



Pension Schemes Bill 2014-15

Keeling Versions

January 2015

This document is provided to assist in the scrutiny of the Pension Scheme Bill 2014-15 and is for illustrative purposes only.

It is based on the print of the Bill as introduced into the House of Lords on 26 November 2014.

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Introduction

1. The Pension Schemes Bill was introduced in the House of Commons on 26 June 2014.
2. The Pension Schemes Bill contains measures to:
 - Introduce new definitions into the current legislative framework - establishing three, mutually exclusive scheme categories based on the type of promise to members during the accumulation phase of saving about the benefits that will be payable at retirement;
 - Make consequential amendments to the existing legislation so it relates correctly to the new structures – including revaluation of accrued benefits, and preservation rights for members leaving a scheme before normal pension age, as well as other amendments;
 - Define collective benefits for the first time in UK pensions legislation, in order to enable the development of pension schemes which provide collective benefits, and make regulation-making powers in order to create a robust regulatory framework under which such schemes can safely operate;
 - Fulfil a DWP commitment to the Red Tape Challenge, by removing a regulatory requirement deemed unnecessary;
 - Pension flexibilities; including:
 - pensions guidance;
 - independent advice; and
 - rights to transfer benefits
3. This document shows the changes to existing legislation that would result from the Bill and has been produced to assist in its scrutiny. Please note, it is not an exhaustive account of all changes to enactments resulting from the entirety of the Pension Schemes Bill but is designed to help the reader understand the effect of such changes where it is not immediately

apparent. It is based on the print of the Bill as introduced into the House of Lords on 26 November 2014.

4. Further details of the Pension Schemes Bill can be found on both the Parliamentary website and on the Gov.uk website at the links below.

<http://services.parliament.uk/bills/2014-15/pensionschemes.html>

<https://www.gov.uk/government/collections/pension-schemes-bill-2014-to-2015>

Note on formatting

Where the provisions of the draft Bill would result in legislation or parts of legislation being repealed, this is shown using struck-through font. Example:

~~(1) — A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder.~~

Where the provisions add to existing legislation, these are shown in bold red font. Example:

(1) A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the test scheme standard in relation to that jobholder.

Part 3 - GENERAL CHANGES TO LEGISLATION ABOUT PENSION SCHEMES

Clause 38 – Disclosure of information about schemes

Amends section 113 of the Pension Schemes Act 1993 as follows:

113.—(1) The Secretary of State may by regulations specify requirements to be complied with in the case of an occupational pension scheme or a person pension scheme with respect to keeping ~~the persons mentioned in subsection (2)~~ **persons of prescribed descriptions** informed—

- (a) of its constitution;
- (b) of its administration and finances;
- (c) of the rights and obligations that arise or may arise under it;
- (ca) of the pensions and other benefits an entitlement to which would be likely to accrue ~~to the member~~, or be capable of being secured ~~by him~~, in respect of the rights that may arise under it, and
- (d) of any other matters that appear to the Secretary of State to be relevant to occupational pension schemes or personal pension schemes in general or to schemes of a description to which the scheme in question belongs.

~~(2) The persons referred to in subsection (1) are—~~

- ~~(a) members and, in the case of an occupational pension scheme, prospective members of the scheme;~~
- ~~(b) spouses [or civil partners] of members and, in the case of an occupational pension scheme, of prospective members;~~
- ~~(c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits;~~
- ~~(d) in the case of an occupational pension scheme, independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and to prospective members of the scheme.~~
- ~~(e) persons of prescribed descriptions.~~

(2A) In complying with requirements specified in the regulations, a person must have regard to any guidance prepared from time to time by the Secretary of State.

(3) Without prejudice to the generality of section 182(2), the regulations may distinguish between—

- (a) cases in which information is to be given as of course; and
- (b) cases in which information need only be given on request or in other prescribed circumstances.

(3A) The regulations may provide for the information that must be given to be determined, in whole or part, by reference to guidance which is prepared and from time to time revised by a prescribed body.

(3B) The regulations may, in relation to cases where a scheme is being wound up, contain—

- (a) provision conferring power on the Regulatory Authority, at times before the period expires, to extend any period specified in the regulations as the period within which a requirement imposed by the regulations must be complied with; and
- (b) provision as to the contents of any application for the exercise of such a power and as to the form and manner in which, and the time within which, any such application must be made.

~~(4) The regulations shall make provision for referring to an industrial tribunal any question whether an organisation is such a trade union as is mentioned in subsection (2)(d).~~

(4) Where the regulations specify requirements to be complied with in the case of an occupational pension scheme with respect to keeping recognised trade unions

informed, the regulations must make provision for referring to an employment tribunal any question whether an organisation is a recognised trade union.

(4A) For the purposes of subsection (4) a trade union is a recognised trade union in relation to an occupational pension scheme if it is an independent trade union recognised to any extent for the purposes of collective bargaining in relation to members and to prospective members of the scheme.

(5) The Secretary of State must make regulations under subsection (1) requiring information about some or all of the transaction costs of a relevant scheme to be given to ~~some or all of the persons mentioned in subsection (2).~~ **persons of a prescribed description.**

(6) The Secretary of State must by regulations make provision requiring the publication of information about—

- (a) some or all of the transaction costs of a relevant scheme, and
- (b) some or all of the administration charges imposed on members of a relevant scheme.

(7) Regulations under subsection (6) may require other relevant information to be published along with information about transaction costs or administration charges in relation to a scheme.

(8) “Other relevant information” means other information which would or may assist in making comparisons between those costs or charges and costs or charges in relation to other schemes.

(9) Before making regulations by virtue of subsection (5) or (6), the Secretary of State must consult—

- (a) the Financial Conduct Authority, and
- (b) the Treasury;

(in addition to any other persons consulted in accordance with section 185(1)).

(10) In this section—

“administration charge” has the meaning given by paragraph 1(5) of Schedule 18 to the Pensions Act 2014;

“relevant scheme” means a money purchase scheme that is an occupational pension scheme.

[Note: subsection (3B) and subsections (5) – (10) not in force]

Clause 38(7)

Omits paragraph 17 of Schedule 12 to the Pensions Act 2004, which is no longer needed.

~~17. In section 113 (disclosure of information about schemes to members etc), after subsection (2)(d) insert—~~

~~“(e) persons of prescribed descriptions.”~~

Clause 39 – Extension of preservation of benefit under occupational pension schemes

Amends Part 4 of the Pension Schemes Act 1993 (protection for early leavers) as follows:

70 Interpretation

(1) In this Chapter

"scheme" means an occupational pension scheme to which this Chapter applies;
"relevant employment", in relation to a scheme, means any employment to which the scheme applies;

"benefits", in relation to a member of a scheme, means -

- (a) retirement benefit for the member at normal pension age, or**
- (b) benefit for the member's wife, husband, civil partner, widow, widower, surviving civil partner or dependants or others on the member's attaining normal pension age or the member's later death, or**
- (c) both such descriptions of benefit;**

"long service benefit", in relation to a scheme, means the benefits which will be payable under the scheme, in accordance with legal obligation, to or in respect of a member of the scheme on the assumption—

- (a) that he remains in relevant employment, and
- (b) that he continues to render service which qualifies him for benefits, until he attains normal pension age; and in this definition "benefits" means
 - (i) retirement benefit for the member himself at normal pension age, or
 - (ii) benefit for the member's wife, husband, civil partner, widow, widower, or surviving civil partner, or dependants, or others, on his attaining that age or his later death, or
 - (iii) both such descriptions of benefit.

"non-salary related benefit", in relation to a scheme and a member of it, means a benefit the rate or amount of which is calculated otherwise than by reference to the salary of the member.

71 Basic principle as to short service benefit

(1) A scheme must make such provision that where a member's pensionable service is terminated before normal pension age and

- (a) he has at least 2 years' qualifying service,
~~(aa) he has at least 30 days' qualifying service and, if he were entitled to benefit because of this paragraph, all of it would necessarily be money purchase benefit,~~
(aa) he has at least 30 days' qualifying service and, if he were entitled to benefit because of this paragraph, all of it would be necessarily be benefit falling within subsection (1A), or
- (b) a transfer payment in respect of his rights under a personal pension scheme has been made to the scheme,

he is entitled to benefit consisting of or comprising benefit of any description which would have been payable under the scheme as long service benefit, whether for himself or others, and calculated in accordance with this Chapter.

(1A) The following fall within this subsection —

- (a) collective benefits;**
- (b) benefits calculated otherwise than by reference to the member's salary.**

(2) The benefit to which a member is entitled under subsection (1) is referred to in this Act as "short service benefit".

(3) Subject to subsection (4) [subsections (4) and (5A)], short service benefit must be made payable as from an age which is no greater than—

- (a) the age of 65, or
- (b) if in the member's case normal pension age is greater than 65, normal pension age.

(4) Short service benefit payable on or in respect of the member's death after normal pension age must be made payable as from his death or within such time after it as long service benefit payable on or in respect of his death would be payable.

(5) In applying subsections (3) and (4), no regard is to be had to the operation of any scheme rule, taking effect at any time after termination of the member's pensionable service, as to what is normal pension age under the scheme.

[~~(5A) Subsection (3) does not apply in relation to a scheme under section 1 of the Public Service Pensions Act 2013.~~]

~~(7) In subsection (1) “2 years’ qualifying service” means 2 years (whether a single period of that duration or two or more periods, continuous or discontinuous, totalling 2 years) in which the member was at all times employed either~~

~~(a) in pensionable service under the scheme; or~~

~~(b) in service in employment which was contracted-out by reference to the scheme; or~~

~~(c) in linked qualifying service under another scheme.~~

~~(8) For the purposes of subsection (7), no regard shall be had to whether or not the service was of the same description in the whole of the 2 years.~~

~~(9) A period of service previously terminated is not to count towards the 2 years’ qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.~~

~~(10) Subsections (7) to (9) apply, with the substitution for references to 2 years of references to 30 days, for determining whether a person has at least 30 days’ qualifying service for the purposes of subsection (1).~~

~~(11) Subsection (1)(aa) does not apply in relation to a person’s membership of a scheme if any period of relevant service began before the day on which section 36 of the Pensions Act 2014 came into force (whether or not it also ended before that date).~~

~~“Relevant service” means service that counts towards the 30 days’ qualifying service for the purposes of subsection (1).~~

(7) In subsection (1), “2 years’ qualifying service” or (as the case may be) “30 days’ qualifying service” means a period of service of the relevant duration in which the member was at all times employed either -

(a) in pensionable service under the scheme, or

(b) in service in employment which was contracted-out by reference to the scheme, or

(c) in linked qualifying service under another scheme.

(8) For the purposes of subsection (7).

(a) a period of service may consist of a single period or two or more periods, continuous or discontinuous;

(b) no regard is to be had to whether or not the service was of the same description throughout the period of service.

(9) A period of service previously terminated is not to count towards the 2 years’ or (as the case may be) 30 days’ qualifying service unless it counts towards qualification for long service benefit, and need then count only to the same extent and in the same way.

(10) Subsection (1)(aa) does not apply in relation to a person’s membership of a scheme if -

(a) in a case where the benefit would necessarily all be money purchase benefit, any period of relevant service began before the day on which section 36 of the Pensions Act 2014 came into force (whether or not it also ended before that date);

(b) in any other case, any period of relevant service began before the day on which section 11 of the Pension Schemes Act 2014 came into force (whether or not it also ended before that date).

“Relevant service” means service that counts towards the 30 days’ qualifying service for the purposes of subsection (1)(aa).

[N.B. words in square brackets in subsection 3 and subsection (5A) itself not in force]

74 Computation of short service benefit

(1) Subject to the provisions of this section, a scheme must provide for short service benefit to be computed on the same basis as long service benefit.

(2) For that purpose, no account is to be taken of any rule making it (directly or indirectly) a condition of entitlement to benefit that pensionable service shall have been of any minimum duration.

(3) Subsection (1) does not apply to so much of any benefit, **other than collective benefit**, as accrues at a higher rate, or otherwise more favourably, in the case

- (a) of members with a period of pensionable service of some specified minimum length, or
 - (b) of members remaining in pensionable service up to some specified minimum age.
- (4) Subsection (1) does not apply to so much of any benefit, **other than collective benefit**, as is of an amount or at a rate unrelated to length of pensionable service or to the number or amount of contributions paid by or for the member.
- (5) Regulations may provide that subsection (1) shall not apply to any category of schemes or members, or description of benefit.
- (6) So far as any short service benefit is not required to be computed in accordance with subsection (1), it must be computed on the basis of uniform accrual, so that at the time when pensionable service is terminated, it bears the same proportion to long service benefit as the period of that service bears to the period from the beginning of that service to the time when the member would attain normal pension age or such lower age as may be prescribed.
- (7) Where long service benefit is related to a member's earnings at, or in a specified period before, the time when he attains normal pension age, short service benefit must be related, in a corresponding manner, to his earnings at, or in the same period before, the time when his pensionable service is terminated.
- (8) A scheme must comply with any regulations relating to the basis of computation of short service benefit, including regulations providing for the avoidance of fractional amounts and otherwise to facilitate computation.

Clause 39(6)

Omits section 36 of the Pensions Act 2014:

~~36 Short service benefit for scheme member with money purchase benefits~~

~~(1) Section 71 of the Pension Schemes Act 1993 (basic principle as to short service benefit) is amended as follows.~~

~~(2) In subsection (1)(a), after "service," insert~~

~~(aa) he has at least 30 days' qualifying service and, if he were entitled to benefit because of this paragraph, all of it would necessarily be money purchase benefit,~~

~~(3) After subsection (9) insert~~

~~(10) Subsections (7) to (9) apply, with the substitution for references to 2 years of references to 30 days, for determining whether a person has at least 30 days' qualifying service for the purposes of subsection (1).~~

~~(11) Subsection (1)(aa) does not apply in relation to a person's membership of a scheme if any period of relevant service began before the day on which section 36 of the Pensions Act 2014 came into force (whether or not it also ended before that date).~~

~~"Relevant service" means service that counts towards the 30 days' qualifying service for the purposes of subsection (1).~~

~~(4) In section 101AA of the 1993 Act (early leavers: cash transfer sums and contribution refunds), in subsection (4)(b), after "(a)" insert ", (aa)".~~

Clause 41 – Collective benefits exempt from indexation

Clause 42 – Regulatory own fund schemes exempt from indexation

Clause 43 – Power to create other exemptions from indexation

Amends section 51 of the Pensions Act 1995 (annual increase in rate of pension) as follows:

51 Annual increase in rate of pension

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(1) ~~Subject to subsections (6) and (7)~~ **Subject to subsections (6) to (7A)** this section applies to a pension under an occupational pension scheme if -

- (a) the scheme -
 - (i) is a registered pension scheme under section 153 of the Finance Act 2004, and
 - (ii) is not a public service pension scheme **or a regulatory own fund scheme (see subsection (9))**, and
 - (iii) in the case where the pension becomes a pension in payment on or after the commencement day, is not a money purchase scheme, and
- (b) the whole, or any part of, the pension is attributable -
 - (i) to pensionable service on or after the appointed day, or
 - (ii) in the case of money purchase benefits where the pension is in payment before the commencement day, to payments in respect of employment carried on or after the appointed day, and
- (c) apart from this section -
 - (i) the annual rate of the pension, or
 - (ii) if only part of the pension is attributable as described in paragraph (b), so much of the annual rate as is attributable to that part,would not be increased each year by at least the appropriate percentage of that rate.

(5) Regulations may provide that any of the provisions of this section apply in relation to a pension as if so much of it as would not otherwise be attributable to pensionable service or to payments in respect of employment were attributable to pensionable service or, as the case may be, payments in respect of employment -

- (a) before the appointed day or the commencement day,
- (b) on or after that day, or
- (c) partly before and partly on or after that day.

(5A) Regulations may provide that this section does not apply to a pension, or part of a pension, of a specified description.

(5B) But regulations under subsection (5A) may not be made in respect of-

- (a) a pension, or any part of a pension, under a defined benefits scheme,**
- (b) a pension, or any part of a pension, which came into payment before the day on which the regulations come into force, or**
- (c) a pension, or any part of a pension, which is attributable to pensionable service before the day on which the regulations come into force.**

(5C) Regulations under subsection (5A) may amend this Part.

(6) This section does not apply to any pension or part of a pension which is attributable (directly or indirectly) to a pension credit or which, in the opinion of the trustees or managers, is derived from the payment by any member of the scheme of voluntary contributions.

(7) This section does not apply to any pension (or part of a pension) under a relevant occupational pension scheme which

- (a) is a cash balance benefit (see section 51ZB), and
- (b) first comes into payment on or after the day on which section 21 of the Pensions Act 2011 comes into force.

(7A) This section does not apply to any pension, or part of a pension, that is a collective benefit.

(8) An occupational pension scheme is a "relevant occupational pension scheme" if -

- (a) it has not, on or after the appointed day, been contracted-out by virtue of satisfying section 9(2) of the Pension Schemes Act 1993, or
- (b) it has, on or after the appointed day, been so contracted-out, but no person is entitled to receive, or has accrued rights to, benefits under the scheme attributable to the period on or after that day when it was so contracted-out.

(9) In subsection (1)(a)(ii) "regulatory own fund scheme" means a scheme in respect of which article 17 of Council Directive 2003/41/EC of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision applies.

(10) Regulations may amend subsection (9) to replace the reference to the Article mentioned there with a reference to any provision of an EU instrument that replaces it (with or without changes).

Omits section 21(2) of the Pensions Act 2011:

~~(2) In subsection (1) for "subsection (6)" substitute "subsections (6) and (7)".~~

Clause 43(2)

Amends section 175(2) of the Pensions Act 1995 (statutory instruments subject to affirmative procedure) as follows:

175 Parliamentary control of orders and regulations

(1) Subject to subsections (2) and (3), a statutory instrument which contains any regulations or order made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) A statutory instrument which contains any regulations made by virtue of—

(za) section 51(5A),

(a) section 64(4),

(b) section 78(6),

(c) section 116(1), or

[(ca) section 125(3)(b)]

(d)

or order under section 10(2) must not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(3) Subsection (1) does not apply to an order under section 180.

[Note: (ca) under s175 not yet in force]

Clause 44 – Removal of requirement to maintain register of independent trustees

Amends section 23 of the Pensions Act 1995 (power to appoint an independent trustee of an occupational pension scheme on the insolvency of the person who is the employer in a register maintained by the Pensions Regulator) as follows:

23. Power to appoint independent trustees

(1) While section 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who—

(a) is an independent person in relation to the scheme, ~~and~~

~~(b) is registered in the register maintained by the Authority in accordance with regulations under subsection (4).~~

(2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under subsection (1).

(3) For the purposes of this section a person is independent in relation to a trust scheme only if—

(a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,

(b) he is neither connected with, nor an associate of—

(i) the employer,

(ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or

(iii) the official receiver acting in any of the capacities mentioned in section 22(1)(b) in relation to the employer, and

(c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee is to be construed accordingly.

~~(4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.~~

~~(5) Regulations under subsection (4) may provide—~~

~~(a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;~~

~~(b) for the inspection of the register by prescribed persons in prescribed circumstances.~~

~~(6) The circumstances which may be prescribed under subsection (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.~~

(7) This section is without prejudice to the powers conferred by section 7.

(8) Where, by virtue of subsection (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.

Clause 45 – Rules about modification of schemes

Amends section 67 & 67A of the Pensions Act 1995 (the subsisting rights provisions; interpretation) as follows:

67 The subsisting rights provisions

(1) The subsisting rights provisions apply to any power conferred on any person by an occupational pension scheme to modify the scheme, other than a power conferred by

(a) a public service pension scheme, or

(b) a prescribed scheme or a scheme of a prescribed description.

(2) Any exercise of such a power to make a regulated modification is voidable in accordance with section 67G unless the following are satisfied in respect of the modification

(a) in the case of each affected member

(i) if the modification is a protected modification, the consent requirements (see section 67B),

(ii) if it is not, either the consent requirements or the actuarial equivalence requirements (see section 67C),

(b) the trustee approval requirement (see section 67E), and

(c) the reporting requirement (see section 67F).

(3) The subsisting rights provisions do not apply in relation to the exercise of a power

(a) for a purpose connected with debits under section 29(1) of the Welfare Reform and Pensions Act 1999, or

~~(b) in a prescribed manner.~~

(3A) Regulations may provide for cases in which the subsisting rights provisions do not apply.

(4) References in this section and sections 67A to 67I to "the subsisting rights provisions" are to this section and those sections.

(5) Subsection (6) applies in relation to the exercise of a power to which the subsisting rights provisions apply to make a regulated modification where a member of the scheme dies before the requirements mentioned in subsection (2), so far as they apply in his case, have been complied with in respect of the modification if

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- (a) before he died he had given his consent to the modification in accordance with section 67B(4)(b), or
- (b) before he died, or before the trustees of the scheme had become aware that he had died, the trustees had complied with section 67C(4)(a), (b) and (d) in respect of the modification in his case.

- (6) Any of the requirements mentioned in subsection (2), as it applies in respect of the modification
- (a) which is satisfied in the case of the member, or
 - (b) which would have been satisfied in his case had he not died before it was satisfied,
- is to be taken to be satisfied in the case of any survivor of the member in respect of the modification.

67A (the subsisting rights provisions: interpretation)

67A.—(1) In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this section—

“regulated modification”

“protected modification”

“detrimental modification”

“affected member”

“subsisting right”

“scheme rules”.

(2) “Regulated modification” means a modification which is—

- (a) a protected modification, or
- (b) a detrimental modification,

or is both.

(3) “Protected modification” means a modification of an occupational pension scheme which—

- (a) on taking effect would or might result in any subsisting right of—
 - (i) a member of the scheme, or
 - (ii) a survivor of a member of the scheme, which is not a right or entitlement to money purchase benefits becoming, or being replaced with, a right or entitlement to money purchase benefits under the scheme rules,

(aa) on taking effect would or might result in any subsisting right of a member of the scheme which is a right to benefits in respect of which there is a pensions promise becoming, or being replaced with, a right to benefits under the scheme rules in respect of which there is no pensions promise,

(ab) on taking effect would or might result in any subsisting right of a member of the scheme which is a right to retirement income in respect of which there is a pensions promise becoming, or being replaced with, a right to benefits other than retirement income,

(ac) on taking effect would or might result in any subsisting right of—

- (i) a member of the scheme, or**
- (ii) a survivor of a member of the scheme,**

being replaced with a right or entitlement to collective benefits under the scheme rules,

- (b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, **other than a pension that is a collective benefit,**
- or

(c) is of a prescribed description.

For the purposes of paragraph (a), the reference in the definition of “money purchase benefits” in section 181(1) of the Pension Schemes Act 1993 to the widow or widower of a member of an occupational pension scheme is to be read as including any other survivor of the member.

(4) “Detrimental modification” means a modification of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of—

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- (a) any member of the scheme, or
- (b) any survivor of a member of the scheme.

(5) A person is an "affected member"—

(a) in relation to a protected modification within paragraph (a), **(aa), (ab), (ac)** or (b) of subsection (3), if, at the time the modification takes effect, he is—

- (i) a member of the scheme, or
- (ii) a survivor of a member of the scheme, and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that paragraph,

(b) in relation to a protected modification within paragraph (c) of that subsection, if he is of a prescribed description, and

(c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is—

- (i) a member of the scheme, or
- (ii) a survivor of a member of the scheme, and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

(5)A person is an "affected member"

(a)in relation to a protected modification within paragraph (a) or (b) of subsection (3), if, at the time the modification takes effect, he is

- (i)a member of the scheme, or
- (ii)a survivor of a member of the scheme,

and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that paragraph,

(b)in relation to a protected modification within paragraph (c) of that subsection, if he is of a prescribed description, and

(c)in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is³/₄

- (i)a member of the scheme, or
- (ii)a survivor of a member of the scheme,

and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

(6)"Subsisting right" means

(a)in relation to a member of an occupational pension scheme, at any time

- (i)any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or
- (ii)any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and

(b)in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.

For this purpose, "right" includes a pension credit right.

(7)At any time when the pensionable service of a member of an occupational pension scheme is continuing, his subsisting rights are to be determined as if he had opted, immediately before that time, to terminate that service.

(8)"Scheme rules", in relation to a scheme, means

(a)the rules of the scheme, except so far as overridden by a relevant legislative provision,

(b)the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and

(c)any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes).

(9) For the purposes of subsection (8)

(a) "relevant legislative provision" means any provision contained in any of the following provisions

- (i) Schedule 5 to the Social Security Act 1989 (equal treatment for men and women);
- (ii) Chapters 2 to 5 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under any of those Chapters;
- (iii) Part 4A of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
- (iv) section 110(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);
- (v) this Part of this Act (occupational pensions) or subordinate legislation made or having effect as if made under this Part;
- (vi) section 31 of the Welfare Reform and Pensions Act 1999 (pension debits: reduction of benefit);
- (vii) any provision mentioned in section 306(2) of the Pensions Act 2004;
- (viii) regulations made under Part 2 of the Pension Schemes Act 2014;**

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions

- (i) paragraph 3 of Schedule 5 to the Social Security Act 1989;
- (ii) section 129(1) of the Pension Schemes Act 1993;
- (iii) section 117(1) of this Act;
- (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
- (v) section 306(1) of the Pensions Act 2004;

(vi) regulations made under section 34 of the Pension Schemes Act 2014.

(10) For the purposes of this section

(a) "survivor", in relation to a member of an occupational pension scheme, means a person who

- (i) is the widow or widower of the member, or
- (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and

(b) a modification would or might adversely affect a person's subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.

(11) In the subsisting rights provisions, in relation to

- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
- (b) a modification made, or to be made, in exercise of such a power, references to "the scheme" are to be read as references to the scheme mentioned in paragraph (a).

