We have not made further changes to the Regulations in this respect.

220. However, regulation 17 of the Transitional Regulations now provides for

trustees and managers to treat additional voluntary contributions which have accrued as cash balance benefits etc and which have been used to purchase a pension within the scheme by 1 April 2015 as money purchase benefits if the scheme winds up outside the Pension Protection Fund. This means that the member will continue to receive the full amount of their annuity, without it being potentially reduced in line with Pension Protection Fund compensation rules under the priority order set out in section 73 of the Pensions Act 1995.

221. The Department considers that the term “member voluntary contributions” is understood as an ordinary phrase not previously defined in legislation. However regulation 57 of the Transitional Regulations has been extended to specify the types of scheme pensions and benefits derived from scheme pensions that are included in the transitional protection for additional voluntary contributions from money purchase benefits.

222. The Department considers that additional voluntary contributions are understood to include not only the member's own contributions, but matching employer contributions made through salary sacrifice arrangements. This understanding was not challenged in Bridge and therefore is not included in the transitional provisions in the Regulations.

# Compensation

## Question 33

**Will the draft Regulations for the conversion of a lump sum work in the case of all relevant benefits?**

## Consultation response

223. Three respondents said they thought that the consultation Regulations would work in practice.

224. One respondent expressed the view that the Regulations did not go into the level of detail needed for setting out how compensation would be calculated for benefits that became eligible for the Pension Protection Fund for the first time. The respondent wanted the legislation to set out how revaluation and indexation should be determined where cash lump sum type benefits became eligible for the first time.

225. Respondents also asked that the legislation make it clear that there should be no compensation payable to a spouse where the member had chosen to receive single life benefits. The respondent also felt that clarity was needed in the Regulations about how to treat benefits where a normal pension age was not specified in the scheme.

## Government response

226. Regulation 60 of the Transitional Regulations now makes provision in relation to revaluation and indexation where a member has cash lump sum type benefits. It provides that the Pension Protection Fund can determine as best as it is able, having regard to the scheme’s admissible rules and all the relevant circumstances, how much of the member’s pensionable service should be treated as before or

after relevant dates.

227. Regulation 59 of the Transitional Regulations provides that where a member of a scheme, who is in receipt of their pension, has chosen to receive a pension from the scheme that does not provide survivor benefits for their spouse, this is reflected in the compensation that will be paid in place of that pension. Their compensation will not provide survivor benefits for their spouse.

228. Where a scheme that does not have a normal pension age goes into the Pension Protection Fund the current rules will apply. These provide that the scheme pension age is the earliest age at which a pension can come into payment without being reduced.

## Consultation response

229. One respondent was concerned about the discretion given to the Pension Protection Fund Board by the consultation Regulations to determine how much of a member's pensionable service should be treated as before or after the relevant date. They thought this discretion seemed wide when compared to other compensation provisions which are more tightly framed.

## Government response

230. The Department has considered this issue and concluded that in the circumstances described above giving the Board this discretion is appropriate. We recognise that other compensation provisions are more tightly structured.

231. However, because Pension Protection Fund compensation is only available when a scheme cannot secure Pension Protection Fund level benefits on the open market, there has to be a degree of flexibility about the conversion factors used by the Board. This is because market factors will change continually. We anticipate that Pension Protection Fund Guidance on this matter will require the Board to consider all factors raised carefully and to act in a fair and proportionate manner in all circumstances.

# Chapter Thirteen – Part 14: Scheme funding

232. The trustees or managers of occupational pension schemes which provide non-money purchase benefits are required by Part 3 of the Pensions Act 2004 to obtain actuarial valuations at least every three years. There is no requirement to produce an actuarial valuation for money purchase schemes.

233. Schemes that have never previously obtained a valuation, but which are affected by the commencement of section 29, will become subject to Part 3 of the Pensions Act 2004 (Part 3) and the Occupational Pension Schemes (Scheme Funding) Regulations 2005 (Scheme Funding Regulations). Transitional arrangements allow time for valuations to be carried out.

## Question 35

**What, if any, transitional measures do you think are required for schemes that began to wind up on or after 28 July 2011 and are still winding up on the appointed day in terms of scheme funding?**

## Consultation response

234. Two responses were received from representative bodies on behalf of small self administered schemes. These responses raised concerns that although many small schemes are exempt from Part 3 because they meet the definition of a small scheme in regulation 17(h) of the Scheme Funding Regulations, many others do not. These schemes rely on being classified as money purchase to be exempt.

