Occupational and Personal Pension Schemes and the Pension Protection Fund (Miscellaneous Amendments) Regulations 2016

and

Call for Evidence on the Valuation of Pensions with a Guaranteed Annuity Rate

Government response

March 2016

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Introduction

On 23 November 2015 the government published a consultation paper on the Occupational and Personal Pension Schemes and Pension Protection Fund (Miscellaneous Amendments) Regulations 2016 and the Call of Evidence on the Valuation of Pensions with a Guaranteed Annuity Rate (GAR). The consultation, which ran until 15 January 2016, sought stakeholders' views on:

- amendments to four areas of pensions legislation following the introduction of the pension flexibilities in April 2015, to ensure that the flexibilities operate as intended
- other minor changes to pensions on divorce legislation
- minor proposed changes to regulations governing entry into the Pension Protection Fund for certain schemes
- a proposed simplification of the valuation process for pension benefits which contain a guaranteed annuity rate (GAR), for the purposes of the advice safeguard.

The government received a total of 33 responses from a variety of pension schemes, representative bodies and some individuals to the consultation on the Miscellaneous Regulations 2016, and 24 responses to the call for evidence on the valuation of pension benefits with a GAR. The government is grateful to all respondents, who are listed in Annex A.

This document forms the government's response to the consultation on the Occupational and Personal Pension Schemes and Pension Protection Fund (Miscellaneous Amendments) Regulations 2016, and the call for evidence on the valuation of pensions with a GAR.

The response document is split into five chapters. Chapter 1 covers proposed changes to secondary legislation on pension sharing, which will be brought into law as the Pension Sharing (Miscellaneous Amendments) Regulations 2016. Chapters 2 to 4 address proposed changes to areas of secondary legislation which will be brought into law as the Pension Protection Fund and Occupational and Personal Pension Schemes and (Miscellaneous Amendments) Regulations 2016.

Each chapter introduces the regulations that were consulted on, summarises the consultation responses and clarifies what changes the government has made to the regulations following this consultation. Chapter 5 summarises the responses to the call for evidence on the valuation of pensions with a GAR, and sets out the next steps that the government intends to take in this area.

The intention is that the regulatory changes outlined in this response will be laid before Parliament in March 2016 and come into force on 6 April 2016. The regulations will be available on the UK Legislation website: http://www.legislation.gov.uk/uksi

Chapter 1: Pension Sharing on Divorce

This section includes various consequential amendments following the Pension Schemes Act 2015. It also creates two further exclusions from shareable rights and makes it clear that a reduction for underfunding should only take place in specific circumstances.

Chapter 2: Occupational Pension Schemes: Scheme Wind-Up, Inalienability and Preservation of Benefits

This section clarifies what technical changes the government intends to make to reflect the pension flexibilities in specific situations, including when a scheme is winding up.

Chapter 3: Pension Protection Fund (PPF)

This section clarifies what amendments the government intends to make to the Pension Protection Fund (Entry Rules) Regulations around schemes whose sponsoring employer cannot have an insolvency event.

Chapter 4: Retirement Risk Warnings for Members of Occupational Pension Schemes

This section clarifies what amendments the government intends to make to disclosure of information requirements, to place an obligation on trustees or managers of occupational pension schemes to issue risk warnings to scheme members at the point of decumulation.

Chapter 5: Valuation of Pensions with a Guaranteed Annuity Rate (GAR) and the Advice Safeguard

This section clarifies what steps the government intends to take to simplify the current valuation process for members with GAR pensions for the purposes of the advice requirement.

Chapter 1: Pension Sharing on Divorce

1. Chapter 1 of the consultation sought stakeholders' views on the draft Pension Sharing and Attachment on Divorce etc (Amendment) Regulations 2016, which contained changes to various regulations relating to pension sharing, attachment orders, exclusions to shareable rights, valuing pension rights and further technical changes which were required as a consequence of the pension freedoms introduced in April 2015.
2. Specifically, these changes were intended to:
   - ensure that rights which can be shared do not include rights which are not preserved, and that underfunded schemes apply a reduction only once and only in the implementation stage
   - ensure that, where an attachment order has been granted, the former spouse is alerted where the member intends to take their benefits flexibly, so that the former spouse has the time to seek to vary the order if the outcome would no longer be what the court intended
   - make a number of consequential amendments or minor and technical changes to pension sharing regulations to correct anomalies.
3. The government asked a number of questions to inform its thinking on exactly how amendments to various pension sharing regulations should be achieved. The government response is split into various sub-sections which clarify what changes the government intends to make following the responses and evidence received.
4. Twenty-five respondents commented on one or more questions in this chapter of the consultation document.

Consequential changes following the Pension Schemes Act 2015

5. This sub-section asked the following consultation questions:

Question 1: Do you agree that these various technical amendments ensure that pension sharing legislation reflects changes which have already been made regarding ordinary scheme benefits?

Question 2: Do you agree that the advice requirement should apply to pension credit members if they wish to transfer safeguarded pension credit rights valued above £30,000?

Summary of responses

6. The majority of those who responded to Question 1 agreed generally that the proposed changes ensured that the pension sharing legislation now reflected the other changes.

7. Twenty stakeholders responded to Question 2. All agreed that pension credit members should be treated the same as other members if they wished to transfer or convert safeguarded benefits.

8. Two respondents raised queries around new Regulation 6(3) of the Pension Credit Benefit regulations (inserted by Regulation 2(5) of the draft regulations). Specifically, these were whether Section 48 of the Pension Schemes Act 2015 needs to apply to Regulation 7 (which permits a member's pension benefit to be paid in a different form through being paid earlier or later than the scheme's normal benefit age) and how this new regulation would interact with Section 48(7). One respondent queried whether Section 48 of the Pension Schemes Act 2015 actually applies to pension credit members.

9. Finally, a further respondent pointed out that some members may have both pension credit benefits and their own personal benefits within the same scheme, which are worth less than £30,000 individually but more when taken together, and asked whether the advice requirement would apply.

10. The government is grateful to those respondents who took the time to work through the draft regulations in detail. Many of these comments and suggestions have been reflected in the final draft.

Other issues raised by respondents

11. The consultation document made it clear that the advice requirement is only intended to apply where the member has previously acquired safeguarded benefits through the implementation of a pension sharing order and then subsequently wishes to convert or transfer those rights at a later date. There is no intention that the requirement should apply at the point a pension sharing order is implemented through an external discharge.

12. Two respondents were concerned that this policy placed former spouses at a disadvantage, and another felt the requirements ought to apply where a scheme was underfunded and the former spouse had the choice of an internal discharge or a reduced transfer value.

Government response

13. The majority of respondents who answered Questions 1 and 2 agreed with the government that:

- the proposed amendments will ensure that the pension sharing legislation reflects changes made regarding members with ordinary scheme benefits; and

- the advice requirement should apply to pension credit members with safeguarded benefits in the same way as to other members.

14. The government has looked carefully at the concerns raised about the drafting of the proposed amendment regarding the advice requirement, and remains of the view that Section 48 applies to pension credit members.

15. However, the need to include specific references in the Pension Credit Benefit Regulations has been reconsidered. On reflection, the government now feels that the proposed new Regulation 6(3) duplicates a pre-existing duty already in law and is not necessary. This provision has therefore been removed from the final regulations.

16. The government confirms that a member who has both pension credit benefits and ordinary benefits within the same scheme which are each worth less than £30,000 separately, but above that figure in total, will be subject to the requirement to take advice, as this requirement applies at scheme level.