Clause 45(7)

Clause 45(7) amends section 124 of the Pensions Act 1995 (Interpretation of Part I) by inserting the following definitions :

"pensions promise" has the meaning given by section 5 of the Pensions Schemes Act 2014;

"retirement income" has the meaning given by section 7 of the Pension Schemes Act 2014;

Chapter 3 – INDEPENDENT ADVICE

Clause 50 – Independent advice: consequential amendments – Great Britain

Clause 50(2) amends section 99 of the Pension Schemes Act 1993 as follows:

99 Trustees' duties after exercise of option

(1) Where

- (a) a member has exercised the option conferred by section 95; and
- (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires, the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 96(2), to the extent that an obligation to provide such guaranteed minimum pensions continues to subsist.

(1A) Subsection (2) does not apply if—

- (a) the trustees or managers have been unable to carry out the check required by section 48 of the Pension Schemes Act 2014 by reason of factors outside their control, or**
- (b) the trustees or managers have carried out the check required by section 48 of the Pension Schemes Act 2014 but the check did not confirm that the member had received appropriate independent advice.**

(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95, they shall do what is needed to carry out what the member requires

- (a) in the case of a member of a salary related occupational pension scheme, within 6 months of the guarantee date, or (if earlier) by the date on which the member attains normal pension age,
- (b) in the case of a member of any other occupational pension scheme, within 6 months of the date on which they receive the application, or (if earlier) by the date on which the member attains normal pension age, or
- (c) in the case of a member of a personal pension scheme, within 6 months of the date on which they receive the application.

(3) If

- (a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme at any time before the expiry of the period of 12 months beginning with the termination date; and
- (b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his or her surviving spouse or civil partner being forfeited; and
- (c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the period of 3 months after the conclusion of the disciplinary or court proceedings (including any proceedings on appeal), then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

(3A) In this section, "guarantee date" has the same meaning as in section 93A.

(4) The Regulatory Authority may, in prescribed circumstances, by direction grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.

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(4A) Regulations may make provision requiring applications for extensions under subsection (4) to meet prescribed requirements .

(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within six months of the date mentioned in paragraph (a) or (b) of subsection (2)

(a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and

(b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.

(8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.

Clause 50(3)

Clause 50(3) amends section 101J of the Pension Schemes Act 1993 as follows:

101J Time for compliance with transfer notice

(1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice

(a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and

(b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.

(2) The Regulatory Authority may, in prescribed circumstances, by direction extend the period for complying with the notice.

(2A) Subsection (1) does not apply if—

(a) the trustees or managers have been unable to carry out the check required by section 48 of the Pension Schemes Act 2014 by reason of factors outside their control, or

(b) the trustees or managers have carried out the check required by section 48 of the Pension Schemes Act 2014 but the check did not confirm that the member had received appropriate independent advice.

(4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance

(a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and

(b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.

(5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, section 10 of the Pensions Act 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.

(6) Regulations may

(a) make provision requiring applications for extensions under subsection (2) to meet prescribed requirements , and

(b) provide that subsection (4) shall not apply in prescribed circumstances.

(7) In this section, "valuation date", in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means

- (a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 101H is determined, and
- (b) in the case of any other scheme, the date the notice is given.

Clause 53 – Independent advice: consequential amendments – Northern Ireland

Clause 53(2) amends section 95 of the Pension Schemes (Northern Ireland) Act 1993 as follows:

Trustees' duties after exercise of option

95.—(1) Where—

- (a) a member has exercised the option conferred by section 91; and
- (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,

the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 92(2), to the extent that an obligation to provide such guaranteed minimum pensions continues to subsist.

(1A) Subsection (2) does not apply if—

- (a) the trustees or managers have been unable to carry out the check required by section 51 of the Pension Schemes Act 2014 by reason of factors outside their control, or**
- (b) the trustees or managers have carried out the check required by section 51 of the Pension Schemes Act 2014 but the check did not confirm that the member had received appropriate independent advice.**

(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 91, they shall do what is needed to carry out what the member requires—

- (a) in the case of a member of a salary related occupational pension scheme, within 6 months of the guarantee date, or (if earlier) by the date on which the member attains normal pension age,
- (b) in the case of a member of any other occupational pension scheme, within 6 months of the date on which they receive the application, or (if earlier) by the date on which the member attains normal pension age, or
- (c) in the case of a member of a personal pension scheme, within 6 months of the date on which they receive the application.

(3) If—

- (a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme at any time before the expiry of the period of 12 months beginning with the termination date; and
- (b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his widow being forfeited; and
- (c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the

period of 3 months after the conclusion of the disciplinary or court proceedings (including any proceedings on appeal),

then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

(3A) In this section, “guarantee date” has the same meaning as in section 89A.

(4) The Regulatory Authority may, in prescribed circumstances, by direction, grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.

(4A) Regulations may make provision requiring applications for extensions under subsection (4) to meet prescribed requirements

(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within 6 months of the date mentioned in paragraph (a) or (b) of subsection (2)—

- (a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
- (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.

(8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.

Clause 53(2) amends section 97J of the Pension Schemes (Northern Ireland) Act 1993 as follows:

Time for compliance with transfer notice

97J.—(1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice—

- (a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and
- (b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.

(2) The Regulatory Authority may, in prescribed circumstances, by direction, extend the period for complying with the notice.

(2A) Subsection (1) does not apply if—

- (a) the trustees or managers have been unable to carry out the check required by section 51 of the Pension Schemes Act 2014 by reason of factors outside their control, or**
- (b) the trustees or managers have carried out the check required by section 51 of the Pension Schemes Act 2014 but the check did not confirm that the member had received appropriate independent advice.**

(4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance—

- (a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
- (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.

(5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, Article 10 of the Pensions (Northern Ireland) Order 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.

(6) Regulations may—

- (a) make provision requiring applications for extensions under subsection (2) to meet prescribed requirements, and
 - (b) provide that subsection (4) shall not apply in prescribed circumstances.
- (7) In this section “valuation date”, in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means—
- (a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 97H is determined, and
 - (b) in the case of any other scheme, the date the notice is given.

Clause 54(1)

Clause 54(1) inserts section 308B into the Income Tax (Earnings and Pensions) Act 2003 as follows:

308A Exemption for contributions to overseas pension scheme

308A(1) No liability to income tax arises in respect of earnings where an employer makes contributions under a qualifying overseas pension scheme in respect of an employee who is a relevant migrant member of the pension scheme.

308A(2) In subsection (1) -

"qualifying overseas pension scheme", and
"relevant migrant member",

have the same meaning as in Schedule 33 to FA 2004 (overseas pension schemes: migrant member relief).

308B Independent advice in respect of conversions and transfers of pension scheme benefits

(1) No liability to income tax arises in respect of—

(a) the provision to an employee or former employee of appropriate independent advice, or

(b) the payment or reimbursement, to or in respect of an employee or former employee, of the cost of such advice, if conditions A to C are met.

(2) Condition A is that the provision, payment or reimbursement is required by regulations under section 49 or 52 of the Pension Schemes Act 2014 (power to require employer to arrange independent advice in respect of conversions and transfers).

(3) If condition A is met only as respects part of the payment or reimbursement because the amount of the payment or reimbursement exceeds the amount required to be paid or reimbursed, subsection (1) applies in respect of that part.

(4) Condition B is that the provision, payment or reimbursement is not pursuant to relevant salary sacrifice arrangements.

(5) Condition C is that such other requirements as may be specified in regulations made by the Treasury are satisfied in relation to the provision, payment or reimbursement.

(6) In this section—

“appropriate independent advice”—

(a) in relation to England and Wales and Scotland, has the meaning given by regulations under section 48 of the Pension Schemes Act 2014;

(b) in relation to Northern Ireland, has the meaning given by regulations under section 51 of that Act;

“relevant salary sacrifice arrangements” means arrangements (whenever made, whether before or after the employment began) under which an employee gives up the right to receive

an amount of general earnings or specific employment income in return for the provision of appropriate independent advice or the payment or reimbursement of the cost of such advice.”

Chapter 3 – DRAWDOWN, CONVERSION OF BENEFITS AND LUMP SUMS

Clause 58(1)

Clause 58(1) amends section 73A of the Pensions Act 1995 as follows:

73A Operation of scheme during winding up period

(1) This section applies where an occupational pension scheme to which section 73 applies is being wound up.

(2) During the winding up period, the trustees or managers of the scheme

(a) must secure that any pensions or other benefits (other than money purchase benefits) paid to or in respect of a member are reduced, so far as necessary, to reflect the liabilities of the scheme to or in respect of the member which will be satisfied in accordance with section 73, and

(b) may, for the purposes of paragraph (a), take such steps as they consider appropriate (including steps adjusting future payments) to recover any overpayment or pay any shortfall.

(3) During the winding up period

(a) no benefits may accrue under the scheme rules to, or in respect of, members of the scheme, and

(b) no new members of any class may be admitted to the scheme.

(4) Subsection (3) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any enactment.

(5) Subsection (3) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.

(6) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, subsection (3) does not prevent the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(6A) During the winding up period no right or entitlement of any member, or of any other person in respect of a member, to a benefit that is not a money purchase benefit is to be converted into, or replaced with, a right or entitlement to a money purchase benefit under the scheme rules.

(7) Regulations may require the trustees or managers of the scheme, in prescribed circumstances

(a) to adjust the entitlement of a person to a pension or other benefit under the scheme rules where the entitlement arises as a result of a discretionary award which takes effect during the winding up period;

(b) to adjust the entitlement of a person ("the survivor") to a pension or other benefit under the scheme rules where

(i) a member of the scheme, or a person who was (or might have become) entitled to a pension or other benefit in respect of a member, dies during the winding up period, and

(ii) the survivor's entitlement is to a pension or other benefit in respect of the member (whether arising on the date of that death or subsequently).

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- (8) Regulations under subsection (7) may, in particular
- (a) prescribe how the required adjustments to entitlement are to be determined and the manner in which they are to be made;
 - (b) in a case where the commencement of the winding up of the scheme is backdated (whether in accordance with section 154 of the Pensions Act 2004 (requirement to wind up schemes with sufficient assets to meet protected liabilities) or otherwise), require any adjustment to a person's entitlement to be made with effect from the time the award takes effect;
 - (c) without prejudice to sections 10(3) to (9), 73B(2) and 116, make provision about the consequences of breaching the requirements of the regulations.
- (9) If the scheme confers power on any person other than the trustees or managers of the scheme to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions or benefits), it cannot be exercised by that person but may, subject to the provisions made by or by virtue of this section and sections 73 and 73B, be exercised instead by the trustees or managers.
- (10) For the purposes of this section
- "appropriate rights" has the same meaning as in paragraph 5 of Schedule 5 to the Welfare Reform and Pensions Act 1999 (pension credits: mode of discharge);
 - "discretionary award" means an award of a prescribed description;
 - "shareable rights" has the same meaning as in Chapter 1 of Part 4 of the Welfare Reform and Pensions Act 1999 (sharing of rights under pension arrangements);
- and subsection (10) of section 73 applies as it applies for the purposes of that section.

73B Sections 73 and 73A: supplementary

- (1) Any action taken in contravention of section 73A(3) **or (6A)** is void.
- (2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which section 73 applies, section 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (3) For the purposes of subsection (2), when determining whether section 73A(3) **or (6A)** has been complied with subsection (1) of this section is to be disregarded.
- (4) Regulations may
- (a) prescribe how, for the purposes of the winding up provisions
 - (i) the assets and liabilities of a scheme to which section 73 applies, and
 - (ii) their value or amount,are to be determined, calculated and verified;
 - (b) modify any of the winding up provisions as it applies
 - (i) to prescribed schemes or prescribed descriptions of schemes;
 - (ii) in relation to a scheme where only part of the scheme is being wound up;
 - (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the Pensions Act 2004 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).
- (5) Without prejudice to the generality of subsection (4), regulations under paragraph (b)(i) of that subsection may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.
- (6) The winding up provisions do not apply
- (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
 - (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the

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scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
(c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
(d) in relation to any liability the discharge of which is validated under section 136 of the Pensions Act 2004 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).

(7) But nothing in subsection (6) prevents the winding up provisions applying in relation to a liability under Chapter 4 of Part 4 of the Pension Schemes Act 1993 (transfer values) which
(a) arose before the commencement of the winding up of the scheme, and
(b) was not discharged before the commencement of the winding up period.

(8) Regulations may provide that, in prescribed circumstances, where
(a) an occupational pension scheme to which section 73 applies is being wound up,
(b) a member of the scheme died before the winding up began, and
(c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,
his entitlement to payment of all or part of the benefit is, for the purposes of subsection (6), to be treated as having arisen immediately before the commencement of the winding up period.

(9) If, immediately before the winding up period in relation to an occupational pension scheme to which section 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of subsection (6), to be regarded as having become entitled to payment of the amount before that period.

(10) For the purposes of this section
(a) "winding up provisions" means this section and sections 73, 73A and 74, and
(b) subsection (10) of section 73 applies as it applies for the purposes of that section.

Clause 58(3)

Clause 58(3) amends section 135 of the Pensions Act 2004 as follows:

135 Restrictions on winding up, discharge of liabilities etc

(1) This section applies where there is an assessment period in relation to an eligible scheme.

(2) Subject to subsection (3), the winding up of the scheme must not begin during the assessment period.

(3) Subsection (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under section 11(3A) of the Pensions Act 1995 (Regulator's powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and section 219 makes provision for the backdating of the winding up).

(4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions

(za) no right or entitlement of any member, or of any other person in respect of a member, to a benefit that is not a money purchase benefit is to be converted into, or replaced with, a right or entitlement to a money purchase benefit under the scheme rules,

(a) no transfers of, or transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, and

(b) no other steps may be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of

(i) pensions or other benefits, or

(ii) such other liabilities as may be prescribed.

(5) Subsection (4)

(a) is subject to section 138, and

(b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of subsection (3).

(6) Subsection (7) applies where, on the commencement of the assessment period

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom **Chapter 2 of Part 4ZA** ~~Chapter 5 of Part 4~~ of the Pension Schemes Act 1993 (c. 48) (early leavers: cash transfer sums and contribution refunds) applies.

Section 150(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within paragraph (a) or (b).

(7) Where this subsection applies, during the assessment period

(a) no right or power conferred by that Chapter may be exercised, and

(b) no duty imposed by that Chapter may be discharged.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part 4 under of the Welfare Reform and Pensions Act 1999 (c. 30) (sharing of rights under pension arrangements)) under the scheme, nothing in subsection (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.

(9) Any action taken in contravention of this section is void, except to the extent that the Board validates the action (see section 136).

(10) Disregarding subsection (9), where there is a contravention of this section, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this section.

(11) The Regulator may not make a freezing order (see section 23) in relation to the scheme during the assessment period.

[N.B. Amendment at subsection 6(b) by paragraph 35 of Schedule 4]

Clause 59: Restriction on payment of lump sum during PPF assessment period: Great Britain

Clause 59 amends section 138 of the Pensions Act 2004 as follows:

138 Payment of scheme benefits

(1) Subsections (2), **(2A)** and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if

(a) the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 7 were the date on which the assessment period began.

(2A) Benefits in the form of a lump sum may be paid to or in respect of a member under the scheme rules during the assessment period only in the circumstances in which,

and to the extent to which, lump sum compensation would be payable to or in respect of the member in accordance with this Chapter if—

- (a) the Board assumed responsibility for the scheme in accordance with this Chapter, and**
- (b) the assessment date referred to in Schedule 7 were the date on which the assessment period began.**

(3) ~~But~~ where, on the commencement of the assessment period

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom ~~Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act 1993 (c. 48) (early leavers: cash transfer sums and contribution refunds) applies,

no benefits are payable to or in respect of him under the scheme during the assessment period.

(4) Section 150(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within paragraph (a) or (b) of subsection (3).

(5) Nothing in subsection (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit, during the assessment period, in accordance with ~~subsection (2)~~ **subsections (2) to (3)**.

(6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under subsection (2) and to ~~subsection (3)~~ **subsections (2A) to (3)**, the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.

(7) Subsections (2), **(2A)**, (3) and (6) are subject to sections 150(1) to (3) and 154(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

(8) For the purposes of subsections (2), **(2A)** and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with ~~subsections (2) and (3)~~ **subsections (2) to (3)**.

(9A) Regulations may make provision as to circumstances in which benefits in the form of a lump sum are to be treated for the purposes of subsection (2A) as being paid in the circumstances in which lump sum compensation would be payable in accordance with this Chapter.

(9B) Regulations may create exceptions to subsection (2A).

(10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme

(a) in such circumstances as may be prescribed subsection (2) does not operate to require the reduction of benefits payable to or in respect of any member;

(b) the commencement of a member's pension or payment of a member's lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed, to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.

(11) For the purposes of subsection (10)

(a) "normal pension age", in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at

which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and

(b) where different ages are so specified in relation to different parts of a pension or other benefit

(i) subsection (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and

(ii) in relation to a part of a pension or other benefit, the reference in that subsection to normal pension age is to be read as a reference to the age specified in the scheme rules as the earliest age at which that part becomes so payable.

(12) Regulations may provide that, in prescribed circumstances, where

(a) a member of the scheme died before the commencement of the assessment period, and

(b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member, the benefit, or any part of it, is, for the purposes of ~~subsection (2)~~ **subsections (2) and (2A)**, to be treated as having become payable before the commencement of the assessment period.

(13) Nothing in subsection (2), **2(A)** or (3) applies to money purchase benefits.

[N.B. Amendment at subsection 3(b) by paragraph 35 of Schedule 4]

Clause 63: Restrictions on conversion of benefits during winding up etc: Northern Ireland

Clause 63(1) and (2) amend Article 73A, 73B of the Pensions (Northern Ireland) Order 1995 (SI 1995/3213 (NI 22)) as follows:

Operation of scheme during winding up period

73A.—(1) This Article applies where an occupational pension scheme to which Article 73 applies is being wound up.

(2) During the winding up period, the trustees or managers of the scheme—

(a) must secure that any pensions or other benefits (other than money purchase benefits) paid to or in respect of a member are reduced, so far as necessary, to reflect the liabilities of the scheme to or in respect of the member which will be satisfied in accordance with Article 73, and

(b) may, for the purposes of sub-paragraph (a), take such steps as they consider appropriate (including steps adjusting future payments) to recover any overpayment or pay any shortfall.

(3) During the winding up period—

(a) no benefits may accrue under the scheme rules to, or in respect of, members of the scheme, and

(b) no new members of any class may be admitted to the scheme.

(4) Paragraph (3) does not prevent any increase, in a benefit, which would otherwise accrue in accordance with the scheme or any statutory provision.

(5) Paragraph (3) does not prevent the accrual of money purchase benefits to the extent that they are derived from income or capital gains arising from the investment of payments which are made by, or in respect of, a member of the scheme.

(6) Where a person is entitled to a pension credit derived from another person's shareable rights under the scheme, paragraph (3) does not prevent the trustees or managers of the scheme discharging their liability in respect of the credit under Chapter 1 of Part V of the

Welfare Reform and Pensions (Northern Ireland) Order 1999 (sharing of rights under pension arrangements) by conferring appropriate rights under the scheme on that person.

(6A) During the winding up period no right or entitlement of any member, or of any other person in respect of a member, to a benefit that is not a money purchase benefit is to be converted into, or replaced with, a right or entitlement to a money purchase benefit under the scheme rules.

(7) Regulations may require the trustees or managers of the scheme, in prescribed circumstances—

(a) to adjust the entitlement of a person to a pension or other benefit under the scheme rules where the entitlement arises as a result of a discretionary award which takes effect during the winding up period;

(b) to adjust the entitlement of a person ("the survivor") to a pension or other benefit under the scheme rules where—

(i) a member of the scheme, or a person who was (or might have become) entitled to a pension or other benefit in respect of a member, dies during the winding up period, and

(ii) the survivor's entitlement is to a pension or other benefit in respect of the member (whether arising on the date of that death or subsequently).

(8) Regulations under paragraph (7) may, in particular—

(a) prescribe how the required adjustments to entitlement are to be determined and the manner in which they are to be made;

(b) in a case where the commencement of the winding up of the scheme is backdated (whether in accordance with Article 138 of

the Pensions (Northern Ireland) Order 2005 (requirement to wind up schemes with sufficient assets to meet protected liabilities) or otherwise), require any adjustment to a person's entitlement to be made with effect from the time the award takes effect;

(c) without prejudice to Articles 10(3) to (9), 73B(2) and 113, make provision about the consequences of breaching the requirements of the regulations.

(9) If the scheme confers power on any person other than the trustees or managers of the scheme to apply the assets of the scheme in respect of pensions or other benefits (including increases in pensions or benefits), it cannot be exercised by that person but may, subject to the provisions made by or by virtue of this Article and Articles 73 and 73B, be exercised instead by the trustees or managers.

(10) For the purposes of this Article—

"appropriate rights" has the same meaning as in paragraph 5 of Schedule 5 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension credits: mode of discharge);

"discretionary award" means an award of a prescribed description;

"shareable rights" has the same meaning as in Chapter 1 of Part V of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (sharing of rights under pension arrangements); and paragraph (10) of Article 73 applies as it applies for the purposes of that Article.

Articles 73 and 73A: supplementary

73B.—(1) Any action taken in contravention of Article 73A(3) **or (6A)** is void.

(2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which Article 73 applies, Article 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(3) For the purposes of paragraph (2), when determining whether Article 73A(3) **or (6A)** has been complied with paragraph (1) of this Article is to be disregarded.

(4) Regulations may—

(a) prescribe how, for the purposes of the winding up provisions—

(i) the assets and liabilities of a scheme to which Article 73 applies, and

(ii) their value or amount,

are to be determined, calculated and verified;

(b) modify any of the winding up provisions as it applies—

(i) to prescribed schemes or prescribed descriptions of schemes;

(ii) in relation to a scheme where only part of the scheme is being wound up;

- (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under Article 119(4) of the Pensions (Northern Ireland) Order 2005 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).
- (5) Without prejudice to the generality of paragraph (4), regulations under sub-paragraph (b)(i) of that paragraph may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.
- (6) The winding up provisions do not apply—
- (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
 - (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
 - (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
 - (d) in relation to any liability the discharge of which is validated under Article 120 of the Pensions (Northern Ireland) Order 2005 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).
- (7) But nothing in paragraph (6) prevents the winding up provisions applying in relation to a liability under Chapter 4 of Part IV of the Pension Schemes Act (transfer values) which—
- (a) arose before the commencement of the winding up of the scheme, and
 - (b) was not discharged before the commencement of the winding up period.
- (8) Regulations may provide that, in prescribed circumstances, where—
- (a) an occupational pension scheme to which Article 73 applies is being wound up,
 - (b) a member of the scheme died before the winding up began, and
 - (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member, his entitlement to payment of all or part of the benefit is, for the purposes of paragraph (6), to be treated as having arisen immediately before the commencement of the winding up period.
- (9) If, immediately before the winding up period in relation to an occupational pension scheme to which Article 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of paragraph (6), to be regarded as having become entitled to payment of the amount before that period.
- (10) For the purposes of this Article—
- (a) “winding up provisions” means this Article and Articles 73, 73A and 74, and
 - (b) paragraph (10) of Article 73 applies as it applies for the purposes of that Article.

Clause 63(3)

Clause 63(3) amends Article 119 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Restrictions on winding up, discharge of liabilities etc.

- 119.**(1) This Article applies where there is an assessment period in relation to an eligible scheme.
- (2) Subject to paragraph (3), the winding up of the scheme must not begin during the assessment period.
- (3) Paragraph (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under Article 11(3A) of the 1995 Order (Regulator's powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and Article 198 makes provision for the backdating of the winding up).
- (4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions

(za) no right or entitlement of any member, or of any other person in respect of a member, to a benefit that is not a money purchase benefit is to be converted into, or replaced with, a right or entitlement to a money purchase benefit under the scheme rules,

(a) no transfers of, or transfer payments in respect of, any member's rights under the scheme

rules are to be made from the scheme, and

(b) no other steps may be taken to discharge any liability of the scheme to or in respect of a

member of the scheme in respect of

(i) pensions or other benefits, or

(ii) such other liabilities as may be prescribed.

(5) Paragraph (4)

(a) is subject to Article 122, and

(b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of paragraph (3).

(6) Paragraph (7) applies where, on the commencement of the assessment period

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies.

Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b).

(7) Where this paragraph applies, during the assessment period

(a) no right or power conferred by that Chapter may be exercised, and

(b) no duty imposed by that Chapter may be discharged.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements)) under the scheme, nothing in paragraph (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.

(9) Any action taken in contravention of this Article is void, except to the extent that the Board validates the action (see Article 120).

(10) Disregarding paragraph (9), where there is a contravention of this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this Article.

(11) The Regulator may not make a freezing order (see Article 19) in relation to the scheme during the assessment period.

Clause 64: Restrictions on payment of lump sums during PPF assessment period: Northern Ireland

Clause 64 amends Article 122 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Payment of scheme benefits

122.(1) Paragraphs (2), **(2A)** and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this

Chapter if

(a) the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.

(2A) Benefits in the form of a lump sum may be paid to or in respect of a member under the scheme rules during the assessment period only in the circumstances in which,

and to the extent to which, lump sum compensation would be payable to or in respect of the member in accordance with this Chapter if—

(a) the Board assumed responsibility for the scheme in accordance with this Chapter, and

(b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.

(3) ~~But~~ where, on the commencement of the assessment period

(a) a member's pensionable service terminates, and

(b) he becomes a person to whom Chapter 5 of Part IV of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies, no benefits are payable to or in respect of him under the scheme during the assessment period.

(4) Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b) of paragraph (3).

(5) Nothing in paragraph (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit during the assessment period in accordance with ~~paragraph (2)~~ **paragraphs (2) and (2A).**

(6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under paragraph (2) and to ~~paragraph (3)~~ **paragraphs (2A) and (3)**, the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.