## Government response

235. This issue falls outside of the scope of the judgment in Bridge and therefore no additional provision is made for these schemes. Where schemes fall outside of regulation 17(h), they will need to comply with Part 3 and may take advantage of the transitional measures in the same way as any other schemes, including the easements in relation to the scheme funding requirement.

## Consultation response

236. Three respondents raised concerns on how the consultation Regulations would work for schemes that had regarded themselves as entirely money purchase, but on the commencement of section 29 would cease to be so. They stated that schemes in wind-up would expect to be exempt from the main valuation requirements, subject to providing the annual solvency estimate. Therefore schemes moving to being non-money purchase would need to provide a solvency estimate, and should be given reasonable time to do this.

## Government response

237. Regulations 63 and 64 of the Transitional Regulations now make provision for this circumstance by disapplying Part 3. There is no specific transitional provision in

relation to regulation 18(2) of the Scheme Funding Regulations (the requirement for the actuary to provide an annual estimate as to the solvency of the scheme for a scheme in winding up). This is because if the scheme starts to wind up before the commencement of section 29, benefits that are being treated as money purchase will continue to be treated as such.

## Consultation response

238. Another respondent commented that it would be much simpler if the schemes were exempted from the scheme funding regime if they had begun to wind up before the commencement of section 29.

## Government response

239. Schemes in wind-up are exempt from scheme funding requirements under regulation 17(1) (l) of the Scheme Funding Regulations. Commencing section 29 does not change this exemption. Therefore the only requirement that is applicable, (in relation to scheme funding) is for the actuary to provide an annual estimate as to the solvency of the scheme.

## Consultation response

240. A group of legal professionals observed that the exemption to the scheme funding regime detailed in the consultation Regulations was not wide enough to cover all benefits that could fall outside the new definition of money purchase benefits. They gave the example of deferred annuity arrangements under which a "scheme annuity" is "deferred" and a guaranteed income stream is paid when the annuity is taken to illustrate this. This gave rise to concerns that schemes in this position would be required to comply with the scheme funding regime retrospectively to January 1997.

## Government response

241. The Department considers that where, in advance of pension age, a rate of pension is promised under the scheme, this is a final or average salary benefit, whether described as a "deferred annuity", a "guaranteed annuity rate" or as a rate of pension. These arrangements are not, under existing law, money purchase benefits, and are unaffected by either the Supreme Court decision in Bridge or by section 29.

242. Nevertheless, the Department has accepted that retrospective application of scheme funding requirements would be unduly onerous and of no benefit to members. Regulation 63 of the Transitional Regulations has now been expanded to provide transitional exemption from the scheme funding requirements for any scheme treated as money purchase before the appointed day.

243. Regulation 64 of the Transitional Regulations similarly extends transitional provision to cover schemes providing benefits treated as if they were money purchase benefits before the appointed day.

244. Regulations 65 to 69 of the Transitional Regulations provide transitional modifications of Part 3 of the 2004 Act and of the Scheme Funding Regulations for schemes treated as money purchase before the commencement of section 29.

## Question 36

**Are there problems with the requirement for the scheme actuary to provide an estimate as to the solvency of the scheme under regulation 18 of the Occupational Pension Schemes (Scheme Funding Regulations) 2005?**

## Consultation response

245. One respondent commented that a scheme in wind-up is required to obtain an actuary's estimate of the solvency before the end of each scheme year. The respondent said this could be problematic depending on when the end of the scheme year falls. If it is shortly after the appointed day, the actuary will not have much time to make the necessary calculations and prepare an estimate of solvency. In addition, this would involve schemes preparing an estimate of solvency in respect of a scheme year during which Part 3 of the Pensions Act 2004 did not apply.

## Government response

246. Regulation 13 of the Transitional Regulations which extends the transitional modifications for schemes which begin winding up before the day appointed for section 29 coming into force deals with this point. Trustees may continue to treat benefits as money purchase where a scheme begins to wind up before the appointed day. The Government's view was that specific transitional modification to regulation 18 of the Scheme Funding Regulations was therefore not necessary.