17. With regard to the additional issues raised, there is currently no requirement for a former spouse to take financial advice before a pension sharing order is implemented. However, where a couple are divorcing and a pension share is part of the financial settlement, it is likely that the former spouse will have received financial and legal advice regarding the overall settlement, including the pension rights. The government is, therefore, not persuaded that an additional advice requirement is needed at this point.

Amendments to the Dissolution etc (Pensions) Regulations 2005

18. The Dissolution etc (Pensions) Regulations 2005 replicate some of the provisions of the Divorce etc (Pensions) Regulations 2000 in respect of couples dissolving a civil partnership. Therefore, corresponding consequential amendments following the Pension Schemes Act 2015 changes are needed to these regulations and these amendments have been included in this set of regulations.

Attachment orders

19. This sub-section asked the following consultation questions:

Question 3: Are respondents aware of specific problems where an attachment order exists and the member has chosen to take ‘flexible benefits’ (money purchase benefits or cash balance benefits) in a flexible manner? Can you give actual examples and numbers?

Question 4: Do respondents think that notifying the former spouse at an earlier stage in the process is a solution? Do respondents think that this approach is sufficient or do they consider that further action might be more appropriate? If so, could respondents please give details of any action that they would like the government to consider.

Question 5: What do respondents think would be the practical difficulties of requiring the former spouse to confirm that they had received the notification?

Question 6: Do respondents think that problems will only arise where the member has flexible benefits? Or do respondents think that the former spouses of all members should be notified when the member applies to take benefits, regardless of the type of pension benefits involved?

Question 7: Does your scheme allow members to convert safeguarded benefits to flexible benefits?

Summary of responses

20. Twelve respondents answered Question 3, giving a range of examples where the wording of the order, when applied to certain forms of flexible benefits, might give a different outcome to what was originally envisaged. Due to the comparatively small number of attachment orders in existence, many of the respondents had limited experience of actual cases.

21. Several respondents who are responsible for the administration of pensions confirmed that they were taking a pragmatic case-by-case approach and trying to get both parties' agreement as to how the order should be implemented. However, a significant number of respondents indicated that some form of definitive guidance would be helpful.

22. The 24 responses to Question 4 covered a wide range of views. Some respondents thought that the notification requirement was a solution or at least a reasonable partial solution, with a minority taking the view that there was no need for the government to do anything further. These respondents felt the onus was on the former spouse to take action if the terms of the attachment order would no longer produce the intended outcome.

23. The majority felt that notifying the former spouse was a step in the right direction but that it was not the complete solution. Concerns were raised that a former spouse might take legal advice and return to the court for a variation of the order, only to discover that the benefits had already been paid to the member, or that they might not realise the significance of acting quickly and fail to respond in time. Some respondents were concerned that this approach placed too much responsibility and expense on the former spouse when it was the member who was actually changing the position by choosing to take benefits in a different way to that originally anticipated.

24. Respondents provided a variety of suggestions for further action. These included the government or Law Society providing schemes with guidance on the interpretation of court orders, requiring consent from the former spouse before the member could take their benefits flexibly or transfer their rights, and one-off trawls by schemes or solicitors so that all affected attachment orders could be renegotiated.

25. All those who responded to Question 5 were broadly in agreement. The practical difficulties were seen to be:

- the former spouse might have moved without providing the scheme with their new contact details
- the former spouse may not bother to read the letter or to reply
- the former spouse may deliberately fail to reply in order to prevent the member taking their benefits
- provision would be needed for the cases where no reply was received.

26. All those who responded to Question 6 agreed that the issue raised was one that occurred in respect of flexible benefits. But six cautioned that the same issues could arise if a member was able to convert safeguarded benefits to flexible benefits within the same scheme. Other respondents warned that a member might transfer safeguarded benefits to another scheme with the intention of taking flexible benefits immediately, and could take the benefits before the former spouse had been notified under the requirements in the Divorce etc (Pensions) Regulations 2000 (SI2000/1123).

27. The majority of stakeholders who responded to Question 7 indicated that, in their experience, schemes were not likely to offer members options to convert safeguarded benefits to flexible benefits within the scheme. The member would be required to transfer out to a scheme which provided flexible benefits. However, one reply contradicted this by suggesting that this was an option about which there was growing interest.

Government response

28. Although all those who responded agreed that there is an issue regarding the interaction between attachment orders and the new ways of taking benefits, there was little consensus on what the government should do to address it. This can partly be explained by the fact that the wording of attachment orders varies considerably from one order to another, as do the rules of pension schemes. The government wishes to thank those administrators who provided anonymised examples of attachment orders to aid our understanding of the issues.

29. The varied responses reinforced the government's awareness that this issue affects a number of people in different ways:

- the former spouse with an expectation of receiving some of the member's pension in a particular form
- the member who has the "right" to a wider range of options since April 2015
- the scheme trustees/managers who have the task of balancing the possible conflicts.

30. The government acknowledges that the notification requirement in the draft regulations would only have a limited effect. However, alternative proposals imposing additional requirements on former spouses, members or schemes would require primary legislation. The government also appreciates that schemes would like more guidance around the issues involved. Respondents suggested this could be issued by a range of organisations.
31. Due to the complexity of the issues, the government has decided that it will delay the introduction of the notification requirement until a later date, in order to allow more time to consider these complex issues, balancing the expectations of both members and former spouses, and explore the possibility of guidance, including who would be best placed to issue it.
32. The provision has therefore been removed from the final regulations.

Exclusions to shareable rights

33. This sub-section asked the following consultation questions:

Question 8: Do respondents agree that only pension rights which give rise to a preserved pension should be shareable rights and that the value of a cash transfer sum should be excluded?

Question 9: Do respondents agree that all Pension Death Benefits in payment and mentioned in part 2 of Schedule 28 of the Finance Act 2004 should be excluded from shareable rights?

Summary of responses

34. Almost all of the 17 respondents who answered Question 8 agreed that non-preserved rights should not be shareable, with many citing the practical difficulties which would arise on trying to share the rights.
35. One response queried whether the proposed amendment only referred to those who had left schemes or whether it was intended to include those who were still employed but had less than two years' scheme membership accruing non-money purchase rights.
36. There was overwhelming agreement from the 13 respondents to Question 9 that the new death benefits should not be shareable rights. A small number of these agreed there should be a consistent approach to all death benefits but questioned whether it was appropriate that the rights could not be shared.

Government response

37. The proposed exclusion is intended to apply to all non-preserved rights, regardless of whether the individual is still in pensionable employment or has

already left the scheme, and the wording in the final regulations will be amended to reflect this.

38. The responses confirmed that schemes have not been including non-preserved rights as shareable rights. The consultation document also confirmed that, although pensions law excludes some rights from being shareable, this has never meant that these rights should automatically be ignored in the final divorce settlement.

39. Pension rights or benefits to which a person is entitled to as a dependent or survivor of another person have never been shareable, although they can be considered by the Court in the final divorce settlement. The government is not persuaded that this position should change now. The government confirms that the draft amendments will be reflected in the final regulations, subject to some minor drafting changes.