(7) Paragraphs (2), **(2A)**, (3) and (6) are subject to Articles 134(1) to (3) and 138(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

(8) For the purposes of paragraphs (2), **(2A)** and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with ~~paragraphs (2) and (3)~~ **paragraphs (2) to (3).**

(9A) Regulations may make provision as to circumstances in which benefits in the form of a lump sum are to be treated for the purposes of paragraph (2A) as being paid in the circumstances in which lump sum compensation would be payable in accordance with this Chapter.

(9B) Regulations may create exceptions to paragraph (2A).

(10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme

(a) in such circumstances as may be prescribed paragraph (2) does not operate to require the reduction of benefits payable to or in respect of any member;

(b) the commencement of a member's pension or payment of a member's lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed,

to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.

(11) For the purposes of paragraph (10)

(a) "normal pension age", in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and

(b) where different ages are so specified in relation to different parts of a pension or other benefit

(i) paragraph (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and

(ii) in relation to a part of a pension or other benefit, the reference in that paragraph to

normal pension age is to be read as a reference to the age specified in the scheme rules as the earliest age at which that part becomes so payable.

(12) Regulations may provide that, in prescribed circumstances, where

- (a) a member of the scheme died before the commencement of the assessment period, and
 - (b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,
- the benefit, or any part of it, is, for the purposes of ~~paragraph (2)~~ **paragraphs (2) and (2A)**, to be treated as having become payable before the commencement of the assessment period.
- (13) Nothing in paragraph (2), **(2A)** or (3) applies to money purchase benefits.

Chapter 4 – TRANSFERS

Clause 66: Restriction on transfers out of public service defined benefits schemes: Great Britain

Clause 66(2) amends section 95 of the Pension Schemes Act 1993 as follows:

95 Ways of taking right to cash equivalent

~~(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under paragraph (a), (aa) or (b) of section 94(1) may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.~~

(1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below.

(1A) In the case of a right acquired under section 94(1), the application must be made—
(a) within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement, and
(b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.

(2) In the case of a member of an occupational pension scheme that is not an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are

- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;
- (b) for acquiring rights allowed under the rules of a personal pension scheme
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;
- (c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;
- (d) for subscribing to other pension arrangements which satisfy prescribed requirements.

(2A) In the case of a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are—

- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme if—
- (i) the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits,
 - (ii) the trustees or managers of the other scheme are able and willing to accept payment in respect of the member's transferrable rights, and
 - (iii) the other scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;
- (b) for acquiring rights allowed under the rules of a personal pension scheme if—
- (i) the benefits that may be provided under the personal pension scheme by virtue of the acquired rights are not flexible benefits,
 - (ii) the trustees or managers of the personal pension scheme are able and willing to accept payment in respect of the member's transferrable rights, and
 - (iii) the personal pension scheme satisfies requirements prescribed in regulations made by the Secretary of State or the Treasury;
- (c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury;
- (d) for subscribing to other pension arrangements which satisfy requirements prescribed in regulations made by the Secretary of State or the Treasury.

(2B) The Treasury may by regulations provide for sub-paragraph (i) of subsection (2A)(a) or (b) not to apply in prescribed circumstances or in relation to prescribed schemes or schemes of a prescribed description.

(2C) In subsection (2A) "unfunded public service defined benefits scheme" means a public service pension scheme that—

- (a) is a defined benefits scheme within the meaning given by section 37 of the Public Service Pensions Act 2013, and
- (b) meets some or all of its liabilities otherwise than out of a fund accumulated for the purpose during the life of the scheme.

(3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are

- (a) for acquiring transfer credits allowed under the rules of an occupational pension scheme
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;
- (b) for acquiring rights allowed under the rules of another personal pension scheme
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;
- (c) for subscribing to other pension arrangements which satisfy prescribed requirements.

(5) Except in such circumstances as may be prescribed

- (a) ~~subsection (2) is~~ **subsections (2) and (2A) are** to be construed as if paragraph (d) were omitted; and
- (b) subsection (3) is to be construed as if paragraph (c) were omitted.

(6) Without prejudice to the generality of subsections (2), **(2A)** and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2)) **or (2A)**, an annuity must satisfy requirements of the Inland Revenue.

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~~(7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.~~

~~(8) In subsection (7) "the last option date" means, subject to regulations under section 98, the date which falls~~

~~(a) one year before the date on which the member attains normal pension age; or~~

~~(b) six months after the termination date,~~

~~whichever is the later.~~

(9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

[N.B. Some of amendments set out above in section 95 are made by paragraph 6 of Schedule 4 of this Bill]

Clause 66(6)

Clause 66(6) amends section 96 of the Pension Schemes Act 1993 as follows:

96 Further provisions concerning exercise of option under s95

(1) A member may exercise the option conferred by subsection (1) of section 95 in different ways in relation to different portions of his cash equivalent, but a member who exercises that option must do so

(a) in relation to the whole of his cash equivalent; or

(b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection (3).

(2) This subsection applies where

(a) the trustees or managers

(i) of an occupational pension scheme which is not a contracted-out scheme, or

(ii) of a personal pension scheme, are able or willing to accept a transfer payment only in respect of a member's rights other than his accrued rights to guaranteed minimum pensions his accrued rights so far as attributable to service in contracted-out employment on or after the principal appointed day; and

(b) the member has not required the trustees or managers of the scheme from which he is being transferred to use the portion of his cash equivalent which represents those accrued rights in any of the ways specified in subsection (2), **subsection (2A)** or, as the case may be, subsection (3) of section 95.

(3) Where subsection (2) applies, this section and sections 94, 95 and 97 are to be construed as conferring on the member an option only in respect of the balance of the cash equivalent to which the member would otherwise be entitled, after deduction of an amount sufficient for the trustees or managers of the scheme from which he is being transferred to meet their liability

(a) in the case of a transfer from an occupational pension scheme, in respect of the member's and the member's widow's, widower's or surviving civil partner's (as the case may be) pensions, being guaranteed minimum pensions or pensions so far as attributable to service in contracted-out employment on or after the principal appointed day

(4) Where a member of an occupational pension scheme or a personal pension scheme

(a) is entitled to give a notice under section 101F(1) to the trustees or managers of the scheme, or

(b) would be entitled to do so, but for section 101G(1),

he may not, if the scheme so provides, make an application to them under section 95 unless he also gives them a notice under section 101F(1).

Clause 66(7)

Clause 66(7) amends section 100 of the Pension Schemes Act 1993 as follows:

100 Withdrawal of applications

(1) Subject to subsections (2) and (2A), a member of a scheme may withdraw an application under section 95 by giving the trustees or managers of the scheme notice in writing that he no longer wishes them to do what is needed to carry out what he previously required.

(2) Such a notice shall be of no effect if it is given to the trustees or managers at a time when, in order to comply with what the member previously required, they have already entered into an agreement with a third party to use the whole or part of the member's cash equivalent in a way specified in subsection (2), **subsection (2A)** or, as the case may be, subsection (3) of section 95.

(2A) If the making of the application depended on the giving of a notice under section 101F(1), the application may only be withdrawn if the notice is also withdrawn.

(3) A member who withdraws an application may make another.

(4) A notice to the trustees or managers of a scheme under this section is to be taken to have been given if it is delivered to them personally, or sent by post in a registered letter or by recorded delivery service.

Clause 67: Reduction of cash equivalents: funded public service defined benefits schemes: Great Britain

Clause 67(2) amends section 97 of the Pension Schemes Act 1993 as follows:

97 Calculation of cash equivalents

(1) Cash equivalents are to be calculated and verified—

(a) in the prescribed manner, and

(b) where a designation has been made under section 97A or 97B, in accordance with regulations under section 97C.

(2) Regulations may provide

(a) that in calculating cash equivalents except guaranteed cash equivalents account shall be taken

(i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 95;

(ii) in a case where subsection (2) of section 96 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent, including a guaranteed cash equivalent, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of

(i) any pension; or

(ii) any benefit in lieu of pension;

and

(b) that in prescribed circumstances a cash equivalent shall be increased or reduced.

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include

(a) in the case of an occupational pension scheme, the length of time which elapses between the termination of a member's pensionable service and his exercise of the option conferred by this Chapter or regulations made under it;

- (b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date ; and
 - (c) the state of the funding of the scheme.
- (3A) For the purposes of subsection (3), the "appropriate date"
- (a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 93A), and
 - (b) in any other case, is the date on which the trustees receive an application from the member under section 95.
- (4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

97A Designation of funded public service defined benefits schemes

(1) This section applies to funded public service defined benefits schemes other than schemes to which section 97B applies (equivalent provision for certain Scottish schemes).

A scheme to which this section applies is referred to below as an "eligible scheme".

(2) The relevant person may designate an eligible scheme as a scheme to which regulations under section 97C are to apply for a specified period of no more than 2 years.

(3) The power under subsection (2) may be exercised only if the relevant person considers that—

- (a) there is an increased likelihood of payments out of public funds, or increased payments out of public funds, having to be made into the scheme so that it can meet its liabilities, and**
- (b) the increased likelihood is connected with the exercise or expected future exercise of rights to take a cash equivalent acquired under section 94.**

(4) The power under subsection (2) may be exercised in relation to the whole or any part of a scheme.

(5) In the application of subsection (3) to part of a scheme, paragraph (a) is to be read as if it referred to the scheme's liabilities relating to that part.

(6) A designation under subsection (2)—

- (a) may be extended (on more than one occasion) for a period of no more than 2 years;**
- (b) may be revoked.**

(7) The relevant person must give notice in writing of a designation or its extension or revocation to the trustees or managers of the scheme (except in a case where the relevant person is the trustees or managers).

(8) If the trustees or managers of an eligible scheme, or part of such a scheme, which is not designated under this section consider that the conditions in paragraphs (a) and (b) of subsection (3) are met in relation to the scheme or part they must notify—

- (a) the Treasury, and**
- (b) (where relevant) each Minister of the Crown by whom, or with whose approval, the scheme was established.**

(9) If the trustees or managers of a scheme, or part of a scheme, which is designated under this section consider that the conditions in paragraphs (a) and (b) of subsection (3) are no longer met in relation to the scheme or part they must notify—

- (a) the Treasury, and**
- (b) (where relevant) each Minister of the Crown by whom, or with whose approval, the scheme was established.**

(10) In this section—

"eligible scheme" has the meaning given by subsection (1);

"funded public service defined benefits scheme" means a public service pension scheme that—

- (a) is a defined benefits scheme within the meaning given by section 37 of the Public Service Pensions Act 2013, and**
- (b) meets its liabilities out of a fund accumulated for the purpose during the life of the scheme;**

"local authority" means—

- (a) a county or district council in England,**

- (b) a county or county borough council in Wales,
- (c) a London borough council,
- (d) the Greater London Authority,
- (e) the Common Council of the City of London in its capacity as a local authority, or
- (f) the Council of the Isles of Scilly;

“payment out of public funds” means a payment provided directly or indirectly—

(a) out of—

- (i) the Consolidated Fund or any other account or source of money which cannot be drawn or spent other than by, or with the authority of, the Treasury, or
- (ii) the Welsh Consolidated Fund, or

(b) by a local authority;

“the relevant person” means—

- (a) in relation to a scheme established by virtue of paragraph 12 of Schedule 6 to the Constitutional Reform and Governance Act 2010 (or treated as so established), the Independent Parliamentary Standards Authority and the trustees of the Parliamentary Contributory Pension Fund;
- (b) in relation to a scheme established by virtue of paragraph 16 of Schedule 6 to the Constitutional Reform and Governance Act 2010 (or treated as so established), the trustees of the Parliamentary Contributory Pension Fund;
- (c) in any other case, either of the following—
 - (i) the Treasury, or
 - (ii) any Minister of the Crown by whom, or with whose approval, the scheme was established.

(11) The Treasury may by regulations modify the definitions of “local authority” and “the relevant person” in subsection (10).

97B Designation of funded public service defined benefits schemes: Scotland

(1) This section applies to a funded public service defined benefits scheme that is—

- (a) a scheme established by, or with the approval of, the Scottish Ministers;
- (b) a scheme established by virtue of sections 73 and 74 of the Transport Act 1962 the liabilities in respect of which were transferred to the Scottish Transport Group by paragraph (c) of section 28(2) of the Transport Act 1968 in so far as that paragraph related to liabilities regarding the securities of David MacBrayne Limited or the Caledonian Steam Packet Company Limited);
- (c) a scheme established by virtue of paragraph 3 of Schedule 3 to the Scottish Development Agency Act 1975;
- (d) a scheme established by virtue of paragraph 15(2) of Schedule 1 to the Enterprise and New Towns (Scotland) Act 1990 (read with paragraph 7 of Schedule 3 to that Act);
- (e) a scheme established by virtue of section 81(4)(b) of, or paragraph 3(4)(b) of Schedule 2 to, the Scotland Act 1998.

A scheme to which this section applies is referred to below as an “eligible scheme”.

(2) The relevant person may designate an eligible scheme as a scheme to which regulations under section 97C are to apply for a specified period of no more than 2 years.

(3) The power under subsection (2) may be exercised only if the relevant

person considers that—

(a) there is an increased likelihood of payments out of public funds, or increased payments out of public funds, having to be made into the scheme so that it can meet its liabilities, and

(b) the increased likelihood is connected with the exercise or expected future exercise of rights to take a cash equivalent acquired under section 94.

(4) The power under subsection (2) may be exercised in relation to the whole or any part of a scheme.

(5) In the application of subsection (3) to part of a scheme, paragraph (a) is to be read as if it referred to the scheme's liabilities relating to that part.

(6) A designation under subsection (2)—

(a) may be extended (on more than one occasion) for a period of no more than 2 years;

(b) may be revoked.

(7) The relevant person must give notice in writing of a designation or its extension or revocation to the trustees or managers of the scheme (except in a case where the relevant person is the trustees or managers).

(8) If the trustees or managers of an eligible scheme, or part of such a scheme, which is not designated under this section consider that the conditions in paragraphs (a) and (b) of subsection (3) are met in relation to the scheme or part they must notify the Scottish Ministers.

(9) If the trustees or managers of a scheme, or part of a scheme, that is designated under this section consider that the conditions in paragraphs (a) and (b) of subsection (3) are no longer met in relation to the scheme or part they must notify the Scottish Ministers.

(10) In this section—

“eligible scheme” has the meaning given by subsection (1);

“funded public service defined benefits scheme” means a public service pension scheme that—

(a) is a defined benefits scheme within the meaning given by section 37 of the Public Service Pensions Act 2013, and

(b) meets its liabilities out of a fund accumulated for the purpose during the life of the scheme;

“payment out of public funds” means a payment provided directly or indirectly—

(a) out of the Scottish Consolidated Fund, or

(b) by a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“the relevant person” means—

(a) in relation to a scheme falling within subsection (1)(a) to (d), the Scottish Ministers;

(b) in relation to a scheme falling with subsection (1)(e), the trustees of the Scottish Parliamentary Contributory Pension Fund.

(11) The Scottish Ministers may by regulations modify the definition of “the relevant person” in subsection (10).

97C Reduction of cash equivalents in case of designated schemes

(1) The Treasury may by regulations provide that where, under section 95(1), a member of a designated scheme requires the trustees or managers to use a cash equivalent for acquiring flexible benefits under the rules of another pension scheme the cash equivalent must be reduced by an amount determined in accordance with the regulations.

(2) Regulations under subsection (1) may not require a reduction in cases where a scheme ceases to be a designated scheme before the date on which the trustees or managers do what is needed to carry out what the member requires.

(3) Regulations under subsection (1) may produce the result (alone or in conjunction with regulations under section 97) that the amount by which a cash equivalent is to be reduced is such an amount that a member has no right to receive anything.

(4) In subsection (1), “designated scheme” means a funded public service defined benefits scheme, or part of such a scheme, that (on the date of the application under section 95(1)) is designated under section 97A or 97B.

Clause 68: Public service defined benefits schemes: consequential amendments: Great Britain

Clause 68(1) amends section 182(1) of the Pension Schemes Act 1993 as follows:

182 Orders and regulations (general provisions)

(1) Any power under this Act to make regulations or orders (except a power of the court to make orders) and the powers to make rules under sections 149(2) and 152(1) shall be exercisable by statutory instrument.

(1A) Subsection (1) does not apply to the power of the Scottish Ministers to make regulations under section 97B(11).

(2) Except in so far as this Act otherwise provides, any power conferred by it to make an Order in Council, regulations or an order (except an order under section 153(8)) may be exercised

(a) either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case;

(b) so as to make, as respects the cases in relation to which it is exercised

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case or different provision as respects the same case or class of case for different purposes of this Act,

(iii) any such provision either unconditionally or subject to any specified condition,

and where such a power is expressed to be exercisable for alternative purposes it may be exercised in relation to the same case for any or all of those purposes; and any power to make an Order in Council, regulations or an order for the purposes of any one provision of this Act shall be without prejudice to any power to make an Order in Council, regulations or an order for the purposes of any other provision.

(3) Any power conferred by it to make an Order in Council, regulations or an order shall include power to make such incidental, supplementary, consequential or transitional provision as appears to Her Majesty or the authority making the regulations or order to be expedient for the purposes of the Order in Council, regulations or order.

(4) Any power conferred by this Act to make an order shall include power to vary or revoke any such order by a subsequent order.

(5) Any power conferred on the Secretary of State by any provision of this Act to make any regulations or order (except an order under section 153(8)), where the power is not expressed to be exercisable with the consent of the Treasury, shall if the Treasury so direct be exercisable only in conjunction with them.

Clause 68(2)

Clause 68(2) amends section 185 of the Pension Schemes Act 1993 as follows:

185 Consultations about other regulations

(1) Subject to subsection (2), before the Secretary of State makes any regulations for the purposes of Parts I to VI, Chapter III of Part VII, Part VIII, IX or X or section 153, 154, 155, 156, 160, 162, 163, 174 or 175 of this Act he shall consult such persons as he may consider appropriate .

- (2) Subsection (1) does not apply to
- (a) regulations prescribing actuarial tables; or
 - (b) regulations made for the purpose only of consolidating other regulations revoked by them; or
 - (c) regulations under section 36(6) [or 46A(2); or]
 - (d) regulations in the case of which the Secretary of State considers consultation inexpedient because of urgency, or
 - (e) regulations which
 - (i) state that they are consequential upon a specified enactment, and
 - (ii) are made before the end of the period of six months beginning with the coming into force of that enactment,

(5) In relation to any regulations required or authorised under this Act to be made by the Secretary of State in conjunction with the Treasury, any reference in subsection (1) to the Secretary of State shall be construed as a reference to him and the Treasury acting jointly.

(5A) Subject to subsection (5C), before the Treasury (acting alone) make any regulations under section 95, 97A or 97C they shall consult such persons as they may consider appropriate.

(5B) Subject to subsection (5C), before the Scottish Ministers make any regulations under section 97B(11) they shall consult such persons as they may consider appropriate.

(5C) Subsections (5A) and (5B) do not apply to regulations in the case of which the Treasury or (as the case may be) the Scottish Ministers consider consultation inexpedient because of urgency or to regulations of the type described in subsection (2)(b) or (e).

(7) The power of the Secretary of State to make regulations under section 162 of this Act shall be exercisable only after consultation with the appropriate regulator or, if the matter concerns section 464 of the Income and Corporation Taxes Act 1988, the Commissioners of the Inland Revenue .

(7A) "The appropriate regulator" means

- (a) where the group insurance business to which the regulations relate consists only of activities which are PRA-regulated activities, the Prudential Regulation Authority,
- (b) where the group insurance business to which the regulations relate consists partly of activities which are PRA-regulated activities and partly of other regulated activities, the Prudential Regulation Authority and the Financial Conduct Authority, or
- (c) in any other case, the Financial Conduct Authority.

(7B) In subsection (7A) "regulated activities" and "PRA-regulated activities" have the same meaning as in the Financial Services and Markets Act 2000.

(9) Before making any regulations under paragraph 7 of Schedule 2 the Secretary of State shall consult with such bodies concerned with employments of the class in question as appear to him fairly to represent the interests of the employers and earners in those employments.

Clause 68(3)

Clause 68(3) amends section 186 of the Pension Schemes Act 1993 as follows:

186 Parliamentary control of orders and regulations

(1) Subject to subsections (2) and (3), a statutory instrument which contains (whether alone or with other provisions) any regulations or order made under this Act by the Secretary of State **or the Treasury** shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(2) Subsection (1) shall not apply to any order which under any provision of this Act is required to be laid before Parliament after being made or is subject to a requirement that a draft of the instrument shall be laid before and approved by a resolution of each House of Parliament or to any order made under section 193 or paragraph 1 of Schedule 9.

(3) Subject to subsection (4), a statutory instrument which contains (whether alone or with other provisions)

[(za) regulations made by virtue of section 46A(8), or]

(a) regulations made under section 24B(5), or

(b) regulations made by virtue of section 49, or

(c) an order under section 153(8), or

(d) regulations made by virtue of subsection (1)(a) of section 165 applying such provisions as mentioned in subsection (2)(b) of that section, or

(e) regulations made by virtue of section 168(2) **or**

(f) regulations made under section 97A(11)

shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(4) Subsection (3) does not apply to such regulations as mentioned in paragraph (b) or (d) of that subsection if

(a) they are made for the purpose only of consolidating regulations which they revoke, or

(b) so far as they are made under powers conferred by the provisions mentioned in that paragraph, they only replace provisions of previous regulations with new provisions to the same effect.

(5) In the case of any regulations laid before Parliament at a time when Parliament is not sitting, the requirements of section 184(3) shall be deemed to be satisfied as respects either House of Parliament if a copy of the report and the statement in question are laid before that House not later than the second day on which the House sits after the laying of the regulations.

(6) Regulations made by the Scottish Ministers under section 97B(11) are subject to the affirmative procedure (see Part 2 of the Interpretation and Legislative Reform Scotland Act 2010 (asp 10)).

[N.B. words in square brackets in s185(2)(c) and s186(3)(za) not yet in force]

Clause 68(4)

Clause 68(4) amends section 18 of the Pensions Act 2004 as follows:

18 Pension liberation: interpretation

(1) In this section and sections 19 to 21

(a) "pension scheme" means an occupational pension scheme or a personal pension scheme,

(b) "deposit-taker" has the meaning given by subsections (8A) and (8B) of section 49 of the Pensions Act 1995, except that, for the purposes of this definition, subsection (8A)(c) of that section has effect with the omission of the words from "or" to the end,

(c) references to money liberated from a pension scheme are to be read in accordance with subsection (2),

(d) "liberated member", in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in subsection (2)(a), and

(e) "restraining order" means a restraining order under section 20.

(2) Money is to be taken to have been liberated from a pension scheme if

(a) the money directly or indirectly represents an amount that, in respect of accrued rights of a member of a pension scheme, has been transferred out of the scheme in pursuance of

(i) a relevant statutory provision, or

(ii) a provision of the applicable rules, other than a relevant statutory provision,

- (b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party ("the liberator") would secure that the amount was used in an authorised way,
- (c) the amount has not been used in an authorised way, and
- (d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.

- (3) The following are "relevant statutory provisions" for the purposes of subsection (2)
- (a) section 94(1)(a), (aa) or (b) of the Pension Schemes Act 1993 (c. 48) (right to cash equivalent under Chapter 4 of Part 4 of that Act);
 - (b) section 101AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part 4 of that Act);
 - (c) section 101F(1) of that Act (right to cash equivalent of pension credit benefit).

- (4) In subsection (2) "authorised way" means
- (a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in subsection (3)(a), a way specified in ~~subsection (2) or, as the case may be, subsection (3)~~ of section 95 of the Pension Schemes Act 1993;
 - (b) where that amount is transferred out in pursuance of the provision mentioned in subsection (3)(b), a way specified in section 101AE(2) of that Act;
 - (c) where that amount is transferred out in pursuance of the provision mentioned in subsection (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 101F of that Act;
 - (d) where that amount is transferred out in pursuance of a provision of the kind mentioned in subsection (2)(a)(ii), a way that is authorised by the applicable rules for amounts transferred out in pursuance of that provision.

- (5) In this section "the applicable rules" has the same meaning as, in the case of the pension scheme concerned, that expression has in section 94 of the Pension Schemes Act 1993.

Clause 69: Restriction on transfers out of public service defined benefits schemes: Northern Ireland

Clause 69 amends section 91 and 92 of the Pension Schemes (Northern Ireland) Act 1993 as follows:

Ways of taking right to cash equivalent

91.—(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under paragraph (a), (aa) or (b) of section 90(1) may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.

(2) In the case of a member of an occupational pension scheme, the ways referred to in subsection (1) are—

- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme **that is not an unfunded public service defined benefits scheme** —
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
 - (ii) which satisfies prescribed requirements;
- (b) for acquiring rights allowed under the rules of a personal pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
 - (ii) which satisfies prescribed requirements;
- (c) for purchasing from one or more insurers such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;
- (d) for subscribing to other pension arrangements which satisfy prescribed requirements.

(2A) In the case of a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, the ways referred to in subsection (1) are—

(a) for acquiring transfer credits allowed under the rules of another occupational pension scheme if—

- (i) the benefits that may be provided under the other scheme by virtue of the transfer credits are not flexible benefits,**
- (ii) the trustees or managers of the other scheme are able and willing to accept payment in respect of the member's transferrable rights, and**
- (iii) the other scheme satisfies requirements prescribed in regulations made by the Department or the Department of Finance and Personnel;**

(b) for acquiring rights allowed under the rules of a personal pension scheme if—

- (i) the benefits that may be provided under the personal pension scheme by virtue of the acquired rights are not flexible benefits,**
- (ii) the trustees or managers of the personal pension scheme are able and willing to accept payment in respect of the member's transferrable rights, and**
- (iii) the personal pension scheme satisfies requirements prescribed in regulations made by the Department or the Department of Finance and Personnel;**

(c) for purchasing from one or more insurers such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy

requirements prescribed in regulations made by the Department or the Department of Finance and Personnel;

(d) for subscribing to other pension arrangements which satisfy requirements prescribed in regulations made by the Department or the Department of Finance and Personnel.