## Consultation response

247. In contrast one respondent said that they had valued the scheme's assets and liabilities both in compliance with the judgment in Bridge and section 29 basis. This respondent then allowed their employer members to decide which valuation to pay subject to the coming into force of section 29. This has meant they have delayed certification until section 29 is commenced. Some employers have made payments to schemes even in the absence of certification.

## Government response

248. The Department acknowledges that some schemes will have acted in accordance with section 29, and the commencement of section 29 will preserve their position in line with the policy objective here.

# Schedule of payments

249. Any schemes that had previously classified themselves as entirely money purchase, but which will be non-money purchase under section 29, will not immediately have to prepare a schedule of contributions under section 227 of the Pensions Act 2004 as the existing schedule of payments will remain in force until the first schedule of contributions is available.

## Consultation response

250. Respondents suggested that it was not the date that the schedule of

contributions is prepared that is relevant but the date that the first schedule of contributions is certified by the actuary that is relevant.

## Government response

251. The consultation regulation 62 provided that the schedule of payments for an affected scheme will continue to be in force with full effect until the trustees or managers prepared the scheme's first schedule of contributions. The Department accepts that it is the date that the first schedule of contributions is certified by the actuary which is relevant, rather than the date on which the schedule is prepared. Regulation 62, now Regulation 68 of the Transitional Regulations, has been amended accordingly.

## Question 37

**Have you experienced administrative difficulties in moving from schedule of payments to a schedule of contributions?**

## Consultation responses

252. Three responses in this area commented on the administrative challenge, time and cost for schemes in meeting the requirement to provide a schedule of contributions.

## Government response

253. Whilst the Department acknowledges that this will mean additional administrative and cost responsibilities, schemes will have up to 27 months in which to provide the first schedule of contributions following the Regulations coming into force. The Department believes that this is a reasonable lead in period for schemes to comply with what is the existing legislative requirement for a non-money purchase scheme.

# Chapter Fourteen – Part 15: Financial Assistance Scheme

254. Pension schemes which on the commencement of section 29 are already involved with the Financial Assistance Scheme would have used an interpretation of the legislation on money purchase benefits which reflects either the judgment in Bridge, or the clarified definition in section 29. The Regulations effectively validate decisions of these schemes, irrespective of the basis on which they are made.

255. The consultation Regulations therefore endorsed action taken before the Regulations come into force, such as valuations, and the discharge of benefits which were treated as money purchase benefits. This approach is consistent with the Department's principle of not unpicking past action and avoiding burdens on schemes.

256. To support this approach, the consultation Regulations provided that a scheme which, as a result of section 29, would change from a money purchase scheme to a hybrid or non-money purchase scheme, would not qualify for the Financial Assistance Scheme. Instead it would be deemed to remain a money purchase scheme for the purposes of section 29 if it was treated as a money purchase scheme before it began to wind-up. The Department is not aware of any scheme in this position.

257. There was no specific question asked in the consultation document for this area.

## Consultation response

258. There were no objections to the proposed treatment of schemes which have qualified for the Financial Assistance Scheme. One respondent pointed out that the Regulations were defective, in that, for example, a scheme with a money purchase underpin which did not bite would be treated as a qualifying scheme for the purposes of Financial Assistance Scheme, which was inconsistent with the approach for schemes which provided cash balance benefits.

## Government response

259. The Department agrees that the drafting here was defective. Regulation 71 of the Transitional Regulations has been extended to prevent any scheme which was treated as a money purchase scheme from qualifying for the Financial Assistance Scheme.

## Consultation response

260. Another response commented that should it subsequently become apparent that there are members who would lose out as result of the approach taken, the Department would need to consider the requirements of the European Insolvency Directive. This envisages a situation where, if, as a result of the section 29 definition being applied retrospectively a scheme switched from being a money purchase scheme to a non-money purchase scheme, it may have been better off in qualifying for the Financial Assistance Scheme, rather than winding up

underfunded.

## Government response

261. The Department agrees that if this situation were to arise it would give due consideration to whether further measures were required, but as there is no evidence of any scheme in this position, considered that it was unnecessary to make provision in these Regulations.