Reduction of cash equivalent where the scheme is underfunded

40. This sub-section asked the following consultation questions:

> *Question 10: Do respondents agree that the proposed amendments to the regulations clarify that a reduction for underfunding should only be applied once and only in cases where a pension credit is being implemented outside the scheme?*
>
> *Question 11: Do these changes make it clearer to trustees/managers what information the legislation requires?*
>
> *Question 12: Is this the information that schemes should be providing? Do respondents have any other comments about valuations provided for the purposes of financial settlements connected with divorce proceedings?*
>
> *Question 13: Are underfunded schemes providing divorcing couples/the courts with reduced or unreduced valuations, or both? If schemes are only providing one are they being asked for the other?*

Summary of responses

41. Thirteen respondents commented on one or more of the questions in this section, the lower numbers reflecting the fact that reductions for underfunding only apply to defined benefit schemes.

42. The majority of those who replied to this question confirmed that the draft regulations achieved the policy intention that a reduction for underfunding should only be made at the point during the implementation of a pension sharing order where the pension credit was being transferred from the original scheme to another pension arrangement.

43. From the varied responses received it is clear that, while most schemes have been providing unreduced valuations, not all schemes have been consistent in their approach. However, it does not appear from the responses that underfunded schemes which provided a reduced valuation at an early stage of the pension sharing process also made a second reduction at the implementation stage.

44. All respondents welcomed the revised wording.

45. A small number of respondents suggested that even more clarity would be achieved if schemes which were making a reduction for underfunding had to provide details of the potential reduction alongside the unreduced valuation.

46. Several respondents also pointed out various drafting points which they considered might hinder the smooth working of the revised regulations.

Government response

47. The government is pleased that respondents feel the amendments reflect the policy. The government is also grateful to those respondents who took the time to work through the draft regulations in detail and picked up various drafting points. The final regulations will take account of these suggestions.

48. The government also accepts that added clarity for those calculating the settlement might be provided if underfunded schemes were required to indicate, alongside the full valuation, the amount by which the fund would be reduced if the funds were transferred out of the scheme. However, Regulation 4(2)(c) of the Divorce etc (Provision of Information) Regulations 2000 already requires an underfunded scheme which receives notification that a pension sharing order may be made to provide confirmation whether they are reducing cash equivalent values due to underfunding.

Amendments to the Divorce etc (Pensions) (Scotland) Regulations 2000

49. Amendments to these regulations covering the valuing of pension benefits have been made with the agreement of the Scottish Executive. The responses which commented on these regulations in detail have been forwarded to the Scottish Executive to consider whether any further action is required on their part.

Chapter 2: Occupational Pension Schemes: Scheme Wind-up, Inalienability and Preservation of Benefits

1. Chapter 2 of the consultation sought respondents' views on allowing occupational pension schemes which are winding up to discharge non-money purchase flexible benefits as a lump sum under the new flexibilities. It also sought respondents' views on technical amendments in relation to inalienability of pensions and preservation of benefits.
2. Fourteen respondents commented on the issues raised in this chapter of the consultation document.

The Occupational Pension Schemes (Winding Up) Regulations 1996

3. The draft regulations would allow a pension scheme to discharge its liabilities in wind up by the payment of an uncrystallised funds pension lump sum (UFPLS) where such a payment was permitted by the Finance Act 2004 and the member consented to such a method.
4. This sub-section asked the following consultation questions:

> *Question 14*: *Do the proposed amendments to the winding up regulations achieve the intended outcome?*
>
> *Question 15: The proposed amendment to the winding up regulations requires a scheme to obtain member consent before discharging cash balance benefits by lump sum. Will this create any difficulties for schemes?*

Summary of responses

5. Four responses were received to Question 14, all of which agreed with the proposal. The 11 responses to Question 15 were more mixed. While most acknowledged the importance of member consent, 6 respondents expressed concerns that the requirement could make this method difficult to use and increase costs. However, others pointed out that, even where the regulations do not require member consent for discharge by way of a lump sum (such as a trivial commutation lump sum), in practice, member co-operation would be necessary in any case (for example, to demonstrate that total benefits were less than £30,000 under all schemes).

Government response

6. The government has decided to proceed with the current draft of the regulations, retaining the consent requirement. As one respondent highlighted, the tax consequences for the member of receiving an UFPLS can be significant, and so the requirement for member consent before such a payment is made constitutes an important protection. In addition, the government notes that other lump sum discharge options remain available (where the relevant conditions under the Finance Act 2004 are satisfied) for which the regulations do not require member consent, such as winding up and 'small pot' lump sums. If, at some point in the future, there is evidence that the consent requirement in relation to uncrystallised funds pension lump sums is causing schemes difficulties, the government will review the matter again.

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997

7. Regulation 2(1B)(c) of these regulations allowed for a pension to be commuted (that is, given up in exchange for a lump sum) in specific circumstances, where the member has reached the minimum pension age and has "not retired from the employment of the employer in the respect of the scheme". However, there appeared to be no reason for the requirement for the member to still be employed by the sponsoring employee, so the government proposed to remove this condition.
8. This sub-section asked the following consultation question:

Question 16: Are you aware of any unintended consequences which might result from the removal of the employment condition in Regulation 2(1B)(c) of the Assignment etc. regulations?

Summary of responses

9. Four responses were received to Question 16, none of which identified any disadvantage of deleting the reference.

Government response

10. The government intends to delete the reference, as planned.

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991

11. Section 48 of the Pension Schemes Act 2015 requires a check to ensure, in certain circumstances, that independent financial advice has been received. Section 48 is relevant in relation to the preservation of benefits regulations where a scheme is providing some benefits as an alternative to a short service benefit.
12. This sub-section asked the following consultation question:

Question 17: Would it be useful if we inserted a cross-reference to Section 48 into the relevant regulations?

Summary of responses

13. There were 9 responses to this question. Six respondents said they thought a cross-reference would be helpful; the others thought it was unnecessary. Importantly, one respondent thought that introducing a cross-reference might result in unintended consequences, in that a cross-reference referring specifically to Section 48 could make the check essential and, if not done, result in the transaction being invalid. This would be contrary to the intention behind Section 48 itself.

Government response

14. The government recognises the potential risk highlighted by the respondent above, and has therefore decided not to include a cross-reference.

Chapter Three: Pension Protection Fund (PPF)

1. Chapter 3 of this consultation sought respondents' views on minor changes in relation to the payment of benefits by schemes during an assessment period, and the payment of Pension Protection Fund (PPF) compensation as a lump sum. It further sought respondents' views on amending the Pension Protection Fund (Entry Rules) Regulations 2005 with regard to entry into the PPF for those eligible schemes whose sponsoring employers cannot have an "insolvency event".
2. Nineteen respondents commented on the issues raised in this chapter of the consultation document.

PPF and pension flexibilities

3. In the consultation document the government sought stakeholders' views on changes to PPF legislation that it was considered were required as a result of the introduction of the pension flexibilities. These were in relation to:
   - the minimum age at which compensation can commence
   - the payment of compensation as a lump sum
   - the circumstances in which, during an assessment period, flexible benefits other than money purchase benefits may be converted into money purchase benefits, or paid as a lump sum.
4. This sub-section asked the following consultation question:

Question 18: Will these proposed amendments to the PPF Regulations implement the changes described above?

Summary of responses

5. Eight respondents commented on the changes to PPF legislation, and generally agreed with the proposed changes.
6. One respondent said that the suggested change to the conditions for early payment of compensation, to refer to normal minimum pension age (as defined in the Finance Act 2004) rather than to age 55, would affect members who have an earlier protected pension age. These members can currently opt to receive compensation from that age (subject to a lower limit of age 50), but the suggested change would remove this option.
7. Four respondents commented that new Regulation 25A of the PPF Compensation Regulations 2005, which modifies Schedule 7 to the Pensions Act 2004 as it applies to cash balance schemes, was difficult to follow, or that it was

unclear how the new regulation achieved its stated aim, of making clear that no right to pension compensation in the form of a lump sum arises in respect of a right under scheme rules to payment of an uncrystallised funds pension lump sum (UFPLS).