(2B) The Department of Finance and Personnel may by regulations provide for subparagraph (i) of subsection (2A)(a) or (b) not to apply in specified circumstances or in relation to specified schemes or schemes of a specified description.

(2C) In subsection (2A) "unfunded public service defined benefits scheme" means a public service pension scheme that—

(a) is a defined benefits scheme within the meaning given by section 34 of the Public Service Pensions Act (Northern Ireland) 2014, and

(b) meets some or all of its liabilities otherwise than out of a fund accumulated for the purpose during the life of the scheme.

(3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are—

(a) for acquiring transfer credits allowed under the rules of an occupational pension scheme—

- (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
- (ii) which satisfies prescribed requirements;

(b) for acquiring rights allowed under the rules of another personal pension scheme—

- (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
- (ii) which satisfies prescribed requirements;

(c) for subscribing to other pension arrangements which satisfy prescribed requirements.

(5) Except in such circumstances as may be prescribed—

(a) ~~subsection (2) is~~ **subsections (2) and (2A) are** to be construed as if paragraph (d) were omitted; and

(b) subsection (3) is to be construed as if paragraph (c) were omitted.

(6) Without prejudice to the generality of subsections (2), **(2A)** and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2) **or (2A)**, an annuity must satisfy requirements of the Inland Revenue.

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(7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.

(8) In subsection (7) “the last option date” means, subject to regulations under section 94, the date which falls—

- (a) one year before the date on which the member attains normal pension age; or
 - (b) six months after the termination date,
- whichever is the later.

(9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

Further provisions concerning exercise of option under s. 91

92.—(1) A member may exercise the option conferred by subsection (1) of section 91 in different ways in relation to different portions of his cash equivalent, but a member who exercises that option must do so—

- (a) in relation to the whole of his cash equivalent; or
- (b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection(3).

(2) This subsection applies where—

- (a) the trustees or managers—
 - (i) of an occupational pension scheme which is not a contracted-out scheme, or
 - (ii) of a personal pension scheme

are able or willing to accept a transfer payment only in respect of a member’s rights other than his accrued rights to guaranteed minimum pensions , his accrued rights so far as attributable to service in contracted-out employment on or after the principal appointed day; and

(b) the member has not required the trustees or managers of the scheme from which he is being transferred to use the portion of his cash equivalent which represents those accrued rights in any of the ways specified in subsection (2), **subsection (2A)** or, as the case may be, subsection (3) of section 91.

(3) Where subsection (2) applies this section and sections 90, 91 and 93 are to be construed as conferring on the member an option only in respect of the balance of the cash equivalent to which the member would otherwise be entitled, after deduction of an amount sufficient for the trustees or managers of the scheme from which he is being transferred to meet their liability—

(a) in the case of a transfer from an occupational pension scheme, in respect of the member’s and the member’s widow’s, widower’s or surviving civil partner’s (as the case may be)pensions, being guaranteed minimum pensions or pensions so far as attributable to service in contracted-out employment on or after the principal appointed day

(4) Where a member of an occupational pension scheme or a personal pension scheme—

(a) is entitled to give a notice under section 97F(1) to the trustees or managers of the scheme, or

(b) would be entitled to do so, but for section 97G(1),

he may not, if the scheme so provides, make an application to them under section 91 unless he also gives them a notice under section 97F(1)

Clause 69: Restriction on transfers out of public service defined benefits schemes: Northern Ireland

Clause 69(7) amends section 96 of the Pension Schemes (Northern Ireland) Act 1993 as follows:

Withdrawal of applications

96.—(1) Subject to subsections (2) and (2A), a member of a scheme may withdraw an application under section 91 by giving the trustees or managers of the scheme notice in writing that he no longer wishes them to do what is needed to carry out what he previously required.

(2) Such a notice shall be of no effect if it is given to the trustees or managers at a time when, in order to comply with what the member previously required, they have already entered into an agreement with a third party to use the whole or part of the member's cash equivalent in a way specified in subsection (2), **subsection (2A)** or, as the case may be, subsection (3) of section 91.

(2A) If the making of the application depended on the giving of a notice under section 97F(1), the application may only be withdrawn if the notice is also withdrawn

(3) A member who withdraws an application may make another.

(4) A notice to the trustees or managers of a scheme under this section is to be taken to have been given if it is delivered to them personally, or sent by post in a registered letter or by recorded delivery service.

Clause 70: Reduction of cash equivalents: funded public service defined benefits schemes: Northern Ireland

Clause 70 amends section 93 of the Pension Schemes (Northern Ireland) Act 1993 as follows:

Calculation of cash equivalents

93.—(1) Cash equivalents are to be calculated and verified—

**(a) in the prescribed manner, and
(b) where a designation has been made under section 93A, in accordance with regulations under section 93B.**

(2) Regulations may provide—

(a) that in calculating cash equivalents except guaranteed cash equivalents (as defined in section 90(1A)) account shall be taken—

(i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 91;

(ii) in a case where subsection (2) of section 92 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent, including a guaranteed cash equivalent, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

(i) any pension; or
(ii) any benefit in lieu of pension; and

(b) that in prescribed circumstances a cash equivalent shall be increased or reduced.

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

(a) in the case of an occupational pension scheme, the length of time which elapses between the termination of a member's pensionable service and his exercise of the option conferred by this Chapter or regulations made under it;

(b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date; and

(c) the state of the funding of the scheme.

(3A) For the purposes of subsection (3), the "appropriate date"—

(a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 89A), and

(b) in any other case, is the date on which the trustees receive an application from the member under section 91.

(4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

93A Designation of funded public service defined benefits schemes

(1) The relevant Department may designate a funded public service defined benefits scheme as a scheme to which regulations under section 93B are to apply for a specified period of no more than 2 years.

- (2) The power under subsection (1) may be exercised only if the relevant Department considers that—
- (a) there is an increased likelihood of payments out of public funds, or increased payments out of public funds, having to be made into the scheme so that it can meet its liabilities, and
 - (b) the increased likelihood is connected with the exercise or expected future exercise of rights to take a cash equivalent acquired under section 90.
- (3) The power under subsection (1) may be exercised in relation to the whole or any part of a scheme.
- (4) In the application of subsection (2) to part of a scheme, paragraph (a) is to be read as if it referred to the scheme's liabilities relating to that part.
- (5) A designation under subsection (1)—
- (a) may be extended (on more than one occasion) for a period of no more than 2 years;
 - (b) may be revoked.
- (6) The relevant Department must give notice in writing of a designation or its extension or revocation to the trustees or managers of the scheme (except in a case where the relevant Department is the trustees or managers).
- (7) If the trustees or managers of a funded public service defined benefits scheme, or part of such a scheme, that is not designated under this section consider that the conditions in paragraphs (a) and (b) of subsection (2) are met in relation to the scheme or part they must notify—
- (a) the Department of Finance and Personnel, and (b) (where relevant) each Northern Ireland department by whom, or with whose approval, the scheme was established.
- (8) If the trustees or managers of a scheme, or part of a scheme, that is designated under this section consider that the conditions in paragraphs (a) and (b) of subsection (2) are no longer met in relation to the scheme or part they must notify—
- (a) the Department of Finance and Personnel, and
 - (b) (where relevant) each Northern Ireland department by whom, or with whose approval, the scheme was established.
- (9) In this section—
- “funded public service defined benefits scheme” means a public service pension scheme that—
- (a) is a defined benefits scheme within the meaning given by section 34 of the Public Service Pensions Act (Northern Ireland) 2014, and
 - (b) meets its liabilities out of a fund accumulated for the purpose during the life of the scheme;
- “local authority” means a district council constituted under section 1 of the Local Government Act (Northern Ireland) 1972;
- “payment out of public funds” means a payment provided directly or indirectly—
- (a) out of the Northern Ireland Consolidated Fund;
 - (b) by a local authority;
- “the relevant Department”, in relation to a funded public service defined benefits scheme, means either of the following—
- (a) the Department of Finance and Personnel, or
 - (b) any Northern Ireland department by whom, or with whose approval, the scheme was established.
- (10) The Department of Finance and Personnel may by regulations make modifications of the definition of “the relevant Department” in subsection (9).

93B Reduction of cash equivalents in case of section 93A designated schemes

- (1) The Department of Finance and Personnel may by regulations provide that where, under section 91(1), a member of a designated scheme requires the trustees or managers to use a cash equivalent for acquiring flexible benefits under the rules of another pension scheme the cash equivalent must be reduced by an amount determined in accordance with the regulations.

(2) Regulations under subsection (1) may not require a reduction in cases where a scheme ceases to be a designated scheme before the date on which the trustees or managers do what is needed to carry out what the member requires.

(3) Regulations under subsection (1) may produce the result (alone or in conjunction with regulations under section 93) that the amount by which a cash equivalent is to be reduced is such an amount that a member has no right to receive anything.

(4) In subsection (1), “designated scheme” means a funded public service defined benefits scheme, or part of such a scheme, that (on the date of the application under section 91(1)) is designated under section 93A.

Clause 71: Public service defined benefits schemes: consequential amendments: Northern Ireland

Clause 71(1) amends the definition of regulations in section 176(1) of the Pension Schemes (Northern Ireland) Act 1993 as follows:

General interpretation

176.—(1) In this Act—

“abolition date” means the day appointed for the commencement of section 13(1) of the Pensions Act (Northern Ireland) 2007;

“age”, in relation to any person, shall be construed so that—

(a) he is over or under a particular age if he has or, as the case may be, has not attained that age;

(b) he is between two particular ages if he has attained the first but not the second;

“appropriate scheme” and “appropriate scheme certificate” are to be construed in accordance with section 176A;

“the Assembly” means the Northern Ireland Assembly;

“Category A retirement pension” and “Category B retirement pension” mean the retirement pensions of those descriptions payable under Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“civil recovery order” means an order under section 266 of the Proceeds of Crime Act 2002 or an order under section 276 imposing the requirement mentioned in section 277(3);

“contract of service” has the same meaning as in section 121(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“contracted-out employment” shall be construed in accordance with section 4;

“contracting-out certificate” and references to a contracted-out scheme and to contracting-out shall be construed in accordance with section 3 ⁴¹ and section 176A;

“contributions equivalent premium” has the meaning given in section 51(2);

“the Department” means the Department of Health and Social Services for Northern Ireland;

“the Department of Finance and Personnel” means the Department of Finance and Personnel in Northern Ireland;

“earner” and “earnings” shall be construed in accordance with sections 3, 4 and 112 of the Social Security (Contributions and Benefits (Northern Ireland)) Act 1992;

“earnings factors” shall be construed in accordance with sections 22 and 23 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

“EEA state”, in relation to any time, means—

(a) a state which at that time is a member State, or

(b) any other state which at that time is a party to the EEA agreement;

“employed earner” and “self-employed earner” have the meanings given by section 2 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“employee” means a person gainfully employed in Northern Ireland either under a contract of service or in an office (including an elective office) with earnings;

“employer” means—

(a) in the case of an employed earner employed under a contract of service, his employer;

(b) in the case of an employed earner employed in an office with emoluments—

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- (i) such person as may be prescribed in relation to that office; or
 - (ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;
- “employment” includes any trade, business, profession, office or vocation and “employed” shall be construed accordingly except in the expression “employed earner”;

“Financial Services Compensation Scheme” means the Financial Services Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000;

“government department” includes a department of the government of the United Kingdom;

“guaranteed minimum pension” has the meaning given in section 4(2);

“HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;

“independent trade union” has the meaning given in Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992;

“industrial tribunal” means a tribunal established or having effect as if established under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996;

“the Inland Revenue” means the Commissioners of Inland Revenue;

“linked qualifying service” has the meaning given in section 174;

“long-term benefit” has the meaning given in section 20(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“lower earnings limit” and “upper earnings limit” shall be construed in accordance with section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and “current”, in relation to those limits, means for the time being in force;

“minimum contributions” shall be construed in accordance with sections 39 to 41;

“minimum payment” has the meaning given in section 4(2);

“modifications” includes additions, omissions and amendments;

“money purchase benefits”, in relation to a member of a personal or occupational pension scheme or the widow, widower or surviving civil partner of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits;

“money purchase contracted-out scheme” is to be construed in accordance with section 176A;”

“money purchase scheme” means a pension scheme under which all the benefits that may be provided are money purchase benefits;

“National Insurance Fund” means the Northern Ireland National Insurance Fund;

“normal pension age” has the meaning given in section 175;

“occupational pension scheme” has the meaning given in section 1;

“overseas arrangement” means a scheme or arrangement which—

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- (b) is administered wholly or primarily outside Northern Ireland;
- (c) is not an appropriate scheme; and
- (d) is not an occupational pension scheme;

“pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;

“pension debit” means a debit under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;

“pensionable age”—

- (a) so far as any provisions (other than sections 42 to 44) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and
- (b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995;

“pensionable service” has the meaning given in section 66(2);

“personal pension scheme” has the meaning given in section 1;

“prescribe” means prescribe by regulations;

“the preservation requirements” has the meaning given in section 65(2);

“the principal appointed day” has the meaning assigned by section 3(2B);

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- “primary Class 1 contributions” and “secondary Class 1 contributions” have the same meanings as in section 6 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “protected rights” has the meaning given in section 6, as it had effect immediately prior to the abolition date;
- “public service pension scheme” has the meaning given in section 1;
- “regulations” means, **unless the context otherwise requires**, regulations made by the Department under this Act;
- “the Regulatory Authority” means the Pensions Regulator;
- “resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme;
- “rights”, in relation to accrued rights (within the meaning of section 69 or 174) or transfer credits, includes rights to benefit and also options to have benefits paid in a particular form or at a particular time;
- “short service benefit” has the meaning given in section 67(2);
- “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in a leap year, the last two days) being treated accordingly as a separate tax week;
- “tax year” means the 12 months beginning with 6th April in any year;
- “transfer credits” means rights allowed to an earner under the rules of an occupational pension scheme by reference to—
- (a) a transfer to the scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than rights attributable (directly or indirectly) to a pension credit, or
 - (b) a cash transfer sum paid under Chapter 5 of Part IV in respect of him, to the trustees or managers of the scheme;
- “the upper accrual point” has the meaning given by section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “week” means a period of seven days beginning with Sunday;
- “working life”, in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with—
- (a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or
 - (b) if earlier, the tax year before the one in which the person dies.
- (2) References to employers in the provisions of this Act (other than sections 119 to 123, 153 and 156 (“the excluded provisions”)) are to be treated, in relation to persons within the application of an occupational pension scheme and qualifying or prospectively qualifying for its benefits, as including references to persons who in relation to them and their employment are treated by regulations as being employers for the purposes of those provisions.
- (3) Subject to any such regulations, references to an employer in any of the provisions of this Act (other than the excluded provisions or Chapter I of Part IV, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 149(2), 154(1) to (5), 158, 159 and 171) shall, in relation to an earner employed in an office with emoluments, be construed as references to—
- (a) such person as may be prescribed in relation to that office; or
 - (b) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of that office.
- (4) Regulations may for any purpose of any provision of this Act (other than the excluded provisions or section 27, 107, 156, 160 or 161) prescribe the persons who are to be regarded as members or prospective members of an occupational pension scheme and as to the times at which and the circumstances in which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.
- (5) In sections 161 and 162—
- (a) references to the United Kingdom include references to the territorial waters of the United Kingdom; and
 - (b) references to Northern Ireland include references to the territorial waters of the United Kingdom adjacent to Northern Ireland.

(6) Any reference in section 180 or 181 to an order or regulations under this Act includes a reference to an order or regulations made under any provision of an enactment passed after this Act and directed to be construed as one with it; but this subsection applies only so far as a contrary intention is not expressed in the enactment so passed, and shall be without prejudice to the generality of any such direction.

(7) The Interpretation Act (Northern Ireland) 1954 shall apply to this Act—

- (a) as it applies to a Measure of the Assembly;
- (b) as if any reference in that Act to an enactment or an Act included a reference to this Act.

(8) For the purposes of Part III of the Northern Ireland Constitution Act 1973 (validity of Measures of the Assembly, including Orders in Council under the Northern Ireland Act 1974), provisions of this Act which re-enact provisions of such an Order are to be treated as provisions of such an Order.

Clause 71(2)

Clause 71(2) amends section 181 of the Pension Schemes (Northern Ireland) Act 1993 as follows:

Assembly, etc. control of regulations and orders

181.—(1) The regulations and orders to which this subsection applies shall be laid before the Assembly after being made and shall take effect on such date as may be specified in the regulations or order, but shall (without prejudice to the validity of anything done thereunder or to the making of new regulations or a new order) cease to have effect upon the expiration of a period of six months from that date unless at some time before the expiration of that period the regulations have, or the order has, been approved by a resolution of the Assembly.

(2) Subsection (1) applies to regulations made by the Department under section 20B(5) or 164(2) and to orders made by it under section 149(8) **and to regulations made by the**

Department of Finance and Personnel under section 93A(10)”

(3) Subsection (1) does not apply to—

- (a) regulations under any provision mentioned in subsection (2) which are to be made for the purpose of consolidating regulations thereby revoked;
- (b) regulations which, in so far as they are made under any provision mentioned in subsection (2), only replace provisions of previous regulations with new provisions to the same effect.

(4) Subject to subsection (6), all regulations and orders made by the Department under this Act (other than regulations or orders to which subsection (1) applies and orders made under section 186) **shall and regulations made by the Department of Finance and Personnel under section 91 or 93B shall** be subject to negative resolution.

(5) This subsection applies to any regulations or order made under this Act which—

- (a) but for subsection (6), would be subject to negative resolution, and
- (b) are or is contained in a statutory rule which includes any regulations or order subject to the confirmatory procedure.

(6) Any regulations or order to which subsection (5) applies shall not be subject to negative resolution, but shall be subject to the confirmatory procedure.

(7) Subject to subsection (9), regulations made under this Act by the Secretary of State shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(8) This subsection applies to any regulations made under this Act which—

- (a) but for subsection (9), would be subject to annulment in pursuance of a resolution of either House of Parliament, and
- (b) are contained in an instrument which is subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament.

(9) Any regulations to which subsection (8) applies shall not be subject as mentioned in subsection (8)(a), but shall be subject to the procedure described in subsection (8)(b).

(9A) A statutory instrument containing provision under section 38, 38B or 41A shall not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

(10) In this section “the confirmatory procedure” means the procedure described in subsection (1).

Clause 71(3)

Clause 71(3) amends article 14 of the Pension (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Pension liberation: interpretation

14.(1) In this Article and Articles 15 to 17

(a) “pension scheme” means an occupational pension scheme or a personal pension scheme,

(b) “deposit-taker” has the meaning given by paragraphs (8A) and (8B) of Article 49 of the

1995 Order, except that, for the purposes of this definition, paragraph (8A)(c) of that Article has effect with the omission of the words from “or” to the end,

(c) references to money liberated from a pension scheme are to be read in accordance with paragraph (2),

(d) “liberated member”, in relation to money liberated from a pension scheme, means the

member of the pension scheme who is referred to in paragraph (2)(a), and

(e) “restraining order” means a restraining order under Article 16.

(2) Money is to be taken to have been liberated from a pension scheme if

(a) the money directly or indirectly represents an amount that, in respect of accrued rights of

a member of a pension scheme, has been transferred out of the scheme in pursuance of

(i) a relevant statutory provision, or

(ii) a provision of the applicable rules, other than a relevant statutory provision,

(b) the trustees or managers of the scheme transferred the amount out of the scheme on the

basis that a third party (“the liberator”) would secure that the amount was used in an authorised way,

(c) the amount has not been used in an authorised way, and

(d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.

(3) The following are “relevant statutory provisions” for the purposes of paragraph (2)

(a) section 90(1)(a), (aa) or (b) of the Pension Schemes Act (right to cash equivalent under Chapter 4 of Part IV of that Act);

(b) section 97AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part IV of that Act);

(c) section 97F(1) of that Act (right to cash equivalent of pension credit benefit).

(4) In paragraph (2) “authorised way” means

(a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in paragraph (3)(a), a way specified in ~~subsection (2) or, as the case may be, subsection (3) of section 91 of the Pension Schemes Act;~~

(b) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(b), a way specified in section 97AE(2) of that Act;

(c) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 97F of that Act;

(d) where that amount is transferred out in pursuance of a provision of the kind mentioned in paragraph (2)(a)(ii), a way that is authorised by the applicable rules for amounts transferred out in pursuance of that provision.

(5) In this Article “the applicable rules” has the same meaning as, in the case of the pension scheme concerned, that expression has in section 90 of the Pension Schemes Act.

Part 5 – MISCELLANEOUS

Clause 76: Pension scheme for fee-paid judges

Clause 76 inserts into the Judicial Pensions and Retirement Act 1993 the following:

PART 1A

18A Pension scheme for fee-paid judges

(1) The appropriate Minister may by regulations establish a scheme for the payment of pensions and other benefits to or in respect of fee-paid judges.

(2) The scheme may make provision for payments to or in respect of a person in relation to the person’s service before the scheme is established.

(3) No benefits are to be provided under a new public service pension scheme in relation to service in relation to which benefits are to be provided under a scheme under this section.

“New public service pension scheme” means a scheme under—

(a) section 1 of the Public Service Pensions Act 2013, or

(b) section 1 of the Public Service Pensions Act (Northern Ireland) 2014 (c. 2).

(4) The power under section 18(5) of the Public Service Pensions Act 2013 is to include power to provide for exceptions in the case of a person who—

(a) served as a fee-paid judge before 1 April 2012, and

(b) has been notified by the appropriate Minister that he or she will potentially be eligible for benefits under a scheme under this section in relation to that service, (and section 18(6) to (8) of the 2013 Act apply accordingly).

(5) The power under section 18(5) of the Public Service Pensions Act (Northern Ireland) 2014 is to include power to provide for exceptions in the case of a person who—

(a) served as a fee-paid judge before 1 April 2012, and

(b) has been notified by the appropriate Minister that he or she will potentially be eligible for benefits under a scheme under this section in relation to that service, (and section 18(7) to (9) of the 2014 Act apply accordingly)..

(6) Regulations under this section may, in particular, include provision corresponding or similar to—

(a) any provision made by Part 1, section 20 or Schedule 2 or 2A;

(b) any provision that may be made by regulations under Part 1, section 20 or Schedule 2 or 2A.

(7) In this section—

“judge” means a person who holds an office specified in the regulations;

“fee-paid judge” means a judge whose service is remunerated by the payment of fees (as opposed to the payment of a salary).

Clause 77 – Judicial pensions: pension sharing on divorce etc

Clause 77 amends paragraph 1(5) of Schedule 2A of the Judicial Pensions and Retirement Act 1993:

1(5) Section 28(1) of this Act shall apply to any pension or lump sum payable by virtue of this paragraph as if it were--
(a) a pension or lump sum under Part I of this Act; or
(b) a payment authorised by section 19 of this Act,

payable to the transferor **in respect of the rights from which the pension credit is derived** ~~in respect of the office which he held at the time of the order or agreement under which the pension credit arose.~~

Clause 78 – Extension to Scotland of certain provisions about marriage of same sex couples

Clause 78 extends sections 17(11), 24D(5), 37(7) and 38A of the Pension Schemes Act 1993 to Scotland.

Clause 79 – Pension sharing and normal benefit age

Clause 79(2) amends section 101B and 101C of the Pension Schemes Act 1993 as follows:

101B Interpretation

In this Chapter

"scheme" means an occupational pension scheme to which this Chapter applies;

"pension credit rights" means rights to future benefits under a scheme which are attributable (directly or indirectly) to a pension credit;

"pension credit benefit", in relation to a scheme, means the benefits payable under the scheme to or in respect of a person by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

~~"normal benefit age", in relation to a scheme, means the earliest age at which a person who has pension credit rights under the scheme is entitled to receive a pension by virtue of those rights (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise).~~

"normal benefit age", in relation to a pension credit benefit for a member of a scheme, is the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);

"normal pension age", in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);

101C Basic principle as to pension credit benefit

~~(1) Normal benefit age under a scheme must be between 60 and 65.~~

(1) The normal benefit age in relation to a pension credit benefit for a member of a scheme—

- (a) must not be lower than 60, and**
- (b) must not be higher than the permitted maximum.**

(1A) The “permitted maximum” is 65 or, if higher, the highest normal pension age for any benefit that is payable under the scheme to or in respect of any of the members by virtue of rights which are not attributable (directly or indirectly) to a pension credit.

(2)A scheme must not provide for payment of pension credit benefit in the form of a lump sum at any time before normal benefit age, except in such circumstances as may be prescribed.

Schedule 1 – EARLY LEAVERS: REVALUATION OF ACCRUED BENEFITS

Schedule 1, paragraphs 2 to 4

Amends the Pension Schemes Act 1993 as follows:

82A Overview and meaning of “relevant commencement date”

(1) This Chapter is about the revaluation of benefits for early leavers.

(2) The table contains an overview of the contents of this Chapter.