# Chapter Fifteen – Part 16: Equality

262. Exceptions to the principle of equal treatment in relation to pensions are included in the Equality Act 2010 (Sex Equality Rule) (Exceptions) Regulations 2010 (Equality Act). These Regulations contain permitted exceptions to the Sex Equality Rule in that Act. Regulation 4 of those Regulations allows the use of actuarial factors which differ for men and women in relation to the calculation of a rate of pension resulting from money purchase benefits. The consultation draft of the Regulations extended this exception to the calculation of a rate of pension resulting from cash balance benefits.

## Consultation response

263. Very few responses commented on this issue. Two respondents pointed out that the transitional modifications in the consultation Regulations did not cover the use of differing actuarial factors to calculate pensions resulting from cash balance benefits where the pension was in payment before the commencement of section 29.

264. Points made by respondents in relation to the treatment of underpin and top-up benefits were also relevant to this part of the Regulations.

## Government response

265. The Government accepts that the use of differing actuarial factors in calculating pensions resulting from cash balance benefits might also apply to pensions in payment before the appointed day. Regulation 73 of the Transitional Regulations has been amended accordingly.

266. Regulation 73 of the Transitional Regulations also now extends to cover calculations relating to pensions resulting from underpin arrangements and from top-up benefits where the defined benefit minimum or top-up benefit is a cash balance benefit.

# Chapter Sixteen – Part 17: Pension sharing

267. The value of pension rights are included as part of the couple's assets for the purpose of calculating a financial settlement on divorce or dissolution of a civil partnership. Options include sharing the value of the pension or offsetting its value against other assets of the couple. If pension sharing is chosen, the pension rights to be shared are valued a second time immediately before the pension sharing order is implemented.

268. Money purchase and non-money purchase pensions are valued in different ways. If a scheme valued the rights by the money purchase method but, after the commencement of section 29, found it should have valued the rights by the non-money purchase method, complexity and confusion could arise, leading to an administrative burden on the schemes affected.

269. The consultation Regulations allowed a scheme in the process of valuing pension rights or implementing a pension sharing order to continue using the same valuation method, rather than switch during the implementation process. The Regulations also provide that schemes would not have to revisit valuations that had already taken place, or pension sharing orders that have already been implemented.

## Question 38

**If schemes did have to revisit past valuations, can you give any indication of the costs and practical issues involved?**

## Consultation response

270. The six responses received were unanimous that valuations and pension sharing which had already taken place should not be revisited. The responses pointed out the practical difficulties in revisiting pension sharing. These are similar to trying to revisit transfers. However, they would face the added complication that any change in the value of the pension rights could lead to either party to the divorce or dissolution wanting to revisit the whole settlement.

271. Respondents also supported the position that pension sharing valuations or implementations which have commenced but not been completed before the Regulations come into force should continue using the original methodology.

## Government response

272. Therefore, there is no change from the consultation Regulations.

# Chapter Seventeen – Part 18: Cross-border schemes

273. The consultation Regulations provided transitional arrangements for cross-border schemes which, as a result of section 29, can no longer be considered to be money purchase schemes. For these schemes it would be necessary to re-apply to the Pensions Regulator for authorisation as a non-money purchase scheme. Any cross-border schemes which are affected will have up to a year from the coming into force of the Regulations in which to re-apply, with their existing authorisation remaining valid in this period. There will then be a further year in which schemes will need to meet the requirements for authorisation as a non-money purchase scheme.

## Question 39 and 40

**Will these proposed changes give rise to any difficulties for your scheme in terms of the clarity of the requirements in the legislation?**

**Are specific transitional measures required for schemes affected by section 29 in respect of the existing modifications for cross-border schemes in the Occupational Pensions Schemes (Scheme Funding) regulations 2005?**

## Consultation response

274. One respondent believed that the requirement to re-apply for authorisation should only apply where schemes are still providing non-money purchase benefits at the end of the year in which schemes have to make the new application.

## Government response

275. The Department does not agree. In order to ensure member protection, periods of less than a year from the coming into force of the Regulations will need to be subject to the more stringent requirements appropriate to a non-money purchase scheme. The Department acknowledges that enforcing the requirement for a relatively short period would be inconvenient for the scheme; however, to do otherwise would be contrary to article 8 of Directive 2008/94/EC (the Insolvency Directive).