8. Two respondents queried why different wording was used in draft Regulation 17A, in relation to the reduction of UFPLS payments during an assessment period, from that used in Regulation 16, in relation to reducing the amount of a transfer payment or a refund of contributions.

Other issues raised by respondents

9. Two respondents suggested that the government should consider increasing the maximum lump sum payment, currently set at £2,000, by which the PPF can discharge money purchase benefits. They highlighted the recent changes to tax legislation to allow registered pension schemes to pay ‘small pot’ lump sums of up to £10,000 and UFPLSs in respect of money purchase benefits.

10. One respondent pointed out that an amendment to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 might be needed in relation to schemes in a PPF assessment period where members have cash balance benefits. At present, their scheme is required to direct them to Pension Wise in certain circumstances; however, these members are not generally able to transfer or take their benefits flexibly during the assessment period, and will receive pension compensation if the scheme transfers into the PPF, so will not be able to use the options to which the guidance offered by Pension Wise relates.

Government response

11. The government’s view on the change in the earliest age members can take compensation is that it will not affect the ability of members who have a protected pension age to exercise that option, as in such cases the meaning of “normal minimum pension age” is modified to refer to the protected pension age. However, it has come to the government’s attention that the proposed amendment would have unintentionally removed the absolute minimum age of 50 which applies in relation to PPF compensation, and so a minor drafting change has been made to retain that lower limit.

12. The government acknowledges that new Regulation 25A of the PPF Compensation Regulations is not straightforward. The aim was to make it clear that no right to pension compensation in the form of a lump sum arises in respect of a right under scheme rules to payment of an UFPLS. It seeks to address potential uncertainty regarding the meaning and scope of the term “commutation” in relation to cash balance benefits, following the introduction of the pension flexibilities. The intention of the amendment is to make it clear that a member’s entitlement to an UFPLS under scheme rules is, for the purposes of

pension compensation, to be regarded as an entitlement which results from commuting a pension, and so is excluded from the lump sum compensation provisions.

13. In relation to the difference in the wording used in Regulation 16 and Regulation 17A of the PPF Entry Rules Regulations, Regulation 16 requires payments to be reduced so far as necessary to ensure they do not exceed the cost of securing benefits equal to the compensation that would be payable from the PPF. This reflects the costs involved in securing benefits by way of, for example, a transfer or the purchase of an annuity, with the aim that the value of the benefits secured should not be less than the compensation to which the member would have been entitled. Regulation 17A relates to the payment of a lump sum to the member, and it is therefore not necessary to take into account the costs of securing benefits.
14. The government considered the comments about raising the limit for money purchase lump sum discharges, but concluded that the current options for discharge open to members with money purchase benefits that have transferred into the PPF, such as taking a transfer to an occupational or personal pension scheme, are sufficient. However, the government will keep the £2,000 limit under review.
15. The changes proposed under the draft regulations included the removal of provisions relating to the discharge of money purchase benefits by the PPF as a trivial commutation lump sum, reflecting the fact that since 6 April 2015 it has not been possible under tax legislation to pay a trivial commutation lump sum in respect of money purchase benefits. However, following the decision not to extend the flexibilities to money purchase benefits which transfer to the PPF, officials continue to engage with HMRC regarding the wider implications, and the proposed amendments to DWP legislation in respect of trivial commutation lump sums will not be taken forward at this stage.
16. The government agrees with the response regarding the need to amend the Disclosure of Information Regulations in relation to schemes in a PPF assessment period where members have cash balance benefits. Directing members to Pension Wise in these circumstances would be unnecessary and potentially confusing, so the government has amended the Disclosure of Information Regulations to remove the requirement to signpost these members to Pension Wise.

Entry into the PPF where a sponsoring employer cannot have a qualifying insolvency event

17. Some schemes which are eligible for the PPF have sponsoring employers who are unable to have a qualifying insolvency event in order to trigger access to the PPF. Where such an employer is unlikely to continue as a going concern, the

scheme trustees can apply to the PPF for it to assume responsibility for the scheme.

18. The proposed amendments included changes to Regulation 7 of the Pension Protection Fund (Entry Rules) Regulations 2005, which sets out the types of employers these schemes must have in order to utilise this route. The purpose was to reduce the scope for circumstances in which an eligible scheme's sponsoring employer is effectively insolvent, but the scheme has no mechanism for triggering PPF access. The changes included an extension of Regulation 7 to cover sponsoring employers based outside the UK in specific circumstances where a qualifying insolvency event is not possible. Due to EU legislation (the Insolvency Regulation, EC Regulation No. 1346/2000), employers based in the EU that do not have an "establishment" in the UK cannot be the subject of secondary insolvency proceedings, such as winding up, under UK law, resulting in the scheme not being able to enter the PPF. The proposed amendments provided for schemes of such employers to be able to apply to the PPF.

19. This sub-section asked the following consultation question:

Question 19: Do you agree that the proposed amendments to regulation 7 achieve the aim of ensuring that all eligible schemes have a mechanism by which to enter the PPF? Are respondents aware of any other practical scenarios which might not be covered by the proposed amendments, in relation to employers based in the UK or elsewhere within or outside the EU, in which the sponsoring employer of a PPF eligible scheme might not be able to have an insolvency event due to limitations on the jurisdiction of the courts to make a winding up order?

Summary of responses

20. There were 19 responses to this question. Of these, 13 welcomed the change (although 4 of these suggested that further changes were needed), 3 made general comments neither in support nor opposition, and 3 agreed that a change was needed, but disagreed with the government's approach in the proposed amendments.

21. Of the 19 respondents, 5 confirmed that in their view the changes would achieve the aim of ensuring that all eligible schemes have a mechanism by which to enter the PPF, or confirmed that they were not aware of other scenarios which would not be covered by the changes. Another 8 respondents broadly welcomed the changes; of these, 4 did not comment as to whether there might be other scenarios not covered by the changes, and 4 suggested that there were other scenarios in which an eligible scheme might not be able to trigger entry to the PPF.

22. Three respondents expressed concerns about the position of schemes with employers based outside the EU. They suggested that there could be

circumstances in which the UK courts might refuse to exercise their discretion to order the winding up of such an employer if it had no business operations or assets in the UK.

23. Four respondents suggested that there might still be cases in which a scheme with a sponsoring employer based in an EU member state other than the UK might not be able gain entry to the PPF. Their concerns included that the courts might refuse to grant a winding up order in a particular case even if the employer did have an establishment in the UK, or that an employer without an establishment in the UK might be effectively insolvent, but without insolvency proceedings in its centre of main interests, so the conditions for an application to the PPF would not be satisfied. Some of these respondents commented that there was a tension between the approach taken in the proposed amendments and the policy underlying the EU Insolvency Regulation, which was intended to avoid the opening of parallel insolvency proceedings where possible, and suggested including EU insolvency proceedings as an insolvency event within PPF legislation and not requiring UK insolvency proceedings.

Other issues raised by respondents

24. Two respondents suggested that it could be difficult for trustees or the PPF to determine whether or not an employer with its centre of main interests outside the UK has an establishment in the UK, in order to establish that the conditions under Regulation 7 for making an application to the PPF are satisfied. They were concerned that trustees might have to go to court to get a decision on this issue.