Section	General description
Section 83	Benefits to which this Chapter applies
Sections 84 and 84A	Basis of revaluation: benefits accrued before the 2014 Act commencement date
Sections 84B and 84C	Basis of revaluation: benefits accrued on or after the 2014 Act commencement date
Section 84D	Special rules for hybrid benefits
Sections 84E and 84F	Revaluation by other methods
Section 85	Revaluation not to apply to substituted benefits
Sections 85A to 86B	Supplementary provision and definitions

(3) In this Chapter “the 2014 Act commencement date” means the date on which paragraph 2 of Schedule 1 to the Pension Schemes Act 2014 comes into force

83 Scope of Chapter II

- (1) This Chapter applies for the purpose of revaluing -
- (a) relevant benefits payable to or in respect of a member of an occupational pension scheme where -
 - (i) his pensionable service ends on or after 1st January 1986;
 - (ii) on the date on which his pensionable service ends (in this Chapter referred to as "the termination date") he has accrued rights to benefit under the scheme;
 - (iii) the period beginning with the day after the termination date and ending with the date on which he attains normal pension age (in this Chapter referred to as "the pre-pension period") is at least 365 days; and
 - (iv) in the case of benefit payable to any other person in respect of the member, the member dies after attaining normal pension age; and

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- (b) relevant benefits payable to or in respect of a member of a personal pension scheme -
- (i) in respect of whom contributions to the scheme have ceased to be paid; and
 - (ii) who has accrued rights to benefit under the scheme.

~~(1A) The following are relevant benefits for the purposes of subsection (1)-~~

~~(a) any benefits payable otherwise than by virtue of rights which are attributable (directly or indirectly) to a pension credit, and~~

~~(b) in the case of a salary related occupational pension scheme, any benefits payable by virtue of such rights, to the extent that the rights involve the member being credited by the scheme with notional pensionable service.~~

(1A) In subsection (1) “relevant benefits” means benefits that are -

- (a) retirement benefits payable to a member, or**
- (b) benefits payable in respect of a member.**

(1AA) This Chapter does not apply to any benefits payable by virtue of pension credit rights except, in the case of a salary related occupational pension scheme, to the extent that they involve the member being credited by the scheme with notional pensionable service.

(1AB) Where this Chapter applies in relation to a benefit payable by virtue of a pension credit right, then-

- (a) if entitlement to the relevant pension credit arose before the 2014 Act commencement date, the benefit is to be treated for the purposes of section 84(1) and 84B(1) as attributable to pensionable service before that date;**
- (b) if entitlement to the relevant pension credit arose on or after the 2014 Act commencement date, the benefit is to be treated for the purposes of sections 84(1) and 84B(1) as attributable to pensionable service on or after that date.**

(1AC) “Pension credit rights” means rights that are attributable (directly or indirectly) to a pension credit.

(2) In calculating 365 days for the purpose of subsection (1)(a)(iii), any day which is 29th February shall be disregarded.

(3) In subsection (1)(b) -

- (a) the reference to a personal pension scheme does not include a scheme which is comprised in an annuity contract made before 4th January 1988; and
- (b) the reference to contributions includes any minimum contributions.

(4) For the purposes of this section, an occupational pension scheme is salary related if -

- ~~(a) it is not a money purchase scheme~~ **(a) it is not a scheme under which all the benefits that may be provided are money purchase benefits,** and
- (b) it does not fall within a prescribed class.

84 Basis of revaluation

~~(1) Subject to subsections (2) and to (3B), in the case of such benefits as are mentioned in section 83(1)(a), any pension or other retirement benefit payable under the scheme in question to the member and any pension or other benefit payable under it to any other person in respect of him, is to be revalued by the final salary method.~~

~~(2) If-~~

- ~~(a) any such benefit is an average salary benefit or flat rate benefit; and~~

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~~(b) it appears to the trustees or managers of the scheme under which it is payable that it is appropriate to revalue the benefit by the average salary method or, as the case may be, the flat rate method,~~

~~then the benefit shall be revalued using that method.~~

~~(3) If any benefit such as is mentioned in paragraph (a) of section 83(1) is a money purchase benefit, and in the case of such benefit as is mentioned in paragraph (b) of that section, the benefit shall be revalued using the money purchase method.~~

~~(3A) If—~~

~~(a) any such benefit as is mentioned in section 83(1)(a) is a cash balance benefit which is not calculated by reference to final salary;~~

~~(b) the benefit is attributable to periods of pensionable service falling on or after the day on which section 29 of the Pensions Act 2011 (definition of money purchase benefits) comes into force; and~~

~~(c) it appears to the trustees or managers of the scheme under which it is payable that it is appropriate to revalue the benefit by the cash balance method,~~

~~then the benefit shall be revalued using that method.~~

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

~~(a) is attributable to periods of pensionable service falling partly before and partly on or after the day on which section 29 of that Act comes into force; and~~

~~(b) it appears to the trustees or managers of the scheme under which it is payable that it is appropriate to revalue so much of the benefit as is attributable to the member's pensionable service falling on or after that day by the cash balance method,~~

~~then so much of the benefit as is attributable to the member's pensionable service falling on or after that day shall be revalued using that method.~~

~~(4) In this section—~~

~~"average salary benefit" means benefit the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefit is based;~~

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

~~"final salary", in relation to a member to or in respect of whom rights to benefits accrue, means the member's pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member's pensionable service in relation to that scheme ends;"~~

~~"flat rate benefit" means any benefit the rate or amount of which is calculated by reference solely to the member's length of service;~~

~~"average salary method", "cash balance method", "final salary method", "flat rate method" and "money purchase method" have the meanings given in Schedule 3.~~

~~"pensionable earnings", in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated~~

~~(5) The fact that a scheme provides for the amount of the pension or other benefit for a member or for any other person in respect of him to be increased during the pre-pension period—~~

~~(a) by the percentages specified during that period under section 151(1) of the Social Security Administration Act 1992 (directions specifying percentage increases for up-rating purposes); or~~

~~(b) under any arrangement which, in the opinion of the Secretary of State, maintains the value of the pension or other benefit by reference to the rise in the general level of prices in Great Britain during that period, does not in itself result in conflict with this section, if the increase falls to be determined by reference to an amount from which the guaranteed minimum for a member or a member's widow, widower, surviving same sex spouse or surviving civil partner has not been deducted.~~

84 Old basis of revaluation: occupational pension schemes

(1) A benefit of the kind mentioned in section 83(1)(a) must be revalued in accordance with this section if it is attributable to pensionable service before the 2014 Act commencement date.

(2) The benefit must be revalued using the final salary method unless it is.

- (a) a money purchase benefit (see subsection (3)),**
- (b) an average salary benefit revalued in accordance with subsection (4), or**
- (c) a flat rate benefit revalued in accordance with subsection (5).**

(3) If the benefit is a money purchase benefit it must be revalued using the money purchase method.

(4) If the benefit is an average salary benefit it must be revalued using the average salary method if the trustees or managers of the scheme consider the average salary method to be more appropriate than the final salary method.

(5) If the benefit is a flat rate benefit it must be revalued using the default method if the trustees or managers of the scheme consider the default method to be more appropriate than the final salary method.

84A Old basis of revaluation: personal pension schemes

(1) A benefit of the kind mentioned in section 83(1)(b) must be revalued in accordance with this section if it is attributable to contributions paid before the 2014 Act commencement date.

(2) The benefit must be revalued using the money purchase method.

84B New basis of revaluation: occupational pension schemes

(1) A benefit of the kind mentioned in section 83(1)(a) that is a collective benefit must be revalued using the default method.

(2) A benefit of the kind mentioned in section 83(1)(a) that is not a collective benefit must be revalued in accordance with the following provisions of this section if it is attributable to pensionable service on or after the 2014 Act commencement date.

(3) The benefit must be revalued using the default method unless it is—

- (a) a money purchase benefit (see subsection (4)),**
- (b) a salary related benefit (see subsections (5) and (6)), or**
- (c) a flat rate benefit revalued in accordance with subsection (7).**

(4) If the benefit is a money purchase benefit it must be revalued using the money purchase method.

(5) If the benefit is a salary related benefit it must be revalued using the final salary method unless it is revalued in accordance with subsection (6).

(6) If the benefit is an average salary benefit it must be revalued using the average salary method if the trustees or managers of the scheme consider the average salary method to be more appropriate than the final salary method.

(7) If the benefit is a flat rate benefit it must be revalued using the final salary method if the trustees or managers of the scheme consider the final salary method to be more appropriate than the default method.

84C New basis of revaluation: personal pension schemes

(1) A benefit of the kind mentioned in section 83(1)(b) must be revalued in accordance with this section if it is attributable to contributions paid on or after the 2014 Act commencement date.

(2) The benefit must be revalued using the default method unless it is a money purchase benefit.

(3) If the benefit is a money purchase benefit it must be revalued using the money purchase method.

84D Hybrid benefits

(1) This section modifies the revaluation requirements in this Chapter in relation to hybrid benefits.

(2) "Hybrid benefit" means a benefit the rate or amount of which depends on which of two or more alternative methods of calculation produces the highest, or lowest, rate or amount.

(3) For hybrid benefits-

(a) first, calculate the benefit using each of those methods and revalue in accordance with this Chapter, and

(b) then, determine which method of calculation produces the highest, or lowest, rate or amount.

84E Revaluation by other methods: general

The fact that an occupational pension scheme provides for the amount of the pension or other benefit for a member or for any other person in respect of the member to be increased during the prepension period.

(a) by the percentages specified during that period under section 151(1) of the Social Security Administration Act 1992 (directions specifying percentage increases for up-rating purposes), or

(b) under any arrangement which, in the opinion of the Secretary of State, maintains the value of the pension or other benefit by reference to the rise in the general level of prices in Great Britain during that period,

does not in itself result in conflict with section 84 or 84B, if the increase falls to be determined by reference to an amount from which the guaranteed minimum for a member or a member's widow, widower, surviving same sex spouse or surviving civil partner has not been deducted.

84F Revaluation by other methods: transitional protection in certain cases

(1) This section applies to a scheme which, before the 2014 Act commencement date, provided for any description of benefits to which this Chapter applies to be revalued by a method that the scheme was allowed to use under subsection (3A) or (3B) of old section 84.

(2) The scheme may continue to use that method of revaluation in relation to that description of benefits for so long as it continues to contain that provision.

(3) In subsection (1), “the old section 84” means section 84 as it had effect immediately before the substitution made by Schedule 1 to the Pension Schemes Act 2014.

85 Revaluation not to apply to substituted benefit

Nothing in this Chapter is to be construed as requiring the revaluation of any pension or other benefit provided by virtue of section 73(2)(b) or 101D(2)(b) by way of complete substitute for another pension or benefit.

85A Power to add revaluation methods for personal pension schemes

(1) Regulations may make provision enabling or requiring benefits of the kind mentioned in section 83(1)(b) to be revalued by the average salary or final salary method in specified cases.

(2) Regulations under this section -

- (a) may amend this Chapter (and may, in particular, amend the average salary or final salary method as applied in relation to benefits of the kind mentioned in section 83(1)(b));**
- (b) may not change the revaluation method to be used for a benefit that has already accrued.**

86 Supplementary provisions

(1) In making any calculation for the purposes of this Chapter in relation to any occupational pension scheme -

- (a) any commutation, forfeiture or surrender of,
- (b) any charge or lien on, and
- (c) any set-off against,

the whole or part of a pension shall be disregarded.

(2) The same money may not be treated as providing both the increase in benefit required by this Chapter and the benefit required by Chapter III.

86A The revaluation methods

The revaluation methods referred to in this Chapter are defined by the provisions listed in the table.

<i>Method</i>	<i>Provision</i>
Average salary method	Paragraph 3 of Schedule 3
Default method	Paragraph A1 of Schedule 3
Final salary method	Paragraphs 1 to 2A of Schedule 3
Money purchase method	Paragraph 5 of Schedule 3

86B Definitions of benefits referred to in this Chapter

(1) In this Chapter.

“average salary benefit” means a benefit under an occupational pension scheme the rate or amount of which is calculated by reference to the member’s average salary over the period of service to which the benefit relates;
“final salary benefit” means a benefit under an occupational pension scheme that is calculated by reference to the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;
“flat rate benefit” means a benefit under an occupational pension scheme the rate or amount of which is calculated by reference solely to the member’s length of service;
“salary related benefit” means a benefit under an occupational pension scheme the rate or amount of which is calculated by reference to the salary of the member.

(2) In subsection (1) “pensionable earnings”, in relation to a pension scheme and a member of it, means earnings by reference to which benefits under the scheme are calculated.

Schedule 1, paragraph 7

Amends section 186(3) (statutory instruments subject to affirmative procedure) as follows:

(3) Subject to subsection (4), a statutory instrument which contains (whether alone or with other provisions)

(za) regulations made by virtue of section 46A(8), or
(a) regulations made under section 24B(5), or
(b) regulations made by virtue of section 49, or
(ba) regulations under section 85A, or
(c) an order under section 153(8), or
(d) regulations made by virtue of subsection (1)(a) of section 165 applying such provisions as mentioned in subsection (2)(b) of that section, or
(e) regulations made by virtue of section 168(2)
shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

[Note: para (za) not in force]

Schedule 1, paragraphs 8 to 11

Amend Schedule 3 of the Pension Schemes Act 1993 as follows:

Schedule 3 - Methods of Revaluing Accrued Pension Benefits

Sections 84 and 102(3).

The default method

A1 (1) The default method is to revalue the benefits in any way in which they would have been revalued if -
(a) in the case of an occupational pension scheme, the member’s pensionable service had not terminated, or

(b) in the case of a personal pension scheme, contributions in respect of the member had not ceased to be paid.

The final salary method

1

(1) The final salary method is to add to the amount that would be payable but for Chapter 2 of Part 4, or regulations made under it, the additional amount specified in sub-paragraph (1A), (1B), (1C) or (1D) (whichever applies).

(1A) Where -

- (a) the termination of pensionable service occurs before 1st January 1991, and
- (b) the whole of the member's pensionable service falls on or after 1st January 1985,

the additional amount is the appropriate higher revaluation percentage of the accrued benefit.

(1B) Where -

- (a) the termination of pensionable service occurs before 1st January 1991, and
- (b) some of the member's pensionable service falls before 1st January 1985,

the additional amount is such proportion of the appropriate higher revaluation percentage of the accrued benefit as the member's pensionable service falling on or after 1st January 1985 bears to the member's total pensionable service.

(1C) Where the termination of pensionable service occurs -

- (a) on or after 1st January 1991, but
- (b) before the day on which section 101 of the Pensions Act 2008 comes into force ("the 2008 Act commencement day"),

the additional amount is the appropriate higher revaluation percentage of the accrued benefit.

(1D) Where the termination of pensionable service occurs on or after the 2008 Act commencement day, the additional amount is the aggregate of -

- (a) the appropriate higher revaluation percentage of so much of the accrued benefit as is attributable to the member's pensionable service falling before the 2008 Act commencement day, and
- (b) the appropriate lower revaluation percentage of so much of the accrued benefit as is attributable to the member's pensionable service falling on or after that day.

(1E) In this paragraph "the accrued benefit" means the amount of the pension or other benefit which on the termination date has accrued to the member or to any other person in respect of the member (excluding any part of that amount which consists of -

- (a) the member's guaranteed minimum, or
- (b) the guaranteed minimum of the member's widow, widower, surviving same sex spouse or surviving civil partner).

(2) For the purposes of this paragraph, a member's pensionable service includes any notional pensionable service which is credited to the member by the scheme ("notional service").

But notional service shall not be taken into account in determining which of sub-paragraphs (1A), (1B), (1C) and (1D) applies.

(3) For the purposes of determining the additional amount where sub-paragraph (1B) applies, any notional service shall be taken to have ended immediately before the member's actual pensionable service began.

(3A) For the purposes of determining the additional amount where sub-paragraph (1D) applies, any notional service shall be treated as falling on or after the 2008 Act

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commencement day only if, or to the extent that, it is so treated for the purposes of the scheme.

(4) Any rule of a scheme the effect of which is that benefit falls to be revalued by reference to any period is to be disregarded in making any calculation required by this method.

(5) The sub-paragraphs above are subject to sub-paragraph (6).

(6) If paragraph 2A applies to the pension or other benefit, the final salary method is to apply the requirement of the rules of the scheme mentioned in paragraph 2A(1).

The revaluation percentage and the appropriate revaluation percentage

2

(1) For the purposes of paragraph 1 the Secretary of State shall in each calendar year by order specify (so far as it is necessary to do so) -

- (a) a higher revaluation percentage, and
- (b) a lower revaluation percentage,

for each period which is a revaluation period in relation to that order.

(2) A period is a "revaluation period", in relation to an order under this paragraph, if it is a period which -

- (a) begins with 1st January 1986 or with an anniversary of that date falling before the making of the order; and
- (b) ends with the next day after the making of the order which is 31st December.

(3) The higher revaluation percentage which the Secretary of State is to specify in relation to a revaluation period is the lesser of -

- (a) the percentage which appears to the Secretary of State to be the percentage increase in the general level of prices in Great Britain during the period which is the reference period in relation to the revaluation period ("the inflation percentage"), and
- (b) the higher maximum rate.

(3A) The lower revaluation percentage which the Secretary of State is to specify in relation to a revaluation period is the lesser of -

- (a) the percentage which appears to the Secretary of State to be the inflation percentage, and
- (b) the lower maximum rate.

(4) The Secretary of State may estimate the percentage increase mentioned in sub-paragraph (3)(a) in such manner as he thinks fit.

(5) For the purposes of that sub-paragraph, the reference period in relation to a revaluation period is -

- (a) in the case of the revaluation period beginning on 1st January 1986, the period which begins with 1st October 1985 and ends with the last day before the making of the order which is 30th September; and
- (b) in the case of the revaluation periods with later commencement dates, the period which -
 - (i) begins with the last day before the commencement of the revaluation period which is 1st October; and
 - (ii) ends with the last day before the making of the order which is 30th September.

(6) For the purposes of sub-paragraph (3)(b) and (3A)(b) - "the higher maximum rate", in relation to a revaluation period, is -

- (a) in the case of a revaluation period of 12 months, 5 per cent; and

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(b) in any other case, the percentage that would be the inflation percentage had the general level of prices increased at the rate of 5 per cent compound per annum during the reference period in question;

"the lower maximum rate", in relation to a revaluation period, is -

(a) in the case of a revaluation period of 12 months, 2.5 per cent; and

(b) in any other case, the percentage that would be the inflation percentage had the general level of prices increased at the rate of 2.5 per cent compound per annum during the reference period in question.

(7) In paragraph 1 -

"the appropriate higher revaluation percentage" means the higher revaluation percentage specified in the last calendar year before the date on which the member attains normal pension age as the higher revaluation percentage for the revaluation period which is of the same length as the number of complete years in the pre-pension period;

"the appropriate lower revaluation percentage" has a corresponding meaning.

2A

(1) This paragraph applies to the pension or other benefit if the rules of the scheme under which it is payable contain a requirement that the accrued benefit be revalued by adding to the accrued benefit an amount of at least the relevant amount.

(2) "The accrued benefit" has the same meaning as in paragraph 1.

(3) "The relevant amount" means the amount which, ignoring paragraph 1(5) and (6), would be the additional amount specified in paragraph 1(1A), (1B), (1C) or (1D) (as the case may be) were the appropriate higher revaluation percentage and the appropriate lower revaluation percentage to be determined on the following basis.

(4) The higher revaluation percentage and the lower revaluation percentage for the revaluation period mentioned in paragraph 2(7) are to be taken to be the percentages which would have been specified in the Secretary of State's order -

(a) had the following been substituted for paragraph 2(3)(a) -

"(a) the percentage increase in the retail prices index for the reference period in relation to the revaluation period ("the inflation percentage"), and",

(b) had, in paragraph 2(3A)(a), the words "the percentage which appears to the Secretary of State to be" been omitted,

(c) had paragraph 2(4) been omitted,

(d) had, in paragraph 2(5), the words "sub-paragraph (3)(a)" been substituted for "that sub-paragraph",

(e) had, in paragraph (b) of the definitions of "the higher maximum rate" and "the lower maximum rate" in paragraph 2(6), the words "retail prices index" been substituted for "general level of prices", and

(f) had the following been inserted after paragraph 2(6) -

"(6A) In this paragraph "retail prices index" means -

(a) the general index of retail prices (for all items) published by the Statistics Board (or any predecessor), or

(b) where that index is not published for a month, any substituted index or figures published by the Board (or any predecessor)."

The average salary method

3

(1) The average salary method is to revalue the member's salaries as respects the pre-pension period in any way in which they would have been revalued during that period if he had remained in the same pensionable service.

(2) In this paragraph "salaries" means, subject to sub-paragraph (4), the member's salaries for the period between the date when his pensionable service began and the termination

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date, or such part of them as was relevant under the scheme to the calculation of the retirement benefits payable under the scheme to him or to any other person in respect of him.

- (3) For the purpose of this paragraph those salaries are to be taken to include -
- (a) any amount which is attributed to them, otherwise than by virtue of this paragraph, as the result of a revaluation for which the rules of the scheme provide; and
 - (b) any amount which is for any reason credited to the member by way of salary notionally earned.

(4) Where the member's pensionable service ended before 1st January 1991, sub-paragraph (2) shall have effect with the substitution for the words from "means" to "termination date" of the words "means the member's salaries for the period between 1st January 1985 and the termination date".

(5) For the purposes of the application of this paragraph to a case where a member is credited with an amount by reference to salary notionally earned over a period of time of a particular length, that period shall be taken to have ended immediately before the member's actual pensionable service began.

The cash balance method

~~3A. The cash balance method of revaluing a cash balance benefit is to revalue the available sum in respect of the benefit in any way in which it would have been revalued if the member's pensionable service had not terminated.~~

~~The flat rate method~~

~~4~~

~~The flat rate method is to revalue the benefits which have accrued to the member as respects the pre-pension period in any way in which they would have been revalued during that period if he had remained in the same pensionable service.~~

~~The money purchase method~~

~~5~~

~~(1) Subject to sub-paragraphs (2) and (3), the money purchase method is to apply the investment yield and any bonuses arising from payments made by or on behalf of a member towards providing any pension or other retirement benefit which is payable under the scheme to him or to any other person in respect of him in the manner in which they would have been applied if his pensionable service had not terminated. if -~~

~~**(a) in the case of an occupational pension scheme, the member's pensionable service had not terminated, or**~~

~~**(b) in the case of a personal pension scheme, contributions in respect of the member had not ceased to be paid**~~

~~(2) The Secretary of State may by regulations authorise trustees and managers of occupational pension schemes to deduct from any pension or other retirement benefit provided by virtue of the money purchase method an appropriate amount in respect of the administrative expenses incurred by them in carrying this method into effect.~~

~~(3) The trustees and managers of a personal pension scheme may, when providing a pension or other retirement benefit by virtue of the money purchase method, deduct -~~

~~(a) the actual administrative expenses of doing so, or~~

~~(b) the amount of the administrative expenses which would have been incurred in providing a money purchase benefit for the same member if contributions had not ceased to be paid to the scheme in respect of him,~~

~~whichever is the less.~~

Schedule 1, paragraph 11(a)

Omits paragraph 31(3) of Schedule 12 to the Welfare Reform and Pensions Act 1999

31

(1) Section 83 is amended as follows.

(2) In subsection (1), before "benefits", in both places, there is inserted "relevant".

~~(3) After that subsection there is inserted~~

~~(1A) The following are relevant benefits for the purposes of subsection (1)~~

~~(a) any benefits payable otherwise than by virtue of rights which are attributable (directly or indirectly) to a pension credit, and~~

~~(b) in the case of a salary related occupational pension scheme, any benefits payable by virtue of such rights, to the extent that the rights involve the member being credited by the scheme with notional pensionable service.~~

(4) At the end there is inserted

(4) For the purposes of this section, an occupational pension scheme is salary related if

(a) it is not a money purchase scheme, and

(b) it does not fall within a prescribed class.

Schedule 1, paragraph 11(b)

Omits section 19(1) to (3) of the Pensions Act 2011

19 Indexation and revaluation

~~(1) Section 84 of the Pension Schemes Act 1993 (basis of revaluation of accrued benefits) is amended as follows.~~

~~(2) In subsection (5)(b) for the words from "maintains" to "index" substitute ", in the opinion of the Secretary of State, maintains the value of the pension or other benefit by reference to the rise in the general level of prices in Great Britain".~~

~~(3) Omit subsection (6).~~

Schedule 2 – OTHER AMENDMENTS TO DO WITH PARTS 1 AND 2

Schedule 2, paragraph 2

Amends section 83 of the Pension Schemes Act 1993

83 Scope of Chapter II

(1) This Chapter applies for the purpose of revaluing

(a) relevant benefits payable to or in respect of a member of an occupational pension scheme where

(i) his pensionable service ends on or after 1st January 1986;

(ii) on the date on which his pensionable service ends (in this Chapter referred to as "the termination date") he has accrued rights to benefit under the scheme;

(iii) the period beginning with the day after the termination date and ending with the date on which he attains normal pension age (in this Chapter referred to as "the pre-pension period") is at least 365 days; and

(iv) in the case of benefit payable to any other person in respect of the member, the member dies after attaining normal pension age; and

(b) relevant benefits payable to or in respect of a member of a personal pension scheme

(i) in respect of whom contributions to the scheme have ceased to be paid; and

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(ii) who has accrued rights to benefit under the scheme.

(1A) The following are relevant benefits for the purposes of subsection (1)

(a) any benefits payable otherwise than by virtue of rights which are attributable (directly or indirectly) to a pension credit, and

(b) in the case of a salary related occupational pension scheme, any benefits payable by virtue of such rights, to the extent that the rights involve the member being credited by the scheme with notional pensionable service.

(1B) The reference in subsection (1)(a)(iii) to normal pension age is to be read, in relation to a person who is an active or deferred member of a scheme under section 1 or 31(7) of the Public Service Pensions Act 2013, as

(a) the member's normal pension age within the meaning of that Act, or

(b) the member's deferred pension age within the meaning of that Act, if that is later.

In this subsection "active member" and "deferred member", in relation to such a scheme, have the meanings given by section 124(1) of the Pensions Act 1995.

(2) In calculating 365 days for the purpose of subsection (1)(a)(iii), any day which is 29th February shall be disregarded.

(3) In subsection (1)(b)

(a) the reference to a personal pension scheme does not include a scheme which is comprised in an annuity contract made before 4th January 1988; and

(b) the reference to contributions includes any minimum contributions.