## Consultation response

276. Some responses said that schemes would need time to assess their position and then, if necessary, time to achieve full funding, suggesting a longer transitional period. There were also perceived difficulties in the effort and cost of providing valuations and reporting, with schemes locked into this until they could discharge the scheme's European rights.

## Government response

277. The timescale in the Regulations matches that for a new cross-border scheme in the existing legislation and, the Department believes this to be a reasonable

period in which to meet the requirement. In addition, the legislation has been in the public domain since 31 October 2013. This means that trustees or scheme managers will have known of the Department's intentions since that time, with no requirement to act until one year after these Regulations are in force.

278. With regard to any difficulties there might be in discharging European rights, the purpose of the cross-border provisions is to enable cross-border schemes to obtain the correct authorisation for cross-border members, not to revoke an authorisation or smooth the way for discharging European rights. The Regulations are not compelling schemes to act in this way, so any decision taken by the scheme to do so and the cost and difficulty of doing so is not something which is a direct result of the provisions in these Regulations.

## Consultation response

279. One respondent expressed confusion at the reference in the provisions to regulation 5 of the Occupational Pension Scheme (Cross-border Activities) Regulations 2005. This response appears to express surprise that the provisions apply to schemes which are already engaged in cross-border activity.

## Government response

280. The cross-border provisions in the Regulations are intended to accommodate schemes which are already authorised as cross-border schemes on a money purchase basis but which will need to re-apply for authorisation as a non-money purchase scheme. Regulation 5 of the Cross-border Regulations is therefore appropriate for these purposes.

## Consultation response

281. One respondent suggested that the cross-border provisions should be amended to accommodate schemes which, through ignorance, might not have made an application to be a cross-border scheme.

## Government response

282. The provisions are predicated on the fact that schemes will have applied for and been granted authorisation to accept contributions from European employers. The Department sees no justification for changing the provisions to endorse schemes which have not met any legislative requirement for a cross-border scheme. If there are schemes in this position they will need to make the appropriate application to the Pensions Regulator for authorisation as a cross-border scheme.

## Consultation response

283. Other responses agreed that the funding requirements and timescales for cross-border schemes were appropriate for schemes affected by section 29.

284. Another made the point that for a scheme which was already providing some non-money purchase benefits, there should be no need to vary the existing valuation cycle.

## Government response

285. Since these particular provisions are only aimed at schemes which prior to the commencement of section 29 were money purchase schemes, this will be the case for schemes of this nature.

## Consultation response

286. One respondent sought clarification from the Pensions Regulator on the treatment of segregated multi-employer schemes, where they believed the whole scheme would be subject to full funding even if the cross-border members are money purchase only members. They do not believe this is in the ambit of the Regulations but would like clarification.

## Government response

287. The Department believes that regulation 77(5) of the Transitional Regulations, which provides that the regulations apply to a sectionalised scheme as if it were a separate scheme, addresses this concern adequately. If any further changes are necessary, this is a question which is not pertinent to these Regulations. It will need to be addressed outside these Regulations.

288. Finally, in response to comments of a technical nature, the Department has made some further changes to regulation 77 of the Transitional Regulations so that transitional measures in respect of authorisation applications to the Pensions Regulator under section 289 of the Pensions Act 2004 are included. This ensures that the authorisation to receive contributions from a particular European employer as well as the general provisions for European employers in the 2004 Act is covered in this regulation. Other changes of a technical nature have been made in these provisions as a result of comments from one respondent.

# Chapter Eighteen – Part 19: Disclosure

289. Until 5 April 2014 the regulations on disclosure were principally found in the Occupational Pension Schemes (Disclosure of Information) Regulations 1996. From 6 April 2014 these Regulations were revoked and replaced by the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013.

290. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 set out: the information which must be disclosed in certain situations; to whom the information must be disclosed; the timescales for doing so, and the manner in which the information should be provided.

291. The above regulations do not extend any rights or obligations on any party. Instead the regulations clarify what schemes are required to provide, and therefore what members can expect, in certain situations.

## Questions 41 and 42

**Do you agree that schemes should not have to revisit actions taken in respect of disclosure requirements and that the transitional provision captures all relevant areas?**

**If you are a trustee or manager of a scheme with cash balance benefits do you agree with the proposed amendments to the disclosure regulations and would this mean you need to revisit your disclosure requirements?**

## Consultation response

292. Twelve respondents acknowledged support for the Department’s intent not to recreate historic information. Indeed, one respondent thought that to try and inform members of historic information could be confusing.