25. Three respondents highlighted the potential impact of the recast EU Insolvency Regulation (Regulation 2015/848), which comes into effect in June 2017. 2 suggested that the new Insolvency Regulation might make it easier in some cases to open secondary insolvency proceedings in the UK, because the question of whether the employer has an establishment will be determined by reference to the 3 month period prior to the request to open the main insolvency proceedings. However, 2 respondents suggested that in other respects the recast regulation might make it more difficult to open secondary insolvency proceedings.

26. Four respondents suggested that the government should consider changing the 28-day time limit (which runs from the date on which trustees become aware the employer is unlikely to continue as a going concern) within which trustees must make an application to the PPF. Three commented that making an application within the time limit could cause particular difficulties in the case of an employer based outside the UK, while two suggested that the current time limit could also be problematic in relation to UK employers. They suggested a number of alternatives, including requiring trustees to make the application “as soon as reasonably possible”; extending the time period to 3 months (with a PPF discretion to allow longer); or providing for the 28-day period to run from when

the trustees are aware that the employer is unlikely to continue and that EU insolvency proceedings have commenced so as to satisfy the requirement under Regulation 7.

Government response

27. The government acknowledges the concerns respondents had about the risk of schemes not being able to enter the PPF if certain specific circumstances were to arise (for example, if the court were to refuse to exercise its discretion to give a winding up order in relation to a sponsoring employer based in a country outside the EU). The government does not consider that the points raised demonstrate that there is a significant problem in practice such as to require legislation, but will keep the position under review.

28. It is the government's intention that schemes eligible for the PPF that have a foreign sponsoring employer should be able to access the PPF, where necessary. Our view is that the legislation enables this to happen. Where an eligible scheme has a foreign sponsoring employer, the route to gain entry to the PPF would most likely be through a winding up order made by the court; and courts have a wide discretion to order the winding up of "unregistered companies", including companies incorporated outside the UK. The government has taken steps, in these proposed amendments, to address the issue identified in relation to circumstances where it is accepted that the courts may not have jurisdiction to give such an order.

29. The government is concerned about protecting the PPF, and would not want the PPF to be opened up to circumstances where an effectively solvent employer was able to get the PPF to take responsibility for its scheme. The government considers that the conditions and processes which must be satisfied and complied with in order for a scheme to transfer into the PPF are reasonable and proportionate to the need to protect the PPF against this risk.

30. The government acknowledges that in some cases it could be difficult for trustees to determine whether an employer has an "establishment" in the UK at the relevant time. However, in many cases the answer will be apparent; the government has been informed by a number of schemes that their sponsoring employers ceased to have any establishment in the UK a long time ago. Trustees and the PPF will need to make the best decision they can on the facts of each case based on the information available, taking advice as appropriate.

31. However, the government intends to keep the position under review, particularly considering the impending changes to the EU Insolvency Regulation.

32. The government was persuaded by the argument the respondents made about the 28-day time limit and sought the views of the PPF, who were open to a change being made. The Pensions Act 2004 provides that where the trustees of an eligible scheme become aware that the sponsoring employer is unlikely to continue as a going concern they must make an application to the PPF "within

the prescribed period”. The PPF Entry Rules Regulations 2005 provide that the period is 28 days from the date on which the trustees become aware that the employer is unlikely to continue as a going concern.

33. The government has decided to amend the legislation to allow the 28-day time limit to be extended to a maximum of 3 months for cases in which the PPF considers that it is reasonable to do so.

Stay or cessation of insolvency proceedings in relation to friendly societies etc.

34. This sub-section asked the following consultation question:

Question 20: Is it possible for the insolvency events of friendly societies, industrial and provident societies, credit unions, limited liability partnerships, persons authorised under Part 4A of the Financial Services and Markets Act 2000 or the Society of Lloyd's and Lloyd's members to be stayed or come to an end? Should we cover these types of employers within regulation 6 of the PPF Entry Rules Regulations?

Summary of responses

35. Several respondents said that they did not have the specialist knowledge to be able to comment on this area, but were in broad agreement that, where insolvency proceedings in relation to the types of employers mentioned can be stayed or come to an end, the regulations should provide for this. Two respondents indicated that they were aware of circumstances in which the types of entities listed in the question can be subject to a stay or cessation of insolvency proceedings.

Government response

36. The government is grateful for respondents’ input on this issue and intends to extend Regulation 6 to cover the relevant circumstances in which insolvency proceedings in relation to these types of bodies can be stayed or come to an end. The government will keep this matter under review, and will continue to work with insolvency specialists to identify the precise circumstances which should be covered.

Chapter Four: Retirement Risk Warnings for Members of Occupational Pension Schemes

1. The consultation document set out the rationale for requiring occupational pension schemes to send generic risk warnings to members prior to decumulation or transfer, but after members had received information on their retirement options, and consulted on a new addition to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, Regulation 19A, which would place an obligation on trustees or managers to this effect.
2. The government also consulted on whether the current regulations 18A and 18B of the same regulations need clarification. These regulations cover the information to be given to a member if they are over 55, but have yet to receive a pre-retirement “wake up pack”.
3. The consultation also covered changes to the disclosure rules for unfunded public sector defined benefit schemes, proposing to remove the requirement to give members of these schemes information about transferring in order to take benefits flexibly. This information is unnecessary, as since April 2015 members of these schemes have been prohibited from transferring to schemes where they could access flexible benefits.
4. Twenty-two respondents commented on the issues raised in this chapter of the consultation document.

Retirement Risk Warnings: New Regulation 19A

5. As the consultation document set out, the pension flexibilities have given members more choice over how they access their pension benefits. It is therefore important that they are aware of the potential risks involved in any decision to take or transfer their pension benefits. The proposal set out an approach and timescale for schemes to provide these risk warnings, as there is currently no legislative requirement for occupational pension schemes to do so.
6. This sub-section asked the following consultation question:

Question 21: Do respondents agree that the proposed amendments to the disclosure regulations would provide appropriate protection for members of occupational schemes, ensuring that members have an adequate understanding of the risks involved?

Summary of responses

7. There was almost universal agreement among respondents that members of occupational schemes needed more information and that they should receive risk warnings before making any decision on decumulation options. Only two respondents suggested that there should not be a legislative change, preferring a principles-based approach or one based on guidance. However, they differed on how they thought these should be provided.
8. Stakeholders were concerned that members should receive appropriate information which helped them make a decision but which did not overwhelm them. Five other respondents thought that the system should mirror the FCA process more closely, on the grounds that personalised risk warnings (as mandated by the FCA for personal pension schemes) would allow individuals to better understand the risks involved, while 2 respondents thought that only financial advice could provide “adequate” risk warnings for members. Three respondents thought that the differences between the FCA risk warnings and the proposed risk warnings for occupational schemes might mean that insurers who were already providing personalised warnings to members of occupational schemes would have to provide potentially less useful generic risk warnings instead. They therefore asked if the legislation could be altered to allow schemes to supply either generic or personalised risk warnings.
9. Two providers recognised that the government’s approach would help members even though they would prefer a different approach.

Government response

10. The government agrees with stakeholders that there should be a statutory requirement to provide risk warnings and that members should be given appropriate information to make considered decisions about decumulation, without being overwhelmed by detail. The government remains convinced that generic risk warnings strike the correct balance, allowing members to receive concise information, while not placing a disproportionate burden on schemes.
11. Having said this, in light of the consultation responses the policy has been revised so that generic warnings can be tailored to the options for which the member has the opportunity to apply rather than covering all the options available under the pension flexibilities. There is also no requirement to send generic warnings placed on schemes that choose to provide more personalised risk warnings based on additional information they obtain from their members.