(4) For the purposes of this section, an occupational pension scheme is salary related if—

~~(a) it is not a money purchase scheme~~

(a) it is not a scheme under which all the benefits that may be provided are money purchase benefits, and

(b) it does not fall within a prescribed class.

Schedule 2, paragraph 3

Amends section 113 of the Pension Schemes Act 1993 as follows:

113 Disclosure of information about schemes to members etc

(1) The Secretary of State may by regulations specify requirements to be complied with in the case of an occupational pension scheme or a personal pension scheme with respect to keeping the persons mentioned in subsection (2) informed -

(a) of its constitution;

(b) of its administration and finances;

(c) of the rights and obligations that arise or may arise under it;

(ca) of the pensions and other benefits an entitlement to which would be likely to accrue to the member, or be capable of being secured by him, in respect of the rights that may arise under it; and

(d) of any other matters that appear to the Secretary of State to be relevant to occupational pension schemes or personal pension schemes in general or to schemes of a description to which the scheme in question belongs.

(2) The persons referred to in subsection (1) are -

(a) members and, in the case of an occupational pension scheme, prospective members of the scheme;

(b) spouses or civil partners of members and, in the case of an occupational pension scheme, of prospective members;

(c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits;

(d) in the case of an occupational pension scheme, independent trade unions recognised to any extent for the purposes of collective bargaining in relation to members and to prospective members of the scheme.

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(e) persons of prescribed descriptions.

(3) Without prejudice to the generality of section 182(2), the regulations may distinguish between -

- (a) cases in which information is to be given as of course; and
- (b) cases in which information need only be given on request or in other prescribed circumstances.

(3A) The regulations may provide for the information that must be given to be determined, in whole or part, by reference to guidance which is prepared and from time to time revised by a prescribed body.

(3B) The regulations may, in relation to cases where a scheme is being wound up, contain—

(a) provision conferring power on the Regulatory Authority, at times before the period expires, to extend any period specified in the regulations as the period within which a requirement imposed by the regulations must be complied with; and

(b) provision as to the contents of any application for the exercise of such a power and as to the form and manner in which, and the time within which, any such application must be made.

[Note: subsection 3B not in force]

(4) The regulations shall make provision for referring to an employment tribunal any question whether an organisation is such a trade union as is mentioned in subsection (2)(d).

(5) The Secretary of State must make regulations under subsection (1) requiring information about some or all of the transaction costs of a relevant scheme to be given to some or all of the persons mentioned in subsection (2).

(6) The Secretary of State must by regulations make provision requiring the publication of information about—

- (a) some or all of the transaction costs of a relevant scheme, and
- (b) some or all of the administration charges imposed on members of a relevant scheme.

(7) Regulations under subsection (6) may require other relevant information to be published along with information about transaction costs or administration charges in relation to a scheme.

(8) “Other relevant information” means other information which would or may assist in making comparisons between those costs or charges and costs or charges in relation to other schemes.

(9) Before making regulations by virtue of subsection (5) or (6), the Secretary of State must consult—

- (a) the Financial Conduct Authority, and
- (b) the Treasury;

(in addition to any other persons consulted in accordance with section 185(1)).

(10) In this section—

“administration charge” has the meaning given by paragraph 1(5) of Schedule 18 to the Pensions Act 2014;

“relevant scheme” means a money purchase scheme that is an occupational pension scheme.

“relevant scheme” means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits”.

Schedule 2, paragraph 4

Amends section 124 of the Pension Schemes Act 1993 as follows:

124 Duty of Secretary of State to pay unpaid contributions to schemes

(1) If, on an application made to him in writing by the persons competent to act in respect of an occupational pension scheme or a personal pension scheme, the Secretary of State is satisfied -

- (a) that an employer has become insolvent; and
- (b) that at the time he did so there remained unpaid relevant contributions falling to be paid by him to the scheme,

then, subject to the provisions of this section and section 125, the Secretary of State shall pay into the resources of the scheme the sum which in his opinion is payable in respect of the unpaid relevant contributions.

(2) In this section and section 125 "relevant contributions" means contributions falling to be paid by an employer to an occupational pension scheme or a personal pension scheme, either on his own account or on behalf of a worker; and for the purposes of this section a contribution shall not be treated as falling to be paid on behalf of a worker unless a sum equal to that amount has been deducted from the pay of the worker by way of a contribution from him.

(3) Subject to subsection (3A), The sum payable under this section in respect of unpaid contributions of an employer on his own account to an occupational pension scheme or a personal pension scheme shall be the least of the following amounts -

- (a) the balance of relevant contributions remaining unpaid on the date when he became insolvent and payable by the employer on his own account to the scheme in respect of the 12 months immediately preceding that date;
- (b) the amount certified by an actuary to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme to or in respect of the workers of the employer;
- (c) an amount equal to 10 per cent. of the total amount of remuneration paid or payable to those workers in respect of the 12 months immediately preceding the date on which the employer became insolvent.

~~(3A) Where the scheme in question is a money purchase scheme, the sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection~~

(3A) The sum payable under this section by virtue of subsection (3) shall be the lesser of the amounts mentioned in paragraphs (a) and (c) of that subsection in any case where the scheme is—

- (a) a defined contributions scheme,**
- (b) a shared risk scheme under which all the benefits that may be provided are money purchase benefits, or**
- (c) a shared risk scheme under which all the benefits that may be provided are money purchase benefits or collective benefits.**

(4) For the purposes of subsection (3)(c), "remuneration" includes holiday pay, statutory sick pay, statutory maternity pay under Part V of the Social Security Act 1986 or Part XII of the Social Security Contributions and Benefits Act 1992 and any payment such as is referred to in section 184(2) of the Employment Rights Act 1996 .

(5) Any sum payable under this section in respect of unpaid contributions on behalf of a worker shall not exceed the amount deducted from the pay of the worker in respect of the worker's contributions to the scheme during the 12 months immediately preceding the date on which the employer became insolvent.

(6) In this section "on his own account", in relation to an employer, means on his own account but to fund benefits for, or in respect of, one or more workers.

Schedule 2, paragraph 5

Amends section 181 of the Pension Schemes Act 1993 as follows:

181 General interpretation

(1) In this Act, unless the context otherwise requires -

"abolition date" means the day appointed for the commencement of section 15(1) of the Pensions Act 2007;

"age", in relation to any person, shall be construed so that -

(a) he is over or under a particular age if he has or, as the case may be, has not attained that age;

(b) he is between two particular ages if he has attained the first but not the second;

"appropriate scheme" and "appropriate scheme certificate" are to be construed in accordance with section 181A;

"Category A retirement pension" and "Category B retirement pension" mean the retirement pensions of those descriptions payable under Part II of the Social Security Contributions and Benefits Act 1992;

"civil recovery order" means an order under section 266 of the Proceeds of Crime Act 2002 or an order under section 276 imposing the requirement mentioned in section 277(3);

"collective benefit" has the meaning given by section 8 of the Pension Schemes Act 2014;

"contract of service" has the same meaning as in section 122(1) of the Social Security Contributions and Benefits Act 1992;

"contracted-out employment" shall be construed in accordance with section 8;

"contracting-out certificate" and references to a contracted-out scheme and to contracting-out shall be construed in accordance with section 7 and section 181A ;

"contributions equivalent premium" has the meaning given in section 55(2);

"defined benefits scheme" has the meaning given by section 2 of the Pension Schemes Act 2014;

"defined contributions scheme" has the meaning given by section 4 of the Pension Schemes Act 2014;

"earner" and "earnings" shall be construed in accordance with sections 3, 4 and 112 of the Social Security Contributions and Benefits Act 1992;

"earnings factors" shall be construed in accordance with sections 22 and 23 of the Social Security Contributions and Benefits Act 1992;

"employed earner" and "self-employed earner" have the meanings given by section 2 of the Social Security Contributions and Benefits Act 1992;

"employee" means a person gainfully employed in Great Britain either under a contract of service or in an office (including an elective office) with earnings (as defined by section 7 of the Income Tax (Earnings and Pensions) Act 2003);

"employer" means -

(a) in the case of an employed earner employed under a contract of service, his employer;

(b) in the case of an employed earner employed in an office with emoluments -

(i) such person as may be prescribed in relation to that office; or

(ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;

"employment" includes any trade, business, profession, office or vocation and "employed" shall be construed accordingly except in the expression "employed earner";

"Financial Services Compensation Scheme" means the Financial Services Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000.

["the first abolition date" has the meaning given by section 7A;]

"guaranteed minimum pension" has the meaning given section 8(2);

"independent trade union" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992;

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"employment tribunal" means a tribunal established or having effect as if established under section 1(1) of the Employment Tribunals Act 1996;

"HMRC" means the Commissioners for Her Majesty's Revenue and Customs;

"the Inland Revenue" means the Commissioners of Inland Revenue;

"linked qualifying service" has the meaning given in section 179;

"long-term benefit" has the meaning given in section 20(2) of the Social Security Contributions and Benefits Act 1992;

"lower earnings limit" and "upper earnings limit" shall be construed in accordance with section 5 of the Social Security Contributions and Benefits Act 1992 and "current", in relation to those limits, means for the time being in force;

"minimum contributions" shall be construed in accordance with sections 43 to 45;

"minimum payment" has the meaning given in section 8(2);

"modifications" includes additions, omissions and amendments, and related expressions shall be construed accordingly;

"money purchase benefits", in relation to a member of a personal or occupational pension scheme or the widow, widower or surviving civil partner of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which fall within section 181B;

"money purchase contracted-out scheme" is to be construed in accordance with section 181A;

~~"money purchase scheme" means a pension scheme under which all the benefits that may be provided are money purchase benefits;~~

"normal pension age" has the meaning given in section 180;

"occupational pension scheme" has the meaning given in section 1;

"overseas arrangement" means a scheme or arrangement which -

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- (b) is administered wholly or primarily outside Great Britain;
- (c) is not an appropriate scheme; and
- (d) is not an occupational pension scheme;

"pension credit" means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;

"pension debit" means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999;

"pensionable age" -

- (a) so far as any provisions (other than sections 46 to 48) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and
- (b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.

"pensionable service" has the meaning given in section 70(2);

"personal pension scheme" has the meaning given in section 1;

"prescribe" means prescribe by regulations and "prescribed" shall be construed accordingly;

"the preservation requirements" has the meaning given in section 69(2);

"primary Class 1 contributions" and "secondary Class 1 contributions" have the same meanings as in the Social Security Contributions and Benefits Act 1992;

"the principal appointed day" means 6 April 1997 (which is the day designated as the principal appointed day for the purposes of Part 3 of the Pensions Act 1995);

"protected rights" has the meaning given in section 10, as it had effect immediately prior to the abolition date;

"public service pension scheme" has the meaning given in section 1;

"regulations" means regulations made by the Secretary of State under this Act;

"the Regulatory Authority" means the Pensions Regulator;

"resources", in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme;

"rights", in relation to accrued rights (within the meaning of section 73, 136 or 179) or transfer credits, includes rights to benefit and also options to have benefits paid in a particular form or at a particular time;

["salary related contracted-out scheme" is to be construed in accordance with section 7B;]

["the second abolition date" has the meaning given by section 7A;]

"shared risk scheme" has the meaning given by section 3 of the Pension Schemes Act 2014;

"short service benefit" has the meaning given in section 71(2);

"tax week" means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in a leap year, the last two days) being treated accordingly as a separate tax week;

"tax year" means the 12 months beginning with 6th April in any year;

"trade or business", in relation to a public or local authority, includes the exercise and performance of the powers and duties of the authority;

"transfer credits" means rights allowed to an earner under the rules of an occupational pension scheme by reference to -

(a) a transfer to the scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than rights attributable (directly or indirectly) to a pension credit, or

(b) a cash transfer sum paid under Chapter 5 of Part 4 in respect of him, to the trustees or managers of the scheme;

"the upper accrual point" has the meaning given by section 122 of the Social Security Contributions and Benefits Act 1992;

"week" means a period of seven days beginning with Sunday;

"working life", in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with -

(a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or

(b) if earlier, the tax year before the one in which the person dies.

[Note: words in square brackets in force 6 April 2016]

Schedule 2, paragraph 6

Amends section 37 of the Pensions Act 1995 as follows:

37 Payment of surplus to employer

(1) This section applies to a trust scheme if

(a) apart from this section power is conferred on the employer or any other person to make payments to the employer out of funds held for the purposes of the scheme, and

(b) the scheme is not being wound up.

(1A) But this section does not apply in the case of **(a)** any of the payments listed in paragraphs (c) to (f) of section 175 of the Finance Act 2004 (authorised employer payments other than public service scheme payments or authorised surplus payments) **(b) any payments out of funds held for the purposes of providing collective benefits under the scheme (but see section 21 of the Pension Schemes Act 2014).**

Schedule 2, paragraph 8

Amends section 38 of the Pensions Act 1995 as follows:

38 Power to defer winding up

(1) If, apart from this section, the rules of a trust scheme would require the scheme to be wound up, the trustees may determine

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- (a) that the scheme is not for the time being to be wound up but that no new members are to be admitted to it, or
- (b) that the scheme is not for the time being to be wound up but that no new members, except pension credit members, are to be admitted to it.

- (2) Where the trustees make a determination under subsection (1), they may also determine -
- (a) that no further contributions are to be paid towards the scheme (other than those due to be paid before the determination is made) , or
 - (b) that no benefits are to accrue to, or in respect of, members of the scheme;

- (2A) Subsection (2) does not authorise the trustees to determine -
- (a) where there are accrued rights or pension credit rights to any benefit, that the benefit is not to be increased, or
 - (b) where the power conferred by that subsection is exercisable by virtue of a determination under subsection (1)(b), that members of the scheme may not acquire pension credit rights under it.

- (3) This section does not apply to –
- ~~(a) a money purchase scheme,~~ **(a) a scheme under which all the benefits that may be provided are money purchase benefits,** or
 - (b) a scheme falling within a prescribed class or description.

(4) This section also does not apply in relation to a trust scheme where the trustees are required to wind up, or continue the winding up, of the scheme under section 154(1) of the Pensions Act 2004 (requirement to wind up certain schemes with sufficient assets to meet protected liabilities).

Schedule 2, paragraphs 8 & 9

Amends sections 51 & 51A of the Pensions Act 1995 as follows:

51 Annual increase in rate of pension

(1) Subject to subsections (6) and (7) this section applies to a pension under an occupational pension scheme if -

- (a) the scheme -
 - (i) is a registered pension scheme under section 153 of the Finance Act 2004, and
 - (ii) is not a public service pension scheme, and
 - (iii) in the case where the pension becomes a pension in payment on or after the commencement day, ~~is not a money purchase scheme,~~ **is not a defined contributions scheme** and
- (b) the whole, or any part of, the pension is attributable -
 - (i) to pensionable service on or after *the appointed day* [6 April 1997], or
 - (ii) in the case of money purchase benefits where the pension is in payment before the commencement day, to payments in respect of employment carried on or after *the appointed day* [6 April 1997], and
- (c) apart from this section -
 - (i) the annual rate of the pension, or
 - (ii) if only part of the pension is attributable as described in paragraph (b), so much of the annual rate as is attributable to that part,

would not be increased each year by at least the appropriate percentage of that rate.

[Words in italics repealed and substituted by words in square brackets - in force 6 April 2016]

51A Restriction on increase where annuity tied to investments

(1) No increase under section 51 is required to be made, at any time on or after the relevant date, of so much of any pension under a ~~money purchase scheme~~ **defined contributions scheme** as -

- (a) is payable by way of an annuity the amount of which for any year after the first year of payment is determined (whether under the terms of the scheme or under the terms of the annuity contract in pursuance of which it is payable) by reference to fluctuations in the value of, or the return from, particular investments; and
- (c) satisfies such other conditions (if any) as may be prescribed.

(2) For the purposes of this section it shall be immaterial whether the annuity in question is payable out of the funds of the scheme in question or under an annuity contract entered into for the purposes of the scheme.

(3) In this section "the relevant date" means the date appointed for the coming into force of section 51 of the Child Support, Pensions and Social Security Act 2000.

Schedule 2, paragraph 11

Amends section 73 of the Pensions Act 1995 as follows:

73 Preferential liabilities on winding up

(1) This section applies where an occupational pension scheme to which this section applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.

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

- ~~(a) a money purchase scheme, **(a) a scheme under which all the benefits that may be provided are money purchase benefits,** or~~
- ~~(b) a prescribed scheme or a scheme of a prescribed description.~~

(2) This section applies to a pension scheme that is—

- (a) an occupational defined benefits scheme,**
- (b) an occupational shared risk scheme, or**
- (c) an occupational defined contributions scheme,**

unless subsection (2A) provides for the scheme to be exempt.

(2A) A scheme is exempt from this section if it is—

- (a) a scheme under which all the benefits that may be provided are money purchase benefits, or**
- (b) a prescribed scheme or a scheme of a prescribed description.**

Schedule 2, paragraph 12

Amends section 75 of the Pensions Act 1995 as follows:

75 Deficiencies in the assets

~~(1) This section applies in relation to an occupational pension scheme other than a scheme which is—~~

- ~~(a) a money purchase scheme, or~~
- ~~(b) a prescribed scheme or a scheme of a prescribed description.~~

(1) This section applies in relation to a pension scheme that is—

- (a) an occupational defined benefits scheme,**
- (b) an occupational shared risk scheme, or**
- (c) an occupational defined contributions scheme,**

unless subsection (1A) provides for the scheme to be exempt.

1A) A scheme is exempt from this section if it is—

- (a) a scheme under which all the benefits that may be provided**

- are money purchase benefits,
- (b) a scheme under which all the benefits that may be provided are collective benefits,
- (c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or
- (d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

- (a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and
 - (b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),
- the scheme is to be treated for the purposes of this Part as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.

Schedule 2, paragraphs 13 to 14

Amends section 87 of the Pensions Act 1995 as follows:

Schemes providing money purchase benefits

87 Schedules of payments **in respect of money purchase benefits** to money purchase schemes

~~(1) This section applies to an occupational pension scheme which is a money purchase scheme, other than one falling within a prescribed class or description.~~

(1) This section applies to an occupational pension scheme that is a scheme under which —

- (a) all the benefits that may be provided are money purchase benefits, or**
- (b) all the benefits that may be provided are money purchase benefits or collective benefits,**

other than a scheme falling within a prescribed class or description.

(2) The trustees or managers of every occupational pension scheme to which this section applies must secure that there is prepared, maintained and from time to time revised a schedule (referred to in this section and section 88 as a "payment schedule") showing

- (a) the rates of contributions payable towards the scheme by or on behalf of the employer and the active members of the scheme **in respect of money purchase benefits,**
- (b) such other amounts payable towards the scheme as may be prescribed, and
- (c) the dates on or before which payments of such contributions or other amounts are to be made (referred to in those sections as "due dates").

(3) The payment schedule for a scheme must satisfy prescribed requirements.

(4) The matters shown in the payment schedule for a scheme^{3/4}

- (a) to the extent that the scheme makes provision for their determination, must be so determined, and
- (b) otherwise,
 - (i) must be matters previously agreed between the employer and the trustees or managers of the scheme, or
 - (ii) if no such agreement has been made as to all matters shown in the schedule (other than those for whose determination the scheme makes provision), must be matters determined by the trustees or managers of the scheme.

(5) Where in the case of a scheme this section is not complied with

- (b) section 10 applies to any trustee or manager who has failed to take all such steps.

Schedule 2, paragraph 15

Amends section 88 of the Pensions Act 1995 as follows:

88 Schedules of payments to ~~money purchase schemes~~ **in respect of money purchase benefits under certain schemes**: supplementary

(1) Where, in the case of an occupational pension scheme to which section 87 applies^{3/4}

- (a) there is a failure to pay on or before the due date any amounts payable in accordance with the payment schedule, and
- (b) the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions,

they must, except in prescribed circumstances, give notice of the failure to the Authority and to the members of the scheme within a reasonable period after the due date.

(2) Any such amounts which for the time being remain unpaid after that date (whether payable by the employer or not) shall, if not a debt due from the employer to the trustees or managers apart from this subsection, be treated as such a debt.

(3) Where any amounts payable in accordance with the payment schedule by or on behalf of the employer on the employer's own account have not been paid on or before the due date, section 10 applies to the employer.

(4) If, in the case of an occupational pension scheme to which section 87 applies, subsection (1) is not complied with

- (b) section 10 applies to any trustee or manager who has failed to take all such steps.

[(5) Except in prescribed circumstances, any person acting instead of an auditor for the purposes of section 41(2)(b) in relation to an occupational pension scheme to which section 87 applies must, where any amounts payable in accordance with the payment schedule have not been paid on or before the due date, give notice of that fact, within the prescribed period, to the Authority.

(6) Section 10 applies to a person so acting who fails to comply with subsection (5).]

[Note: Words in square brackets not yet in force]

Schedule 2, paragraph 16

Amends section 89 of the Pensions Act 1995 as follows:

89 Application of further provisions to money purchase schemes

(1) In the case of ~~money purchase schemes~~ **schemes under which all the benefits that may be provided are money purchase benefits and that are schemes** falling within a prescribed class or description, regulations may -

- (a) provide for any of the provisions of Part 3 of the Pensions Act 2004 to apply, or apply with prescribed modifications (in spite of anything in that Part), and
- (b) provide for any of the provisions of sections 87 and 88 to apply with prescribed modifications or not to apply, to such extent as may be prescribed.

(2) Regulations may provide for any of the provisions of section 75 to apply, or apply with prescribed modifications, to ~~money purchase schemes~~ **schemes under which all the benefits that may be provided are money purchase benefits** to such extent as may be prescribed (in spite of anything in that section), and the power conferred by this subsection includes power to apply section 75 in circumstances other than those in which the scheme is being wound up or a relevant event occurs (within the meaning of that section).

Schedule 2, paragraph 17

Amends section 124 of the Pensions Act 1995 as follows:

124 Interpretation of Part I

(1) In this Part -

"active member", in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme,

"the actuary" and "the auditor", in relation to an occupational pension scheme, have the meanings given by section 47,

"the Authority" means the Pensions Regulator,

["civil partnership status", in relation to a person, means whether that person has previously formed a civil partnership and, if so, whether that civil partnership has ended],

"collective benefit" has the meaning given by section 8 of the Pension Schemes Act 2014

"the Compensation Board" has the meaning given by section 78(1),

"the compensation provisions" has the meaning given by section 81(3),

"contravention" includes failure to comply,

"deferred member", in relation to an occupational pension scheme, means a person (other than an active or pensioner member) who has accrued rights under the scheme,

"defined benefits scheme" has the meaning given by section 2 of the Pension Schemes Act 2014;

"defined contributions scheme" has meaning given by section 4 of the Pension Schemes Act 2014;

"employer", in relation to an occupational pension scheme, means the employer of persons in the description or category of employment to which the scheme in question relates (but see section 125(3)),

"equal treatment rule" has the meaning given by section 62,

"firm" means a body corporate or a partnership,

"fund manager", in relation to an occupational pension scheme, means a person who manages the investments held for the purposes of the scheme,

"independent trustee" has the meaning given by section 23(3),

"managers", in relation to an occupational pension scheme other than a trust scheme, means the persons responsible for the management of the scheme,

"member", in relation to an occupational pension scheme, means any active, deferred, pensioner or pension credit member (but see section 125(4)),

"normal pension age" has the meaning given by section 180 of the Pension Schemes Act 1993,

"occupational" in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme, means an occupational pension scheme of that description;

"payment schedule" has the meaning given by section 87(2),

"pension credit" means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation,

"pension credit member", in relation to an occupational pension scheme, means a person who has rights under the scheme which are attributable (directly or indirectly) to a pension credit,

"pension credit rights", in relation to an occupational pension scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit,

"pensionable service", in relation to a member of an occupational pension scheme, means service in any description or category of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme,

"pensioner member", in relation to an occupational pension scheme, means a person who in respect of his pensionable service under the scheme or by reason of transfer credits, is entitled to the present payment of pension or other benefits,

"pensions promise" has the meaning given by section 5 of the Pensions Schemes Act 2014;

"prescribed" means prescribed by regulations,

"professional adviser", in relation to a scheme, has the meaning given by section 47,

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"public service pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993,

"regulations" means regulations made by the Secretary of State,

"resources", in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme,

"retirement income" has the meaning given by section 7 of the Pension Schemes Act 2014;

"Scottish partnership" means a partnership constituted under the law of Scotland,

"shared risk scheme" has the meaning given by section 3 of the Pension Schemes Act 2014"

"the Taxes Act 1988" means the Income and Corporation Taxes Act 1988,

"transfer credits" means rights allowed to a member under the rules of an occupational pension scheme by reference to -

(a) a transfer to the scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than pension credit rights, or

(b) a cash transfer sum paid under Chapter 5 of Part 4 of the Pension Schemes Act 1993 (early leavers) in respect of him, to the trustees or managers of the scheme,

"trustees or managers", in relation to an occupational pension scheme, means -

(a) in the case of a trust scheme, the trustees of the scheme, and

(b) in any other case, the managers of the scheme,

"trust scheme" means an occupational pension scheme established under a trust.

[Note: "collective benefit has the meaning given by section 19 of the Pension Scheme Act 2014" is inserted by Schedule 4 of this Bill. Definition of "civil partnership status" repealed in relation to England and Wales only as of 13 March 2014]

Schedule 2, paragraph 18

Amends section 125 of the Pensions Act 1995 as follows:

125: supplementary

(1) For the purposes of this Part, an occupational pension scheme is salary related if -

~~(a) the scheme is not a money purchase scheme,~~ **(a) the scheme is not a scheme under which all the benefits that may be provided are money purchase benefits,**
and

(b) the scheme does not fall within a prescribed class or description,
and "salary related trust scheme" is to be read accordingly.