293. All respondents agreed that it was reasonable to expect schemes that switch from money purchase to non money purchase to review disclosure requirements to ensure ongoing compliance.

294. Responses regarding transitional protection for schemes providing underpin and top-up benefits also apply to disclosure requirements.

## Government response

295. In the light of responses regarding underpin and top-up benefits, the Department has changed its position following consultation. Therefore, regulation 78 of the Transitional Regulations extends transitional protection to schemes with these benefit designs, where benefits were treated as money purchase, in relation to periods before the coming into force date for section 29.

## Question 43

**If so, can you give an indication of the costs and practical issues involved?**

## Consultation response

296. Respondents noted that there may be a cost. They accepted that communications would need to be reviewed once the detail of the regulations was known. This is to ensure ongoing compliance with disclosure Regulations 2013 and the most appropriate type of member information for their members.

## Government response

297. The Department accepts the respondents’ position and has made no change to the provisions.

## Question 44

**We would be particularly interested to hear about the benefit information you have been issuing to scheme members and whether this is provided automatically to the member on a regular basis?**

## Consultation response

298. Respondents noted that members had been receiving an annual statutory money purchase illustration in accordance with the existing disclosure requirements.

## Government response

299. The Department accepts the respondents’ position and has made no change to the provisions.

## Question 45

**What are your views on the suggested proposal for a pension illustration?**

## Consultation response

300. Respondents thought that the proposal appeared reasonable.

## Government response

301. The Department accepts the respondents’ position and has made no change to the provisions.

## Question 46

**Can you suggest an alternative to ensure the member receives this information?**

## Consultation response

302. All respondents commented that there was no alternative method of communicating with members.

## Government response

303. The Department accepts the respondents' position and has made no change to the provisions.

## Question 47

**What types of information have you been issuing to scheme members who are approaching retirement?**

## Consultation response

304. Respondents commented on the requirement that six months prior to retirement members are notified of their options at retirement, including the open market option. In addition three months before retirement members receive a retirement quotation and all the forms to enable their benefits to be paid.

305. Respondents raised concerns that once the Regulations come into force members will no longer be able to secure a pension via an open market option. This is because it will no longer be a money purchase arrangement. Although members will still have the option of transferring to another arrangement, because these will be defined benefit, financial advisers may be reluctant to recommend a transfer, as it could see the member lose value. As a result members may miss out on the opportunity to obtain the best available rate to convert their fund value into a pension.

## Government response

306. The Department does not accept that this is the case. The Finance Act 2004 makes it clear that the open market option also extends to cash balance arrangements. However, the disclosure requirements have been amended to reflect this. Regulation 79 of the Transitional Regulations makes consequential and supplementary amendments to the Disclosure Regulations 2013 and inserts the use of cash balance as defined in these regulations, including the clarification of requiring annuity options where there are cash balance benefits.

## General

307. Respondents also commented that the consultation stage disclosure Regulations did not include provisions for underpin benefits, which in their view was needed.

## Government response

308. The Department accepted that this was the case. Regulation 78 of the Transitional Regulations now covers money purchase underpin benefits and top-up benefits as defined in regulations 4, and 5 of the Transitional Regulations.

# Annex A – List of formal respondents

309. The following made formal responses to the consultation exercise. Those named below may have made more than one submission to the consultation.