Other issues raised by respondents: Risk warnings on transfer

12. Five respondents to the consultation questioned why occupational schemes would be required to give risk warnings on transfers, when such an obligation does not exist in FCA rules governing personal pension schemes.

13. Although there was some acknowledgement that transfers were more common in occupational schemes because of the limited options currently available in occupational schemes for taking pension benefits, concerns were raised that the proposals were too wide ranging, and that risk warnings on transfer should only be required if individuals were at risk of losing access to benefits as a result of transfer. Given that the transfer of flexible, non-safeguarded benefits in itself is not a decision about taking benefits, these respondents argued that this situation does not merit a risk warning.
14. Respondents also argued that requiring a risk warning on transfers would slow down the transfer process and add an unnecessary burden on schemes without providing significant extra member protection, given that members would receive a risk warning from their new provider once they received a “wake up pack” and considered how to take their benefits.

Government response

15. The original rationale for suggesting that there should be risk warnings on transfer was the limited options for taking flexible benefits available for members of occupational schemes. However, the government is aware that the market is changing, with most trust-based schemes now offering uncrystallised funds pension lump sums (UFPLS). Therefore, while schemes may wish to provide risk warnings on transfer, the argument for government intervention is less compelling.
16. The government agrees that extra burdens should not be placed on occupational schemes in the absence of a strong argument for doing so and is therefore no longer requiring schemes to supply risk warnings on transfer. The government will instead work with The Pensions Regulator (TPR) to see whether the “Scorpion” information regarding pension scams can include additional information on the possible risks around transfers.

Approach and timescale

17. This sub-section asked the following consultation questions:

Question 22: Do respondents agree that the approach we have taken is workable? Is there anything the government could do to clarify the timescale?

Question 23: Do respondents agree that 7 days is an appropriate maximum timescale for trustees to send out risk warnings?

Summary of responses

18. There was some support for the proposed approach and timescale. Two respondents agreed that the approach was clear and the timescale was workable.

19. However, more than 75% of the respondents who commented were sceptical that this approach would be workable and cost effective.

20. The proposal was based on the assumption that many schemes already followed the process set out in TPR's best-practice guidance, whereby application forms should be provided separately from the "wake up pack". However, several stakeholders commented that, at present, many schemes send out information on a member's retirement options alongside the relevant application forms. The majority of respondents were therefore concerned about the extra cost to schemes that would result from having to send out a separate communication, and suggested that, instead, risk warnings should be given at the same time as the member is provided with their retirement options. One respondent was specifically concerned that schemes which offer their members the chance to apply online might not be able to change their systems in time to meet the proposed implementation timescale of April 2016.

21. Some stakeholders also commented that the suggested trigger point for issuing the risk warnings of the trustees becoming aware that the member had "decided or was considering" their options for taking their benefits was too open to interpretation. They requested clarification to explain when trustees would "become aware" that the member was considering taking their flexible benefits.

22. Most responses to Question 23 suggested that giving schemes 7 days to provide risk warnings to their members was not appropriate, with 11 respondents doubting that it was workable within the proposed approach. Respondents were worried about the uncertainty caused by the lack of a specific point when the time period began. Some felt it was too prescriptive, while others suggested that the time period should be defined in terms of working days, so as to avoid confusion around public holidays.

Government response

23. The government still believes that risk warnings should provide a second line of defence. The policy has been reviewed in light of the responses to the consultation and it has been decided that the important feature of a "second line of defence" is not the timing but rather the fact that it cannot be ignored, and that every member has the necessary information on risk factors when they apply to take their flexible pension benefits.

24. The government has therefore redrafted the regulations to ensure that risk warnings should be provided when the scheme provides the member with the means to apply to access their benefits, whether this is at the same time as the

member receives their information on retirement options or subsequently. These amendments therefore no longer include a set timescale for the provision of risk warnings.

25. As a result of these changes, schemes should not need to put in place an additional communication point with members, thereby minimising the extra burden on schemes.

Statement on the availability of advice and guidance

26. This sub-section asked the following consultation question:

> *Question 24: Do respondents think that putting the need to send out a statement to the member in legislation is necessary?*

Summary of responses

27. The majority of respondents saw the rationale behind a legislative statement reminding members that they should have taken guidance or independent advice and read the risk warning. Just over half of respondents agreed that this statement should be included in legislation, arguing that this approach would align occupational schemes with the FCA’s approach and offer the member more protection. Five respondents thought that a guidance based approach was more appropriate and argued that the government should guard against overwhelming members with too much information. Three respondents thought the proposed statutory approach would be incompatible with their favoured principles-based approach.

Government response

28. The government still believes that a statement signposting to advice and guidance is necessary alongside risk warnings. Now that the timing of the risk warnings will be linked to the application forms, members may receive risk warnings after the “wake up pack” with its signposting to pensions guidance. It is therefore important that members are reminded that guidance and advice are available, at the time they apply to take their benefits. The new regulation will therefore require schemes to send out a statement noting the importance of accessing advice or guidance and reading the risk warnings supplied.

Disapplying the requirement to give information relating to financial advice to members of unfunded public sector schemes

29. This sub-section asked the following consultation question:

Question 25: Do respondents agree that paragraphs 4B and 22B of Schedule 2 should be disapplied with regard to members of unfunded defined benefit public service schemes?

Summary of responses

30. All respondents who commented were in favour of disapplying the obligation for members in unfunded public sector defined benefit schemes to be told that they may need to take advice when transferring to access flexible benefits.

Government response

31. The government will disapply the requirement with regard to members of unfunded public sector defined benefit schemes who have not had the right to access their benefits flexibly since the introduction of the pension freedoms.

Clarifying disclosure requirements

32. This sub-section asked the following consultation question:

Question 26: Do respondents agree that the current requirements are clear, or should they be clarified in guidance?

Summary of responses

33. Almost all the responses on this question felt that some clarification was necessary as there was some confusion over how Regulations 18A and 18B worked in practice. However, there was a disagreement on how best to achieve this. Over half of the respondents thought this clarification should be in the form of best-practice guidance, while others wanted changes to the regulations themselves. Legal firms wanted amendments to regulations to bring clarity and streamline the requirements, potentially reducing burdens on existing schemes. One respondent even suggested an overhaul of the disclosure regulations. However, another respondent thought that schemes would have interpreted the regulations by now and that clarifying the situation might add an extra burden.

Government response

34. In light of the consultation responses, the government will work with TPR to provide further guidance to clarify the relationship between Regulations 18A and 18B, in respect both of the information that must be disclosed under these regulations and of the triggers that require such disclosure.

Chapter 5: Valuation of Pensions with a Guaranteed Annuity Rate (GAR) and the Advice Safeguard

1. This call for evidence sought views on the valuation of pensions with a guaranteed annuity rate (GAR) for the purposes of the advice requirement. The government asked respondents for their opinions on whether the valuation process for pensions with a GAR should be simplified, and, if so, whether any additional consumer protections would be required.
2. There were 24 responses to this call for evidence..