(2) Regulations may apply this Part with prescribed modifications to occupational pension schemes -

~~(a) which are not money purchase schemes, but~~

~~(b) where some of the benefits that may be provided are money purchase benefits.~~

under which some but not all of the benefits that may be provided are money purchase benefits.

(3) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part the meaning of "employer" to include -

(a) persons who have been the employer in relation to the scheme;

(b) such other persons as may be prescribed

[Note: subsection 3(a) and (b) not in force]

(4) For any of the purposes of this Part, regulations may in relation to occupational pension schemes -

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- (a) extend or restrict the meaning of "member",
- (b) determine who is to be treated as a prospective member, and
- (c) determine the times at which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

Schedule 2, paragraph 19

Amends section 38 the Welfare Reform and Pensions Act 1999 as follows:

38 Treatment in winding up

(2) In the case of an occupational pension scheme which is not a scheme to which this section applies, rights attributable (directly or indirectly) to a pension credit are to be accorded in a winding up the same treatment-

- (a) if they have come into payment, as the rights of a pensioner member, and
- (b) if they have not come into payment, as the rights of a deferred member.

(2A) This section applies to an occupational pension scheme other than-

- ~~(a) a money purchase scheme,~~ **(a) a scheme under which all the benefits that may be provided are money purchase benefits,** or
- (b) a prescribed scheme or a scheme of a prescribed description.

(3) Subsection (2) overrides the provisions of a scheme to the extent that it conflicts with them, and the scheme has effect with such modifications as may be required in consequence.

(4) In subsection (2) -

- (a) "deferred member" and "pensioner member" have the same meanings as in Part I of the Pensions Act 1995,
- (b) "pension credit" includes a credit under Northern Ireland legislation corresponding to section 29(1)(b), and
- (c) references to rights attributable to a pension credit having come into payment are to the person to whom the rights belong having become entitled by virtue of the rights to the present payment of pension or other benefits.

Schedule 2, paragraph 20

Amends section 137A of the Financial Services and Markets Act 2000 as follows:

[Note: section 137FA not in force]

137FA (FCA general rules: disclosure of information about pension scheme transaction costs etc)

(1) The FCA must make general rules requiring information about some or all of the transaction costs of a relevant scheme to be given to some or all of the persons mentioned in subsection (2).

(2) Those persons are -

- (a) members of the scheme,
- (b) spouses or civil partners of members, and
- (c) persons within the application of the scheme and qualifying or prospectively qualifying for its benefits.

(3) The FCA must make general rules requiring the publication of information about—

- (a) some or all of the transaction costs of a relevant scheme, and
- (b) some or all of the administration charges imposed on members of a relevant scheme.

(4) Rules made by virtue of subsection (3) may require other relevant information to be published along with information about transaction costs or administration charges in relation to a scheme.

(5) "Other relevant information" means other information which would or may assist in making comparisons between those costs or charges and costs or charges in relation to other schemes.

(6) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—

- (a) the Secretary of State, and
- (b) the Treasury.

(7) In determining what provision to include in the rules, the FCA must have regard to any regulations about the disclosure or publication of transaction costs or administration charges that are for the time being in force under section 113 of the Pension Schemes Act 1993.

(8) In this section—

"administration charge" has the meaning given by paragraph 1(5) of Schedule 18 to the Pensions Act 2014;

"money purchase benefit" has the meaning given by section 181(1) of the Pension Schemes Act 1993;"

~~"money purchase scheme" has the meaning given by section 181(1) of the Pension Schemes Act 1993;~~

"personal pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993;

"relevant scheme" means a ~~money purchase scheme~~ **scheme under which all the benefits that may be provided are money purchase benefits and** that is—

- (a) a personal pension scheme where direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993) exist in respect of one or more members of the scheme who are workers, or
- (b) a personal pension scheme which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes);

"worker" means a person—

- (a) who is a worker for the purposes of Part 1 of the Pensions Act 2008, or
- (b) to whom a provision of Part 1 of that Act applies as if the person were a worker because of a provision of Chapter 8 of that Part;

but for the purposes of paragraph (b), ignore section 92 of that Act."

Schedule 2, paragraph 22

Amends section 142X of the Financial Services and Markets Act 2000 as follows:

142X Further interpretative provisions for section 142W

(1) The following provisions have effect for the interpretation of section 142W and this section.

(2) "Relevant pension scheme" means an occupational pension scheme that is not a ~~money purchase scheme~~ **scheme under which all the benefits that may be provided are money purchase benefits.**

(3) "Occupational pension scheme" has the meaning given in section 1 of the Pension Schemes Act 1993 or section 1 of the Pension Schemes (Northern Ireland) Act 1993 and, in relation to such a scheme, "member" and "trustees or managers" have the same meaning as in Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995.

(4) ~~Money purchase scheme~~ **"Money purchase benefits"** has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

(5) "Employer", in relation to a relevant pension scheme, means

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- (a) a person who is for the purposes of Part 1 of the Pensions Act 1995 or Part 2 of the Pensions (Northern Ireland) Order 1995 an employer in relation to the scheme, and
- (b) any other person who has or may have any liability under the scheme.

(6) "Employment" has the meaning given in section 181(1) of the Pension Schemes Act 1993 or section 176(1) of the Pension Schemes (Northern Ireland) Act 1993.

(7) "Pension liabilities" means liabilities attributable to or associated with the provision under a relevant pension scheme of pensions or other benefits.

(8) "The court" means

- (a) in relation to England and Wales or Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Court of Session.

Schedule 2, paragraph 24

Amends section 13 of the Pensions Act 2004 as follows:

New powers in respect of occupational and personal pension schemes

13 Improvement notices

(1) If the Regulator is of the opinion that a person

- (a) is contravening one or more provisions of the pensions legislation, or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

it may issue a notice (an "improvement notice") to that person directing him to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of the contravention.

(2) An improvement notice must

- (a) state that the Regulator is of that opinion and specify the provision or provisions of the pensions legislation in question,
- (b) contain a statement of the matters which it is asserted constitute the contravention and of the evidence on which that opinion is based, and
- (c) in respect of each step specified in the notice, state the period (being a period of not less than 21 days beginning with the date of the notice) within which it must be complied with.

(3) Directions in an improvement notice

- (a) may be framed to any extent by reference to a code of practice issued by the Regulator under section 90, and
- (b) may be framed so as to afford the person to whom the notice is issued a choice between different ways of remedying or preventing the recurrence of the contravention.

(4) Directions in an improvement notice may be expressed to be conditional on compliance by a third party with a specified direction, or specified directions, contained in a notice under section 14 (third party notices).

(5) An improvement notice may direct the person to whom it is issued to inform the Regulator, within such period as may be specified in the notice, of how he has complied, or is complying, with the notice.

(6) Where a contravention of a provision of the pensions legislation consists of a failure to take action within a time limit, for the purposes of this section the contravention continues until such time as the action is taken.

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(7) In this section "pensions legislation" means any enactment contained in or made by virtue of

- (a) the Pension Schemes Act 1993 (c. 48),
- (b) Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment),
- (c) Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), ~~or~~
- (d) this Act; **or**
- (f) the Pension Schemes Act 2014.**

(8) If the trustees or managers of an occupational or personal pension scheme fail to comply with an improvement notice issued to them, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(9) That section also applies to any other person who, without reasonable excuse, fails to comply with an improvement notice issued to him.

Schedule 2, paragraph 25

Amends section 17 of the Pensions Act 2004 as follows:

17 Power of the Regulator to recover unpaid contributions

(1) Where any employer contribution payable towards an occupational or personal pension scheme is not paid on or before its due date, the Regulator may, on behalf of the trustees or managers of the scheme, exercise such powers as the trustees or managers have to recover that contribution.

(2) For the purposes of subsection (1), any employer contribution payable towards a personal pension scheme which is not paid on or before its due date is, if not a debt due from the employer to the trustees or managers apart from this subsection, to be treated as if it were such a debt.

(3) In this section
"due date"

- (a) in relation to employer contributions payable towards an occupational pension scheme in accordance with a schedule of contributions under section 227, has the same meaning as in section 228,
- (b) in relation to employer contributions payable in accordance with a payment schedule under section 87 of the Pensions Act 1995 (c. 26) (schedules of payments ~~to money purchase schemes~~ **in respect of money purchase benefits under certain schemes**), has the meaning given by subsection (2)(c) of that section, and
- (c) in relation to employer contributions payable towards a personal pension scheme, has the same meaning as in section 111A of the Pension Schemes Act 1993 (c. 48) (monitoring of employer payments to personal pension schemes);
- (d) in relation to employer contributions payable under a public service pension scheme, the date on which the contributions are due under the scheme];

"employer contribution"

- (a) in relation to an occupational pension scheme, means any contribution payable by or on behalf of the employer towards the scheme in accordance with a schedule of contributions under section 227 of this Act or a payment schedule under section 87 of the Pensions Act 1995 (c. 26) (schedules of payments ~~to money purchase schemes~~ **in respect of money purchase benefits under certain schemes**) whether
 - (i) on the employer's own account (but in respect of one or more employees),
 - or
 - (ii) on behalf of an employee out of deductions from the employee's earnings,and
- (b) in relation to a personal pension scheme, means any contribution payable towards the scheme under direct payment arrangements;

(c) in relation to a public service pension scheme, means any contributions payable under the scheme by the employer].

[N.B. words in square brackets not in force]

Schedule 2, paragraph 26

Amends section 23 of the Pensions Act 2004 as follows:

23 Freezing orders

(1) This section applies to an occupational pension scheme ~~which is not a money purchase scheme unless~~ **it is excluded by subsection (1A).**

(1A) A scheme is excluded if -

(a) all the benefits that may be provided under the scheme are money purchase benefits, and

(b) the scheme does not provide for there to be a third party promise about the rate or amount of any benefit at a time before the benefit comes into payment (see subsection (10A)).

(2) The Regulator may make a freezing order in relation to ~~such a scheme~~ **a scheme to which this section applies** if and only if -

(a) the order is made pending consideration being given to the making of an order in relation to the scheme under section 11(1)(c) of the Pensions Act 1995 (c. 26) (power to wind up schemes where necessary to protect the generality of members), and

(b) the Regulator is satisfied that -

- (i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and
- (ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of section 132) in relation to the scheme (see section 135(11)).

(3) A freezing order is an order directing that during the period for which it has effect -

(a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and

(b) winding up of the scheme may not begin.

(4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect -

(a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;

(b) a direction that -

- (i) no further contributions or payments, or
- (ii) no further specified contributions or payments, are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;

(c) a direction that any amount or any specified amount which -

- (i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under paragraph (b), and
- (ii) has been deducted from a payment of any earnings in respect of an employment, is to be repaid to the member in question by the employer;

(d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;

(e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;

(f) a direction that -

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- (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or
 - (ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;
- (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 93A of the Pension Schemes Act 1993 (c. 48) (salary related schemes: right to statement of entitlement);
- (h) a direction that -
- (i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or
 - (ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.
- (5) In subsection (4)(b) -
- (a) the references to contributions do not include contributions due to be paid before the order takes effect, and
 - (b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- (6) A freezing order may not contain a direction under subsection (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.
- (7) A direction under subsection (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.
- (8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.
- (9) A freezing order containing such a requirement must specify -
- (a) the date by reference to which the assets and liabilities are to be valued,
 - (b) the assets and liabilities which are to be taken into account,
 - (c) the manner in which the valuation must be prepared,
 - (d) the information and statements which it must contain, and
 - (e) any other requirements that the valuation must satisfy.
- (10) For the purposes of subsection (8) -
- "an actuarial valuation" means a written valuation of the scheme's assets and liabilities prepared and signed by the actuary;
- "the actuary" means -
- (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or
 - (b) if no such actuary has been appointed -
 - (i) a person with prescribed qualifications or experience, or
 - (ii) a person approved by the Secretary of State.
- (10A) For the purposes of subsection (1A)(b), a scheme provides for there to be a third party promise if the scheme—**
- (a) requires the promise to be obtained from a third party[, or**

(b) provides for the member to be given the option of requiring a promise to be obtained from a third party (whether or not the option is subject to conditions)].

(11) In this section "specified" means specified in the freezing order.

Schedule 2, paragraph 27

Amends section 38 of the Pensions Act 2004 as follows:

38 Contribution notices where avoidance of employer debt

~~(1) This section applies in relation to an occupational pension scheme other than~~

~~(a) a money purchase scheme, **(a) a scheme under which all the benefits that may be provided are money purchase benefits,** or~~

~~(b) a prescribed scheme or a scheme of a prescribed description.~~

(1) This section applies in relation to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),

the scheme is to be treated for the purposes of this section and sections 38A to 42 as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.

(2) The Regulator may issue a notice to a person stating that the person is under a liability to pay the sum specified in the notice (a "contribution notice")

(a) to the trustees or managers of the scheme, or

(b) where the Board of the Pension Protection Fund has assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 (pension protection), to the Board.

(3) The Regulator may issue a contribution notice to a person only if

(a) the Regulator is of the opinion that the person was a party to an act or a deliberate failure to act which falls within subsection (5),

(b) the person was at any time in the relevant period—

(i) the employer in relation to the scheme, or

(ii) a person connected with, or an associate of, the employer,

(c) the Regulator is of the opinion that the person, in being a party to the act or failure, was not acting in accordance with his functions as an insolvency practitioner in relation to another person, and

(d) the Regulator is of the opinion that it is reasonable to impose liability on the person to pay the sum specified in the notice, having regard to

(i) the extent to which, in all the circumstances of the case, it was reasonable for the person to act, or fail to act, in the way that the person did, and

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(ii) such other matters as the Regulator considers relevant, including (where relevant) the matters falling within subsection (7).

(4) But the Regulator may not issue a contribution notice, in such circumstances as may be prescribed, to a person of a prescribed description.

(5) An act or a failure to act falls within this subsection if

- (a) the Regulator is of the opinion that the material detriment test is met in relation to the act or failure (see section 38A) or that the main purpose or one of the main purposes of the act or failure was
 - (i) to prevent the recovery of the whole or any part of a debt which was, or might become, due from the employer in relation to the scheme under section 75 of the Pensions Act 1995 (c. 26) (deficiencies in the scheme assets), or
 - (ii) to prevent such a debt becoming due, to compromise or otherwise settle such a debt, or to reduce the amount of such a debt which would otherwise become due,
- (b) it is an act which occurred, or a failure to act which first occurred
 - (i) on or after 27th April 2004, and
 - (ii) before any assumption of responsibility for the scheme by the Board in accordance with Chapter 3 of Part 2, and
- (c) it is either
 - (i) an act which occurred during the period of six years ending with the giving of a warning notice in respect of the contribution notice in question, or
 - (ii) a failure which first occurred during, or continued for the whole or part of, that period.

(6) For the purposes of subsection (3)

- (a) the parties to an act or a deliberate failure include those persons who knowingly assist in the act or failure, and
- (b) "the relevant period" means the period which
 - (i) begins with the time when the act falling within subsection (5) occurs or the failure to act falling within that subsection first occurs, and
 - (ii) ends with the giving of a warning notice in respect of the contribution notice in question.

(7) The matters within this subsection are

- (a) the degree of involvement of the person in the act or failure to act which falls within subsection (5),
- (b) the relationship which the person has or has had with the employer (including, where the employer is a company within the meaning of subsection (11) of section 435 of the Insolvency Act 1986 (c. 45), whether the person has or has had control of the employer within the meaning of subsection (10) of that section),
- (c) any connection or involvement which the person has or has had with the scheme,
- (d) if the act or failure to act was a notifiable event for the purposes of section 69 (duty to notify the Regulator of certain events), any failure by the person to comply with any obligation imposed on the person by subsection (1) of that section to give the Regulator notice of the event,
- (e) all the purposes of the act or failure to act (including whether a purpose of the act or failure was to prevent or limit loss of employment),
- (ea) the value of any benefits which directly or indirectly the person receives, or is entitled to receive, from the employer or under the scheme;
- (eb) the likelihood of relevant creditors being paid and the extent to which they are likely to be paid;
- (f) the financial circumstances of the person, and
- (g) such other matters as may be prescribed.

(7A) In subsection (7)(eb) "relevant creditors" means

- (a) creditors of the employer, and

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(b) creditors of any other person who has incurred a liability or other obligation (including one that is contingent or otherwise might fall due) to make a payment, or transfer an asset, to the scheme.

(8) For the purposes of this section references to a debt due under section 75 of the Pensions Act 1995 (c. 26) include a contingent debt under that section.

(9) Accordingly, in the case of such a contingent debt, the reference in subsection (5)(a)(ii) to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or (b) of that Act upon which the debt is contingent.

(10) For the purposes of this section

(a) section 249 of the Insolvency Act 1986 (connected persons) applies as it applies for the purposes of any provision of the first Group of Parts of that Act,

(b) section 435 of that Act (associated persons) applies as it applies for the purposes of that Act, and

(c) section 74 of the Bankruptcy (Scotland) Act 1985 (c. 66) (associated persons) applies as it applies for the purposes of that Act.

(11) For the purposes of this section "insolvency practitioner", in relation to a person, means

(a) a person acting as an insolvency practitioner, in relation to that person, in accordance with section 388 of the Insolvency Act 1986, or

(b) an insolvency practitioner within the meaning of section 121(9)(b) (persons of a prescribed description).

(12) Subsection (13) applies if the Regulator is of the opinion that

(a) a person was a party to a series of acts or failures to act,

(b) each of the acts or failures in the series falls within subsection (5)(b) and (c), and

(c) the material detriment test is met in relation to the series, or the main purpose or one of the main purposes of the series was as mentioned in subsection (5)(a)(i) or (ii).

(13) The series of acts or failures to act is to be regarded as an act or failure to act falling within subsection (5) (and, accordingly, the reference in subsection (6)(b)(i) to the act or failure to act falling with subsection (5) is to the first of the acts or failures to act in the series).

(14) In this section "a warning notice" means a notice given as mentioned in section 96(2)(a).

Schedule 2, paragraph 28

Amends section 43 of the Pensions Act 2004 as follows:

43 Financial support directions

~~(1) This section applies in relation to an occupational pension scheme other than—~~

~~(a) a money purchase scheme, **(a) a scheme under which all the benefits that may be provided are money purchase benefits,** or~~

~~(b) a prescribed scheme or a scheme of a prescribed description.~~

(1) This section applies in relation to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

- (b) a scheme under which all the benefits that may be provided are collective benefits,
- (c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or
- (d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

- (a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and
 - (b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),
- the scheme is to be treated for the purposes of this section and sections 43A to 51 as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.

Schedule 2, paragraph 29

Amends section 52 of the Pensions Act 2004 as follows:

52 Restoration orders where transactions at an undervalue

~~(1) This section applies in relation to an occupational pension scheme other than—~~

- ~~(a) a money purchase scheme, **(a) a scheme under which all the benefits that may be provided are money purchase benefits,** or~~
- ~~(b) a prescribed scheme or a scheme of a prescribed description.~~

(1) This section applies in relation to a pension scheme that is—

- (a) an occupational defined benefits scheme,**
- (b) an occupational shared risk scheme, or**
- (c) an occupational defined contributions scheme,**

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

- (a) a scheme under which all the benefits that may be provided are money purchase benefits,**
- (b) a scheme under which all the benefits that may be provided are collective benefits,**
- (c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or**
- (d) a prescribed scheme or a scheme of a prescribed description.**

(1B) Where—

- (a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and**
 - (b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),**
- the scheme is to be treated for the purposes of this section and sections 53 to 56 as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.**

Schedule 2, paragraph 30

Amends section 90 of the Pensions Act 2004 as follows:

90 Codes of practice

(1) The Regulator may issue codes of practice

- (a) containing practical guidance in relation to the exercise of functions under the pensions legislation, and**
- (b) regarding the standards of conduct and practice expected from those who exercise such functions.**

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(2)The Regulator must issue one or more such codes of practice relating to the following matters

- (a)what constitutes a "reasonable" period for the purposes of any provision of the pensions legislation (other than any enactment contained in or made by virtue of Part 2) which requires any action to be taken within such a period;
- (aa)the circumstances in which the Regulator expects to issue contribution notices under section 38 as a result of being of the opinion that the material detriment test is met in relation to an act or failure;
- (b)the discharge of the duty imposed by section 69 (duty to notify Regulator of certain events);
- (c)the discharge of the duty imposed by section 70 (duty to report breaches of the law);
- (d)the discharge of duties imposed on trustees or managers of occupational pension schemes by, or by virtue of, Part 3 (scheme funding);
- (e)the discharge of the duties imposed by sections 241 and 242 (member-nominated trustees and directors);
- (f)the obligations imposed by sections 247 and 248 (requirements for knowledge and understanding: individual and corporate trustees);
- (g)the discharge of the duty imposed by section 49(9)(b) of the Pensions Act 1995 (c. 26) (duty of trustees or managers of occupational pension schemes to report material failures by employers to pay contributions deducted from employee's earnings timeously);
- (h)the discharge of the duties imposed by sections 67 to 67I of that Act (the subsisting rights provisions);
- (i)the discharge of the duty imposed by section 88(1) of that Act (duties of trustees and managers of ~~money purchase schemes~~ **certain schemes** to report failures to pay employer contributions etc timeously);
- (j)the discharge of the duty imposed by section 111A(7A) of the Pension Schemes Act 1993 (c. 48) (duty of trustees or managers of personal pension schemes to report material failures to pay employer contributions timeously);
- (k)such other matters as are prescribed for the purposes of this section.

(3)The Regulator may from time to time revise the whole or any part of a code of practice issued under this section and issue that revised code.

(4)A failure on the part of any person to observe any provision of a code of practice does not of itself render that person liable to any legal proceedings.

This is subject to section 13(3)(a) and (8) (power for improvement notice to direct that person complies with code of practice and civil penalties for failure to comply).

(5)A code of practice issued under this section is admissible in evidence in any legal proceedings and, if any provision of such a code appears to the court or tribunal concerned to be relevant to any question arising in the proceedings, it must be taken into account in determining that question.

(6)In this section

"legal proceedings" includes proceedings of the Pensions Ombudsman, proceedings of the Ombudsman for the Board of the Pension Protection Fund and proceedings of the Board of the Pension Protection Fund under section 207 or 208; and

"the pensions legislation" means any enactment contained in or made by virtue of

- (a)the Pension Schemes Act 1993 (c. 48),
- (b)Part 1 of the Pensions Act 1995 (c. 26), other than sections 62 to 66A of that Act (equal treatment),
- (c)Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), or
- (d)this Act.

(7)Sections 91 and 92 make provision about the procedure to be followed when a code of practice is issued or revoked.

Schedule 2, paragraph 31

Amends section 126 of the Pensions Act 2004 as follows:

126 Eligible schemes

~~(1) Subject to the following provisions of this section, in this Part references to an "eligible scheme" are to an occupational pension scheme which—
(a) is not a money purchase scheme, and
(b) is not a prescribed scheme or a scheme of a prescribed description.~~

(1) Subject to the following provisions of this section, in this Part references to an "eligible scheme" are to a pension scheme that is—

- (a) an occupational defined benefits scheme,**
- (b) an occupational shared risk scheme, or**
- (c) an occupational defined contributions scheme.**

(1A) A scheme is not an eligible scheme if it is—

- (a) a scheme under which all the benefits that may be provided are money purchase benefits,**
- (b) a scheme under which all the benefits that may be provided are collective benefits,**
- (c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or**
- (d) a prescribed scheme or a scheme of a prescribed description.**

(1B) Where—

- (a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and**
- (b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),**

the scheme is to be treated for the purposes of this Part as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.

Schedule 2, paragraph 32

Amends section 221 of the Pensions Act 2004 as follows:

Part 3 Scheme Funding

Introductory

~~221 Pension schemes to which this Part applies~~

~~(1) The provisions of this Part apply to every occupational pension scheme other than—
(a) a money purchase scheme, or
(b) a prescribed scheme or a scheme of a prescribed description.~~

221 Pension schemes to which this Part applies

(1) The provisions of this Part apply to a pension scheme that is—

- (a) an occupational defined benefits scheme,**
- (b) an occupational shared risk scheme, or**
- (c) an occupational defined contributions scheme,**

unless subsection (2) provides for the scheme to be exempt.

(2) A scheme is exempt from this Part if it is—

- (a) a scheme under which all the benefits that may be provided are money purchase benefits,
- (b) a scheme under which all the benefits that may be provided are collective benefits,
- (c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or
- (d) a prescribed scheme or a scheme of a prescribed description.

(3) Where—

- (a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and
- (b) the scheme does not fall within paragraph (c) or (d) of subsection (2),

the scheme is to be treated for the purposes of this Part as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.

(4) Regulations under subsection (2)(d) may provide for exemptions from all or any of the provisions of this Part, but for the purposes of subsection (3)(b) a scheme falls within subsection (2)(d) only if it is exempt from all of the provisions of this Part.

Schedule 2, paragraph 33

Amends section 254 of the Pensions Act 2004 as follows:

254 Representative of non-European scheme to be treated as trustee

(1) In the case of an occupational pension scheme that has its main administration outside the EEA states, a reference in pensions legislation to the trustees, or a trustee, of the scheme includes a person who is for the time being appointed by the trustees of the scheme to be a representative of the scheme for the purposes of this section.

(2) Subsection (1) does not apply to a prescribed reference.

(3) In subsection (1) "pensions legislation" means any enactment contained in or made by virtue of

- (a) the Pension Schemes Act 1993 (c. 48),
- (b) the Pensions Act 1995,
- (c) Parts 1 to 4 of the Welfare Reform and Pensions Act 1999 (c. 30), or
- (d) this Act, **or**
- (e) **the Pension Schemes Act 2014.**

Schedule 2, paragraph 34

Amends section 258 of the Pensions Act 2004 as follows:

258 Form of protection

(1) In a case where section 257 applies, it is a condition of the employee's contract of employment with the transferee that the requirements in subsection (2) or the requirement in subsection (3) are complied with.