Aon Hewitt
asb law LLP
Ashton KJC
Association of Consulting Actuaries
Association of Member-Directed Pension Schemes
Association of Pension Lawyers
Barnett Waddingham LLP
Bond Dickinson LLP
British Airways Pensions
Bucks Consultants Limited
Burton & Dyson
Business in the Community
CHILDREN 1st
Cozens-Hardy LLP
Dickinson Manser LLP
DLA Piper UK LLP
EdwinCoe LLP
Employability Forum
Farrer & Co
Gordons LLP
GRANT SAW SOLICITORS LLP
Gullands Solicitors
H. E. Thomas & Co
Hallett & Co
Haywards Solicitors
Hogan Lovells LLP
Holman Fenwick Willan LLP
Hymans Robertson LLP
Institute and Faculty of Actuaries
J H Powell & Co
Kennedys
MayoWynneBaxter Solicitors
Mercer
Moss Solicitors
Norton Rose Fullbright LLP
Oldham Marsh Page Flavell Solicitors
Pension Protection Fund
PotterRees Ltd
P-Solve
RadcliffesLeBrasseur
RPMI Limited
Sacker & Partners LLP
Sills & Betteridge LLP
Spire Solicitors LLP
Squire Saunders (UK) LLP
Sun Life Financial of Canada
The Institute of Chartered Accountants in England and Wales
The Law Society of Scotland
The National Association of Pension Funds
The Pensions Management Institute
The Pensions Ombudsman
The Pensions Trust
The Society of Pension Consultants
Thompsons Solicitors LLP
Towers Watson
Travers Smith LLP
Vine Orchards Solicitors
Wake Smith LLP
Wannops LLP
Warner Goodman LLP
Warners Law LLP
Wartnaby Hefford Solicitors
Wellers Law Group LLP

Keston College

Lawrence Graham LLP

Liddell and Company

Linklaters LLP

Mayer Brown International LLP

Wilson Browne

Winckworth Sherwood

Wollen Michelmore LLP

Zurich Financial Services (UKISA) Limited

310. In addition to the above named the Department also received four contributions from individuals. The Department also facilitated four stakeholder forums as well as further events with key stakeholder groups. Attendees at these events may also have contributed formal submissions to the consultation process which have been included above.

311. As part of the usual consultation process the Department also liaised closely with officials from the offices of the Pensions Regulator, the Pension Protection Fund and other Government departments.

# Annex B –
# List of consultation questions

## The Regulations

### Question 1

Is there a more cost-effective way of implementing the transitional, consequential and supplementary provisions that support the coming into force of section 29?
The Department is keen to hear about any schemes that currently contain benefits that they treat as money purchase but that will, on the coming into force of section 29 become non-money purchase. As mentioned at paragraph 7 the information the Department currently hold on occupational pension schemes is self reported. We are not aware of any schemes where on the commencement of section 29 their benefits will move entirely from money purchase to non-money purchase. Our assumption is that schemes that contain a mixture of benefits (hybrid schemes) will mainly be affected.

### Question 2

Is your scheme split into sections that contain separately money purchase and non-money purchase benefits?

### Question 3

Is the scheme split into sections for other reasons?

### Question 4

Is there a cross-subsidy between the different sections of the scheme?

### Question 5

What is the membership size of the scheme?

### Question 6

How many members are there in each section of the scheme?

## Implementation

It has been suggested by some stakeholders that these Regulations could be brought into force in two stages separated by a 12 month period.

### Question 7

Do you believe that splitting the Regulations into two stages would be helpful to schemes and if so why it would be helpful?

### Question 8

If so, which Regulations should we delay until the second stage?

## General question

We would appreciate any comments on the policies in chapters four to twenty-two and associated regulations in Parts 1 to 16 of the Statutory Instrument accompanying this consultation document. Especially where they might present difficulties we have not identified. We would also like to hear your views on whether there is a more cost effective way of implementing the transitional, consequential and supplementary provisions that support the coming into force of section 29

**Could you please consider and give detail on the following questions**

### Question 9

Do the proposed changes in the Regulations give rise to particular difficulties that you can identify?

### Question 10

What are these difficulties and why do the proposals give rise to them?

### Question 11

How do you think these difficulties could be addressed?

## Winding-up

We would be particularly interested to hear from single or multi-employer schemes that have begun winding up since 27 July 2011 and will have almost completed winding up by the coming into force of section 29.

### Question 12

Will the proposed wind-up Regulations cause any difficulties?

### Question 13

At what stage would you consider a wind-up to be almost at the point of being completed?

### Question 14

How can it be objectively determined that a wind-up has been completed?

# Deficiencies in assets – employer debt

## Question 15

Will the proposals in the Regulations cause problems for schemes that are considering revisiting debt events following the coming into force of section 29?

## Question 16

If so, what alternative would you suggest that addresses risks to employers and scheme members remaining in the scheme following a debt event?

## Question 17

What impact will the requirement for the actuary to issue a fresh valuation certificate have on schemes and employers?

## Question 18

Are there alternative ways to deal with this issue?