Background

3. The pension freedoms have increased the attractiveness for individuals with safeguarded benefits[1] of transferring or converting these benefits into a form which can be accessed flexibly (or, where the benefits are both safeguarded and flexible, taking an uncrystallised funds pension lump sum (UFPLS) directly from the benefits).
4. Since the introduction of the pension freedoms in April 2015, scheme members with safeguarded pension benefits worth over £30,000 under a scheme, including benefits with a guaranteed annuity rate (GAR), have been required to take independent financial advice before transferring their pension savings to another provider to obtain flexible benefits, converting their benefits into flexible benefits within their scheme, or accessing their pension savings flexibly.
5. However, the government has become aware that the current calculation method for valuing safeguarded benefits to determine whether they exceed the £30,000 threshold is causing difficulties for providers and members in its application to pension benefits which contain a GAR. The legislation requires the benefits to be valued in accordance with the method used to calculate the cash equivalent of salary-related pension benefits under an occupational pension scheme. This is done by determining the amount required to make provision within the scheme for the benefits. As that calculation method does not usually apply to GAR benefits (the majority of which are held under personal pensions and other insurance products), there is no agreed approach to valuing GAR benefits in terms of the current value of the future income that they offer. Personal pension

[1] The Pension Schemes Act 2015 introduced the concept of 'safeguarded benefits' to define the types of benefits to which the advice safeguard applies. This comprises all benefits which are not money purchase or cash balance benefits as defined in pensions legislation. In principle, these are traditional defined benefits such as final salary or career average pensions, and other pension arrangements which contain a form of income guarantee.

providers have reported that the requirement to value the income promise element of GARs places potentially significant practical and financial burdens on them.

6. The government has also received representations from schemes and consumer bodies that the current approach is confusing for members, who are often informed that their benefits have one value for the purpose of determining whether they are required to seek independent financial advice, which takes into the account the value of the GAR, and a separate, lower, transfer value. Members do not always understand why the value that is transferred (should the transfer proceed) may be less than the value used to determine whether advice is required.

7. In the call for evidence document, the government sought stakeholders' views on the desirability and implications of simplifying the current GAR valuation process. Views were also sought on whether, if the process was simplified, additional consumer protection measures should be put in place.

The valuation process for GARs

8. The government asked the following consultation questions:

Question 1: Do you think that changing the GAR valuation process for the purposes of the £30,000 advice threshold would make it easier for providers to determine, and for consumers to understand, when independent financial advice is required?

Question 2: If the valuation method is changed, do you think the new method should treat the value of GAR benefits, for the purposes of the advice requirement, as equal to the transfer payment that would be made in respect of those benefits, if the member were to proceed with a transfer to another scheme? If not, what other method might be suitable?

Question 4: Should such a change in the valuation method apply only to arrangements under personal pension schemes where there is no guarantee about the amount in the member's pot, but the member has the right to exercise a guaranteed annuity rate (or other guaranteed rate of conversion) at a future point? If not, what other types of flexible safeguarded benefits should the new valuation method apply to?

9. All 20 respondents to Question 1 were in favour of changing the GAR valuation process for the purposes of the advice threshold. Several respondents commented that valuing a GAR is a complex process, and that there is no agreed approach to doing so. A number of respondents believed that the existing situation, whereby members often receive one value to determine whether they are required to seek independent financial advice, which takes into the account

the value of the GAR, and a separate, lower, transfer value, is confusing for members.

10. Respondents universally felt that a more straightforward valuation methodology would be easier for providers to administer and communicate, therefore reducing member confusion. However, views on exactly how the valuation process should be changed were more mixed. Eleven respondents to Question 2 felt that, for the purposes of the advice requirement, pension pots with a GAR should be valued as equal to the transfer payment that would be available if the member decided to transfer out. These respondents argued that this approach, which would require only one value to be communicated to members, would be much clearer and simpler for both providers and members, and that it would mirror the approach used for other safeguarded benefits, where the value used to assess whether advice is required is usually equal to the actual transfer value of the benefits.
11. Two respondents who supported this change to the valuation approach nevertheless expressed concern that a single valuation figure would not reflect the full value of the GAR, given that the presence of a guarantee means that members are potentially entitled to a higher income from their pension pot than might be available on the open market. One of these respondents emphasised the importance of members being given personalised information about the potential benefits of their GAR to assist them to make an informed decision on whether to transfer their pension savings or access them flexibly.
12. Of the other respondents, 9, including all individual respondents and several professional bodies, were opposed to changing the current valuation process in this way, generally on the grounds that it would not reflect the full value of the GAR. The remaining 3 respondents were neutral, seeing both advantages and disadvantages to such a change.
13. Four respondents who were opposed to using the transfer value suggested that an income threshold (such as a projected £2,000 or greater annual income) should be used rather than a fund value threshold to determine whether financial advice was required. Two respondents suggested valuing pensions with GARs by comparing the potential income with that currently offered by an open-market annuity, and a further respondent suggested applying a valuation factor to the projected annual income and requiring members to seek advice before transfer if the resulting figure exceeded £30,000.
14. Fifteen out of the 18 respondents to Question 4 believed that any change to the GAR valuation process for the purposes of the advice requirement should apply to personal pension and occupational pension schemes. Two respondents also commented that any change should also apply to cash balance benefits where a GAR is attached. Another two respondents suggested that a significant proportion of GARs will be held under retirement annuity contracts, and that these policies should therefore be included in the scope of any changes.

Government response

15. It is clear that the current system for valuing safeguarded benefits, as set out in the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015, by reference to the Occupational Pension Schemes (Transfer Values) Regulations 1996, is causing problems in its application to GAR benefits for a significant number of pension providers and members alike, and therefore there is a strong case for the government to simplify the current valuation process.

16. The government has carefully considered the advantages and disadvantages of the alternative valuation methods suggested by stakeholders who responded to the consultation against the key principles, outlined in the consultation document, of:

    - making it easier for pension providers to value pensions with a GAR, and for members to understand the valuation process
    - making it easier for members to access independent advice, and to take a decision based on that advice
    - maintaining consumer protections.

17. Many of the concerns raised about the current method of valuing GARs, by respondents including providers, industry bodies and consumer bodies, relate to its perceived complexity and the difficulty of explaining why members are supplied with two different valuations. The government is, therefore, wary of replacing the current method with another method that generates two different valuations, such as a valuation factor or a comparison of potential income with that offered by an open-market annuity.

18. The government has carefully considered the suggestion of using an income rather than a fund value threshold to determine whether financial advice is required. As one respondent pointed out, such an approach would reinforce in members' minds the value of the secure income they would be surrendering by transferring their benefits.

19. However, there is a wide variety in types of GAR that pension providers offer, some of which can only be exercised at particular ages or in relation to particular types of annuities. It is possible for a single pension policy to have several different GARs attached to it, each exercisable at different points in time. The government has therefore concluded that, given the wide variety of GARs products in existence, developing legislation to provide a comprehensive system for presenting GAR benefits in income terms would be impractical and introduce considerable complexity.

20. Using an income threshold for the advice requirement would mean that schemes were still giving members two separate values related to their pension funds – the transfer value that they would actually receive in monetary terms

and a projected income, with the latter value used to assess whether financial advice was required. This change would therefore not address one of the main concerns about the present system.

21. Using an income threshold for the valuation of GAR benefits would differ from the approach in relation to other, salary-related, safeguarded benefits, in relation to which the cash equivalent transfer value would be used. This would risk creating further confusion and complexity for pension scheme providers and members.