## Question 19

Do you think the proposals in the Regulations for a multi-employer scheme with a scheme apportionment arrangement, withdrawal arrangement or flexible apportionment arrangement would cause particular difficulties for the following?

- Members;
- Employers;
- trustees and scheme managers; or
- the Pension Protection Fund if the scheme has entered a Pension Protection Fund assessment period after 27 July 2011.

# Revaluation

## Question 20

Do you agree that schemes should not have to revisit benefits already in payment?

## Question 21

If schemes did have to, can you give any indication of the costs and practical issues involved?

## Question 22

Do you see any risk that the value of benefits accrued in relation to past periods of service will be adversely affected?

### Question 23

Do you see any problems with this approach that only applies the new method to future accruals?

## Indexation

### Question 24

Do you know of any cash balance type schemes which did not provide for indexation on annuities/scheme pensions put into payment prior to January 2012?

### Question 25

If so, how many schemes and members are involved?

### Question 26

Will the arrangements made for these schemes cover all methods of indexation used by these schemes?

### Question 27

Do you agree that schemes should not have to revisit benefits already in payment?

### Question 28

If schemes did have to do so, can you give any indication of the costs and practical issues involved?

## Transfers

The Department would like to hear how schemes that have cash balance type benefits have been calculating transfer values.

### Question 29

Do you agree that schemes should not have to revisit transfers which have already taken place?

### Question 30

If schemes did have to do so, can you give any indication of the costs and practical issues involved?

# The Pension Protection Fund

## Question 31

Do you consider the transitional arrangements for valuations and levies will work in practice for any scheme that is newly eligible or for existing schemes that include benefits that can no longer be considered money purchase?

## Question 32

Do you know of any schemes where money purchase contributions have been made other than from additional voluntary contributions to increase pension entitlement and paid from scheme funds on retirement?

## Question 33

Will the draft Regulations for the conversion of a lump sum work in the case of all relevant benefits?

## Question 34

Do you know of any schemes which would have been considered money purchase before the coming into force of section 29 and which will not be money purchase after, where the employer had suffered an insolvency event before the commencement of section 29?

# Scheme funding

## Question 35

What, if any, transitional measures do you think are required for schemes that began to wind up on or after 28 July 2011 and are still winding up on the appointed day?

## Question 36

Are there problems with the requirement for the scheme actuary to provide an estimate as to the solvency of the scheme under regulation 18 of the Occupational Pension Schemes (Scheme Funding Regulations) 2005?

## Question 37

Have you experienced administrative difficulties in moving from schedule of payments to a schedule of contributions?

# Pension sharing on divorce

## Question 38

If schemes did have to revisit past valuations can you give any indication of the costs and practical issues involved?

# Cross-border schemes

## Question 39

Will these proposed changes give rise to any difficulties for your scheme in terms of the clarity of the requirements in the legislation?

## Question 40

Are specific transitional measures required for schemes affected by section 29 in respect of the existing modifications for cross-boarder schemes in the Occupational Pensions Schemes (Scheme Funding) regulations 2005?

# Disclosure

## Question 41

Do you agree that schemes should not have to revisit actions taken in respect of disclosure requirements and that the transitional provision captures all relevant areas?

## Question 42

If you are a scheme with cash balance benefits do you agree with the proposed amendments to the disclosure regulations and would this mean you need to revisit your disclosure requirements?

## Question 43

If so, can you give an indication of the costs and practical issues involved?

## Question 44

We would be particularly interested to hear about the benefit information you have been issuing to scheme members and whether this is provided automatically to the member on a regular basis?

## Question 45

What are your views on the suggested proposal for a pension illustration?

## Question 46

Can you suggest an alternative to ensure the member receives this information?

## Question 47

What types of information have you have been issuing to scheme members who are approaching retirement?

# Underpin and top-up benefits

## Question 48

Are there any alternative approaches to the treatment of members whose money purchase amount exceeds compensation levels?

# Scheme modifications

## Question 49

What action by the Government do you believe is necessary in respect of this issue?

# Automatic Enrolment

## Question 50

Do you think that the commencement of section 29 will impact on Automatic Enrolment requirements in a way not covered by the regulations?

## Question 51

If so, what changes do you think need to be considered in the regulations to address that impact?