22. The government therefore proposes to amend the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 such that, for the purposes of the advice requirement, providers should treat the value of safeguarded benefits, including those with a GAR, as equal to the actual transfer payment to which the member would have a statutory right in respect of those benefits (although this may be subject to limited exceptions in certain cases, such as where a transfer payment from an occupational pension scheme is reduced to reflect scheme underfunding). The amended valuation approach will apply to both personal and occupational pension schemes, in respect of all types of safeguarded benefits.

23. However, the government has noted the concerns of some respondents that members are often not fully aware of the potential value of GARs attached to their pension benefits. The government agrees that it is crucial that steps are made to ensure that members understand and appreciate the benefits conferred by a GAR before they make a decision to surrender these benefits. This issue is discussed further in paragraphs 33–42 below.

Consumer protection and risk warnings

24. The government asked the following consultation questions:

Question 3: Do you think such a change to the application of the advice safeguard to GAR benefits would significantly reduce the level of protection provided by the requirement to members with GAR benefits?

Question 5: Are there any potential unintended consequences, for providers or members, in simplifying the GAR valuation process for the purposes of the £30,000 advice threshold?

Question 6: What steps do you think Government and/or industry should take to ensure that members who would no longer be legally required to take advice if the valuation process is changed are still made aware of the potentially valuable guarantees they would be giving up?

Question 7: Do you think that providers who offer pension benefits with a GAR should be required to use a statutory risk warning to make their members aware of the implications of giving up the guarantees attached to their pension fund, or could these risk warnings be delivered via a voluntary approach on the part of providers and trade bodies?

25. Six respondents to Question 3 felt that valuing pension benefits with a GAR as equal to the transfer value that the member would receive for the purposes advice requirement would significantly reduce the level of protection for members, on the grounds that such a change would reduce the number of members with GAR benefits who would be required to seek financial advice before transferring their benefits out of their current pension scheme.

26. Seven respondents were neutral, acknowledging that protection for some members would be reduced but suggesting that the reduction was not significant, and that members who were no longer required to take independent financial advice before transferring out would probably welcome this simplification measure.

27. Seven respondents felt that the level of protection for members would not be significantly reduced.

28. Ten respondents to Question 3 highlighted the importance of members with GARs being given robust information and risk warnings to ensure that members are fully informed of the potential benefits conferred by a GAR before making a decision to transfer. Of these, 3 respondents felt that the existing disclosure and risk warnings process for members with GAR benefits was sufficient, while 7 felt it should be strengthened. This issue is discussed further below.

29. Thirteen of the 18 respondents to Question 5 did not foresee any unintended consequences following a change in the GAR valuation process.

30. The 4 respondents who did foresee unintended consequences focused on the reduction of protection to members. Two respondents to question 5 suggested that valuing pension benefits with a GAR as equivalent to the transfer value for the purposes of advice requirement would significantly reduce the level of protection for members.

31. All respondents to Question 6 were strongly in favour of ensuring that members are fully informed of the potential benefits conferred by any GAR before making a decision to transfer or access their benefits flexibly.

32. Three respondents suggested that providers should be required to provide a projection for any GAR, and one respondent suggested that the disclosure regulations should be restructured so that providers are required to inform members of the existence and potential value of any GAR before they transfer out or access their pension benefits flexibly.

33. Nine respondents to Question 7, including providers and industry representatives, were in favour of a statutory risk warning. These respondents cited the importance of a standardised approach across the industry, and pointed out that it is currently possible for members to transfer pension benefits with a GAR prior to their agreed retirement date without receiving any risk warnings, that draw their attention to the existence and potential value of this guarantee. One respondent suggested that pension schemes should be

required to issue risk warnings before rather than after the instruction to transfer, given how quickly many schemes action transfers.

34. Eight respondents opposed the introduction of additional statutory risk warnings for members with GARs, arguing either that the current disclosure and risk warnings regime was sufficient, or that any improvements to the existing regime should be delivered on a voluntary basis. Two respondents felt that the Financial Conduct Authority (FCA)'s rules for risk warnings on personal pensions with guarantees were adequate, but pointed out that occupational pension providers, unlike contract based pension providers regulated by the FCA, are not required to provide tailored risk warnings specifically highlighting any guarantee.

Government response

35. The government has carefully considered the responses received on this issue. Alongside the responses to Questions 3, 5, 6 and 7, several responses to Questions 1 and 2 suggested that many members with GAR benefits were not fully aware of the potential value conferred by these benefits. The proposed simplification of the valuation process for pensions with GARs for the purpose of the advice requirement will mean that some members with GAR benefits who were previously required to take independent financial advice before transferring their benefits will no longer have to do so.

36. The government is committed to ensuring that pension scheme members have the freedom to access their pension savings in the way that suits their needs best. However, in order for members to make informed decisions about their pension savings, it is necessary for them to be fully aware of the potential benefits offered by guarantees that may be attached to these benefits.

37. The government appreciates that many pension schemes are already supplying members with information about guarantees they hold, including projections of the annual income they would be entitled to at retirement. However, although schemes are required to supply this information in pre-retirement wake-up packs, they are not required to supply projections including on pension benefits with a GAR in annual pension statements. There is also no requirement for ceding schemes to send personalised risk warnings to members with GAR pension benefits who wish to transfer out and forgo these guarantees.

38. Following its consultation on pension reforms rules and guidance, which ran from October 2015 to January 2016, the FCA is currently considering requiring providers to show the contractually obligated future value of pension benefits, including GARs, when they communicate projections to members. This would be shown alongside projections of benefits at a lower, intermediate and higher rate of return that are already mandated. If the FCA proceeds with this proposal, it will implement the new requirements in April 2017, in order to give

providers sufficient time to modify existing IT systems, given that most GARs sit on legacy systems.

39. Like the FCA, the government considers it appropriate to ensure that customers are aware of any guarantee by ensuring that it is reflected in future projections of annuity income.

40. The government therefore proposes to require occupational and personal pension schemes to send members with GAR pension benefits projections of the annual income they would potentially be entitled to if they exercised their GAR.

41. The government also proposes to amend regulations so that ceding schemes are required to send a personalised risk warning to members considering transferring or surrendering their GAR benefits.

42. The government intends to consult on draft regulations to deliver these changes in Summer 2016.

Annex A: List of Respondents

Respondents to the consultation on the Occupational and Personal Pension Schemes and Pension Protection Fund (Miscellaneous Amendment) Regulations 2016

Aegon
Aon Hewitt
Association of Accounting Technicians
Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Association of School and College Leaders
Aviva
BT Pension Scheme
Capita
Eversheds
Freshfields Bruckhaus Deringer
Hargreaves Lansdown
Ian Neale
Insolvency Lawyers' Association
Legal and General
Lufthansa German Airlines
Mercer
Mills and Reeve LLP
NEST
Pension and Lifetime Savings Association
Pension Protection Fund
PricewaterhouseCoopers Legal
Royal London
Sackers and Partners
Scottish Widows
Standard Life
Sun Life Financial of Canada
The Pensions Advisory Service
The Society of Pension Professionals
UBS
Virgin Money
Willis Towers Watson

Respondents to the call for evidence on the valuation of pensions with a GAR

Aegon
Aon Hewitt
Association of Accounting Technicians
Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Association of School and College Leaders
Aviva
Capita
Evan Owens
Hargreaves Lansdown
Ian Neale
Legal and General
Liverpool Victoria
Clay Rogers
Mercer
Pension and Lifetime Savings Association
Royal London
Scottish Widows
Standard Life
Sun Life Financial of Canada
The Pensions Advisory Service
The Society of Pension Professionals
Willis Towers Watson