(2) The requirements in this subsection are that -

- (a) the transferee secures that, as from the relevant time, the employee is, or is eligible to be, an active member of an occupational pension scheme in relation to which the transferee is the employer, and
- (b) in a case where the scheme is a ~~money purchase scheme~~ **scheme under which all the benefits that may be provided are money purchase benefits**, as from the relevant time -

- (i) the transferee makes relevant contributions to the scheme in respect of the employee, or
 - (ii) if the employee is not an active member of the scheme but is eligible to be such a member, the transferee would be required to make such contributions if the employee were an active member, and
- (c) in a case where the scheme is not a ~~money purchase scheme~~, **scheme under which all the benefits that may be provided are money purchase benefits** as from the relevant time the scheme -
- (i) satisfies the statutory standard referred to in section 12A of the Pension Schemes Act 1993 (c. 48), or
 - (ii) *if regulations so provide, complies with such other requirements as may be prescribed* [complies with prescribed requirements].

[N.B. Words in italics repealed and substituted by words in square brackets – in force 6 April 2016]

Schedule 2, paragraph 35

Amends section 286 of the Pensions Act 2004 as follows:

286 Financial assistance scheme for members of certain pension schemes

(1) The Secretary of State must make provision, by regulations, for a scheme for making payments to, or in respect of, qualifying members of qualifying pension schemes ("the financial assistance scheme").

(1A) The Secretary of State must, in particular, make provision for securing that (subject to any relevant restriction) the aggregate amount of -

- (a) any annual payment payable to a qualifying member of such a scheme, and
 - (b) the member's actual pension (if any),
- is not less than 80% of the member's expected pension, irrespective of the date of his attaining normal retirement age (or the date when he would have attained that age if he dies before attaining it).

(1B) A "relevant restriction" means any provision of the regulations which -

- (a) operates to restrict the amount of an annual payment by means of a cap on the product of the calculation of a specified fraction of the member's expected pension, or
- (b) provides for an annual payment not to be payable where the member's actual pension exceeds any specified amount.

(1C) Regulations under subsection (1) may prescribe circumstances in which subsection (1A) does not apply.

(2) For the purposes of this section -

"actual pension" and "expected pension", in relation to a qualifying member of a qualifying pension scheme, mean the amounts which, in accordance with regulations under subsection (1), are to be taken into account as the member's actual pension and expected pension, respectively, in determining the amount of any annual payment payable to the member;

"annual payment" has the meaning given by regulations under subsection (1);

"qualifying member", in relation to a qualifying pension scheme, means a person who, at such time as may be prescribed, is a member of the scheme or has ceased to be a member of the scheme, and in respect of whom prescribed conditions are satisfied at such time as may be prescribed;

"qualifying pension scheme" means an occupational pension scheme (including such a scheme which has been fully wound up) -

- (a) which, at such time as may be prescribed, is not -
 - (i) ~~a money purchase scheme~~, **a scheme under which all the benefits that may be provided are money purchase benefits**, or
 - (ii) a scheme of a prescribed description,

- (b) the winding up of which began, subject to any prescribed exception, during the prescribed period ending immediately before the day appointed under section 126(2),
- (c) the employer in relation to which satisfies such conditions as may be prescribed at such time as may be prescribed, and
- (d) prescribed details of which have been notified to such person as may be prescribed by a person of a prescribed description -
 - (i) in the prescribed form and manner, and
 - (ii) before the prescribed date;

Schedule 2, paragraph 36

Amends section 291 of the Pensions Act 2004 as follows:

291 Duty of trustees or managers to act consistently with law of host member State

(1) Where the trustees or managers of an occupational pension scheme receive contributions to the scheme from a European employer, the trustees or managers must ensure that the scheme, so far as it relates to members who are or have been employed by the employer, is operated in a way which is consistent with the requirements of the social and labour law of the host EEA state .

(2) Regulations may modify any provision of pensions legislation in its application to members of an occupational pension scheme in respect of which the employer is a European employer.

(3) If the trustees or managers of a scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

(4) In this section "pensions legislation" means

- (a) the Pension Schemes Act 1993 (c. 48),
- (b) Part 1 of the Pensions Act 1995, other than sections 62 to 66A of that Act (equal treatment),
- (c) Part 1 or section 33 of the Welfare Reform and Pensions Act 1999 (c. 30), or
- (d) this Act, **or**
- (e) the Pension Schemes Act 2014.**

Schedule 2, paragraph 37

Amends section 307 of the Pensions Act 2004 as follows:

307 Modification of this Act in relation to certain categories of schemes

(1) Regulations may modify any of the provisions mentioned in subsection (2) as it applies in relation to -

- (a) hybrid schemes;
- (b) multi-employer schemes;
- (c) any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme.

(2) The provisions referred to in subsection (1) are those of -

- (a) Part 1 (the Pensions Regulator),
- (b) Part 2 (the Board of the Pension Protection Fund), other than Chapter 1,
- (ba) Part 3 (scheme funding),
- (c) sections 257 and 258 (pension protection),
- (d) sections 259 and 261 (consultation by employers),
- (e) section 286 (financial assistance scheme for members of certain pension schemes), and
- (f) Part 7 (cross-border activities within European Union).

(3) Regulations may also modify any of the provisions of Part 2 as it applies in relation to an eligible scheme in respect of which a relevant public authority has -

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- (a) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme rules or any member of the scheme, or
- (b) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities.

(4) In this section -

"eligible scheme" has the meaning given by section 126;

"hybrid scheme" means an occupational pension scheme -

~~(a) which is not a money purchase scheme,~~ **(a) which is not a scheme under which all the benefits that may be provided are money purchase benefits,** but

(b) where some of the benefits that may be provided are -

(i) money purchase benefits attributable to voluntary contributions of the members, or

(ii) other money purchase benefits;

"multi-employer scheme" means an occupational pension scheme in relation to which there is more than one employer;

"relevant public authority" means -

(a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)),

(b) a government department (including any body or authority exercising statutory functions on behalf of the Crown), or

(c) the Scottish Ministers.

Schedule 2, paragraph 38

Amends section 318 of the Pensions Act 2004 as follows:

318 General interpretation

(1) In this Act, unless the context otherwise requires -

"active member" has the meaning given by section 124(1) of the Pensions Act 1995 (c. 26);

"the Board" has the meaning given by section 107;

"collective benefit" has the meaning given by section 8 of the Pension Schemes Act 2014"

"contravention" includes failure to comply;

"defined benefit scheme", has the meaning given by section 2 of the Pension Schemes Act 2014;

"defined contributions scheme", has the meaning given by section 4 of the Pension Schemes Act 2014;

"direct payment arrangements", in relation to a personal pension scheme, has the same meaning as in section 111A of the Pension Schemes Act 1993 (c. 48);

"earnings" has the meaning given by section 181(1) of the Pension Schemes Act 1993;

"employee" has the meaning given by section 181(1) of the Pension Schemes Act 1993;

"employer" -

(a) in relation to an occupational pension scheme, means the employer of persons in the description of employment to which the scheme in question relates (but see subsection (4)), and

(b) in relation to a personal pension scheme, where direct payment arrangements exist in respect of one or more members of the scheme who are employees, means an employer with whom those arrangements exist;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

"managers", in relation to an occupational or personal pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;

"member", in relation to an occupational pension scheme, means any active, deferred, pensioner or pension credit member within the meaning of section 124(1) of the Pensions Act 1995 (c. 26) (but see subsection (5));

"modifications" includes additions, omissions and amendments, and related expressions are to be construed accordingly;

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"money purchase benefit" has the meaning given by section 181(1) of the Pension Schemes Act 1993 (c. 48);

~~"money purchase scheme" has the meaning given by section 181(1) of the Pension Schemes Act 1993;~~

"occupational", in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme, means an occupational pension scheme of that description;

"occupational pension scheme" has the meaning given by section 1 of the Pension Schemes Act 1993;

"shared risk scheme" has the meaning given by section 3 of the Pension Schemes Act 2014;

(2) In this Act, unless the context otherwise requires, references to the scheme rules, in relation to an occupational pension scheme, are references to

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes).

(3) For the purposes of subsection (2)

(a) "relevant legislative provision" means any provision contained in any of the following provisions

- (i) Schedule 5 to the Social Security Act 1989 (c. 24) (equal treatment for men and women);
- (ii) **Chapter 2 or 3 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under either of those Chapters;**
- (iia) **Chapter 1 or 2 of Part 4ZA of that Act (transfers and contribution refunds) or regulations made under either of those Chapters;** ~~Chapters 2 to 5 of Part 4 of the Pension Schemes Act 1993 (c. 48) (certain protection for early leavers) or regulations made under any of those Chapters;~~
- (iii) Part 4A of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
- (iv) section 110(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);
- (v) Part 1 of the Pensions Act 1995 (c. 26) (occupational pensions) or subordinate legislation made or having effect as if made under that Part;
- (vi) section 31 of the Welfare Reform and Pensions Act 1999 (c. 30) (pension debits: reduction of benefit);
- (vii) any provision mentioned in section 306(2) of this Act;
- (viii) **regulations made under Part 2 of the Pension Schemes Act 2014;**

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions

- (i) paragraph 3 of Schedule 5 to the Social Security Act 1989 (c. 24);
- (ii) section 129(1) of the Pension Schemes Act 1993;
- (iii) section 117(1) of the Pensions Act 1995;
- (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
- (v) section 306(1) of this Act
- (vi) **regulations made under section 34 of the Pension Schemes Act 2014.**

(4) Regulations may, in relation to occupational pension schemes, extend for the purposes of Parts 1, 2 and 4 to 7 and this Part the meaning of "employer" to include

- (a) persons who have been the employer in relation to the scheme;
- (b) such other persons as may be prescribed.

- (5) Regulations may for any purpose of any provision of this Act
- (a) prescribe the persons who are to be regarded as members or prospective members of an occupational or personal pension scheme, and
 - (b) make provision as to the times at which and circumstances in which a person is to be treated as becoming, or as ceasing to be, such a member or prospective member.
- (6) A scheme which would otherwise fall within the definition of "public service pension scheme" in subsection (1) does not fall within that definition if
- (a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act 2013), or
 - (b) it is specified in an order made by the Secretary of State after consulting the Treasury.

Schedule 2, paragraphs 40 to 49

Amends sections 20 to 38 of the Pensions Act 2008 as follows:

20 Quality requirement: UK ~~money purchase schemes~~ **occupational defined contributions schemes**

- (1) ~~A money purchase scheme~~ **An occupational defined contributions scheme** that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme
- (a) the jobholder's employer must pay contributions in respect of the jobholder;
 - (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
 - (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.
- (3) A scheme does not fail to satisfy the quality requirement under this section merely because the trustees or managers of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

21 Quality requirement: UK defined benefits schemes

- (1) Subject to subsection (3), a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment.
- (2) ~~A defined benefits scheme~~ **An occupational defined benefits scheme** that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder who is not in contracted-out employment if it satisfies the test scheme standard in relation to that jobholder.
- (3) The Secretary of State may by order provide that a scheme does not satisfy the quality requirement in relation to a jobholder who is in contracted-out employment unless it satisfies the test scheme standard in relation to that jobholder, with the substitution of a higher fraction, not exceeding 1/80th, for the fraction of 1/120th in section 23(4)(a).
- (4) In relation to any scheme, a jobholder is in contracted-out employment for the purposes of this section and section 22 if a certificate has been issued in respect of the jobholder under section 7(1) of the Pension Schemes Act 1993 (c. 48) stating that the employment of the jobholder is contracted-out employment by reference to the scheme.

[[A defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the test scheme standard in relation to that jobholder.]

[N.B. Words in italics substituted by the words in square brackets – in force 16 April 2016]

22 Test scheme standard

(1) A scheme satisfies the test scheme standard in relation to a jobholder (J) if the pensions to be provided for the relevant members of the scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.

(2) Subject to subsection (3), the relevant members are J and

(a) if J is not in contracted-out employment, all active members who are not in contracted-out employment and are jobholders of the same employer as J;

(b) if J is in contracted-out employment, all active members who are in contracted-out employment and are jobholders of the same employer as J.

[(2) Subject to subsection (3), the relevant members are J and all active members who are jobholders of the same employer as J.]

(3) In applying this section the pensions to be provided for relevant members must be considered as a whole.

(4) The Secretary of State may by regulations make provision for the manner of, and criteria for, determining whether the pensions to be provided for the relevant members under a scheme are broadly equivalent to, or better than, the pensions which would be provided for them under a test scheme.

(5) Regulations under subsection (4) may provide for the determination to be made in accordance with guidance issued from time to time by the Secretary of State.

(6) The Secretary of State may by regulations provide that a scheme only satisfies the test scheme standard if the scheme actuary certifies that it does.

(7) Except in prescribed circumstances, the scheme actuary is the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme.

(8) In the case of a scheme under which a sum of money is made available for the provision of benefits to a relevant member, references in this section to pensions are to be read as references to such sums.

[N.B. Words in italics substituted by the words in square brackets – in force 16 April 2016]

23 Test scheme

(1) A test scheme is an occupational pension scheme which satisfies

(a) the requirement in subsection (2),

(b) the requirement in subsection (4) or requirements prescribed under subsection (6) (as appropriate), and

(c) any further requirements that are prescribed.

(2) The scheme must either

(a) provide for a member to be entitled to a pension commencing at the appropriate age and continuing for life, or

(b) provide for a sum of money to be made available for the provision of benefits to a member commencing at the appropriate age and continuing for life.

(3) The appropriate age is 65 or any higher age prescribed.

(4) In the case of a scheme that provides entitlement to a pension as mentioned in subsection

(2)(a), the annual rate of the pension at the appropriate age must be

(a) $\frac{1}{120}$ th of average qualifying earnings in the last three tax years preceding the end of pensionable service,
multiplied by

(b) the number of years of pensionable service, up to a maximum of 40.

(5) Section 13(1) (qualifying earnings) applies for the purposes of subsection (4) as if the reference to a pay reference period were a reference to a tax year.

(6) In the case of a scheme that provides for a sum of money to be made available as mentioned in subsection (2)(b), regulations must prescribe requirements relating to that sum.

23A Alternative quality requirements for UK defined benefits schemes

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(1) The Secretary of State may by regulations provide that a ~~defined benefits scheme~~ **an occupational defined benefits scheme** that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if any one or more of the following is satisfied

- (a) the scheme is of a prescribed description and satisfies the quality requirement under section 20 in relation to that jobholder;
- (b) the cost of providing the benefits accruing for or in respect of the relevant members over a relevant period would require contributions to be made of a total amount equal to at least a prescribed percentage of the members' total relevant earnings over that period;
- (c) in the case of each of at least 90% of the relevant members, the cost of providing the benefits accruing for or in respect of the member over a relevant period would require contributions to be made of a total amount equal to at least a prescribed percentage of the member's total relevant earnings over that period.

(2) For this purpose

"contributions" means contributions to the scheme by, or on behalf or in respect of, a relevant member;

"relevant earnings" means earnings of a prescribed description;

"relevant members" means members of the scheme of a prescribed description;

"relevant period" means a period specified in or determined in accordance with the regulations.

(3) A percentage prescribed under subsection (1)(b) or (c) must be at least 8%.

(4) Regulations under subsection (1)(b) or (c) may make provision

- (a) about how to calculate whether the requirement is satisfied, including provision requiring the calculation to be made in accordance with prescribed methods or assumptions;
- (b) requiring benefits of a prescribed description to be disregarded in determining whether the requirement is satisfied;
- (c) that a scheme only satisfies the requirement if the scheme actuary certifies that it does; and for this purpose "scheme actuary" has the prescribed meaning.

(5) Section 13(3) (meaning of "earnings") applies for the purposes of this section as it applies for the purposes of that section.

(6) The Secretary of State must from time to time review any regulations in force under subsection (1).

(7) A review must be carried out

- (a) during 2017, and
- (b) after that, no more than three years after the completion of the previous review.

[N.B. Section 23A not yet in force]

24 Quality requirement: UK ~~hybrid schemes~~ **shared risk schemes**

(1) A ~~hybrid scheme~~ **A shared risk scheme** that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies the requirements mentioned in whichever of these is the appropriate paragraph

- (a) the requirements for a ~~money purchase scheme~~ **an occupational defined contributions scheme** under section 20, subject to any prescribed modifications;
- (b) the requirements for a ~~defined benefits scheme~~ **an occupational defined benefits scheme** under sections 21 to 23 [23A], subject to any prescribed modifications.

(c) the requirements under section 26 for a personal pension scheme that is a defined contributions scheme, subject to any prescribed modifications.

(2) Which paragraph of subsection (1) is appropriate for any ~~hybrid scheme~~ **shared risk scheme** is to be determined by rules made by the Secretary of State.

(3) The rules may provide for different paragraphs to be appropriate for different provisions of a scheme.

(4) The rules may provide for the paragraphs to be appropriate as alternatives, for any scheme or any provisions of a scheme.

[Note: in subsection 1(b) reference to "23" repealed and subsequent reference in square brackets substituted by Pensions Act 2014 – not in force]

25 Quality requirement: non-UK occupational pension schemes

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of an occupational pension scheme within section 18(b) or (c).

26 Quality requirement: UK personal pension schemes

(1) This section applies to a personal pension scheme **that is a defined contributions scheme** if the operation of the scheme

(a) is carried on in such a way as to be a regulated activity for the purposes of the Financial Services and Markets Act 2000 (c. 8), and

(b) is carried on in the United Kingdom by a person who is in relation to that activity an authorised person or an exempt person under section 19 of that Act.

(2) The scheme satisfies the quality requirement in relation to a jobholder if the following conditions are satisfied.

~~(3) The first condition is that all of the benefits that may be provided to the jobholder under the scheme are money purchase benefits.~~

(4) The ~~second condition~~ **first condition** is that, in relation to the jobholder, there is an agreement between the provider of the scheme and the employer under which

(a) the employer must pay contributions in respect of the jobholder;

(b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

(5) In subsection (6), "shortfall" means the difference (if any) between

(a) the employer's contribution in respect of the jobholder under the agreement referred to in subsection (4), and

(b) 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.

(6) The ~~third condition~~ **second condition** is that if there is a shortfall there is an agreement between the provider of the scheme and the jobholder under which the jobholder must pay contributions which, however calculated, are equal to or more than the shortfall.

(7) The ~~fourth condition~~ **third condition** is that, in relation to the jobholder, there are direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the jobholder and the employer.

(9) A scheme does not fail to satisfy the quality requirement under this section merely because the provider of the scheme may on any occasion refuse to accept a contribution below an amount prescribed for the purposes of this section on the grounds that it is below that amount.

27 Quality requirement: other personal pension schemes

The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of a personal pension scheme to which section 26 does not apply.

28 Certification that quality requirement or alternative requirement is satisfied

(1) The Secretary of State may by regulations provide that, subject to provision within subsection (6)(f), a scheme to which this section applies is to be taken to satisfy the relevant quality requirement in relation to each of an employer's relevant jobholders if a certificate given in accordance with the regulations is in force in relation to the employer.

(1A) In this section

(a) "relevant jobholder" means a jobholder to whom the certificate in question applies;

(b) a reference to a scheme includes a reference to part of a scheme.

(2) The certificate must state

(a) that, in relation to relevant jobholders of the employer who are active members of the scheme, the scheme is in the opinion of the person giving the certificate able to satisfy the relevant quality requirement throughout the certification period, or

(b) that, in relation to those jobholders, the scheme is in that person's opinion able to satisfy a prescribed alternative requirement throughout the certification period.

(2A) Alternative requirements must be such that, assuming all jobholders to be active members of schemes to which this section applies, for at least 90% of jobholders

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- (a) employer contributions, and
- (b) total contributions,

would be likely to be no less if every scheme satisfied an alternative requirement applicable to it than if every scheme satisfied the relevant quality requirement.

(2B) In subsection (2A)

"alternative requirement" means a requirement prescribed under subsection (2)(b);

"employer contributions", in relation to an active member of a scheme, means the amount of contributions that have to be paid under the scheme in respect of the member by the employer;

"total contributions", in relation to an active member of a scheme, means the total amount of contributions that have to be paid under the scheme in respect of the member by the employer and by the member.

(2C) The Secretary of State

- (a) must apply the test in subsection (2A) when regulations under subsection (2)(b) are first made, and

- (b) must carry out subsequent reviews of whether the test continues to be satisfied.

A review under paragraph (b) must be carried out during 2017, and after that each review must be completed no more than three years after the completion of the previous one.

(3) This section applies to

- ~~(a) a money purchase scheme~~ **an occupational defined contributions scheme** to which section 20 applies;

- (b) a personal pension scheme **that is a defined contributions scheme** to which section 26 applies;

- ~~(c) a hybrid scheme, to the extent that requirements within section 24(1)(a) apply.~~

- (c) a shared risk scheme, to the extent that requirements within section 24(1)(a) or (c) apply.**

(3A) This section also applies to

- ~~(a) a money purchase scheme that is an occupational pension scheme within section 18(b)~~ **an occupational defined contributions scheme that is within section 18(b)**;

- (b) a personal pension scheme of a prescribed description for which provision is made under section 27;

- ~~(c) a hybrid scheme that is an occupational pension scheme within section 18(b), to the extent prescribed~~ **an occupational shared risk scheme that is within section 18(b), to the extent prescribed.**

[(3B) This section also applies to ~~a defined benefits scheme~~ **an occupational defined benefits scheme** that has its main administration in the United Kingdom and is of a description prescribed under section 23A(1)(a).]

(4) The "relevant quality requirement"

- (a) for a scheme within subsection (3)(a), means the quality requirement under section 20;

- (b) for a scheme within subsection (3)(b), means the quality requirement under section 26;

- (c) for a scheme within paragraph (c) of subsection (3), means the requirements mentioned in that paragraph

- (d) for a scheme within subsection (3A), means a prescribed requirement.

- [(e) for a scheme within subsection (3B), means the quality requirement under section 23A(1)(a)].

(5) Regulations may make further provision in relation to certification under this section.

(6) Regulations may in particular make provision

- (a) as to the period for which a certificate is in force (the "certification period");

- (b) as to the persons by whom a certificate may be given;

- (c) as to procedures in connection with certification or where a certificate has been given;

- (d) requiring persons to have regard to guidance issued by the Secretary of State;

- (e) requiring an employer to calculate the amount of contributions that a scheme, and any contribution agreements, required to be paid by or in respect of any relevant jobholder in the certification period;

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- (f) as to cases where the requirements of a scheme, and any contribution agreements, as to payment of contributions by or in respect of relevant jobholders of an employer did not satisfy prescribed conditions.
- (7) Provision within subsection (6)(f) includes in particular provision for a scheme not to be treated by virtue of regulations under this section as having satisfied the relevant quality requirement unless prescribed steps are taken (which may include the making of prescribed payments).
- (8) In subsection (6) "contribution agreements" means
- (a) the agreement required, in the case of a scheme within subsection (3)(b), by section 26(4) and any agreement required, in the case of such a scheme, by section 26(6), or
 - (b) any agreement of the same or a similar kind that is required, in the case of a scheme within subsection (3A)(b), by regulations under section 27.
- (9) The Secretary of State may by order repeal this section.

[Note: Words in square brackets at (3B) and (4)(e) not in force]

Transitional

~~29 Transitional periods for money purchase and personal pension schemes~~ **Transitional periods for certain schemes**

- (1) During the first transitional period for money purchase and personal pension schemes
- (a) sections 20(1)(b) and 26(4)(b) have effect as if for "3%" there were substituted "1%";
 - (b) sections 20(1)(c) and 26(5)(b) have effect as if for "8%" there were substituted "2%".
- (2) The first transitional period is a prescribed period of at least one year, beginning with the coming into force of section 20.
- (3) During the second transitional period for money purchase and personal pension schemes
- (a) sections 20(1)(b) and 26(4)(b) have effect as if for "3%" there were substituted "2%";
 - (b) sections 20(1)(c) and 26(5)(b) have effect as if for "8%" there were substituted "5%".
- (4) The second transitional period is a prescribed period of at least one year, beginning with the end of the first transitional period.

~~30 Transitional period for defined benefits and hybrid schemes~~ **shared risk schemes**

- (1) Subsection (3) applies if, in relation to a person who on the employer's first enrolment date is a jobholder to whom section 3 applies, the conditions in subsection (2) are satisfied, and continue to be satisfied during the transitional period for defined benefits and ~~hybrid schemes~~ **shared risk schemes**.
- (2) The conditions are that
- (a) the jobholder has been employed by the employer for a continuous period beginning before the employer's first enrolment date,
 - (b) at a time in that period before the employer's first enrolment date, the jobholder became entitled to become an active member of ~~a defined benefits scheme or a defined member of a hybrid scheme~~ **an occupational defined benefits scheme or a defined benefits member of a shared risk scheme**,
 - (c) the jobholder is, and has always since that time been, entitled to become an active member of ~~a defined benefits scheme or a defined benefits members of a hybrid scheme~~ **an occupational defined benefits scheme or a defined benefits member of a shared risk scheme**, and
 - (d) the scheme to which that entitlement relates is a qualifying scheme, and any scheme to which it has related on or after the employer's first enrolment date has been a qualifying scheme.
- (3) If by the end of the prescribed period the employer has given the jobholder notice that the employer intends to defer automatic enrolment until the end of the transitional period for defined benefits and ~~hybrid schemes~~ **shared risk schemes**, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection-

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"(2) The employer must make prescribed arrangements by which the jobholder becomes
~~(a) an active member, with effect from the end of the transitional period for defined benefits and hybrid schemes, of an automatic enrolment scheme which is a defined benefits scheme or—~~
~~(b) a defined benefits member, with effect from the end of that period, of an automatic enrolment scheme which is a hybrid scheme.~~
(a) an active member, with effect from the end of the transitional period for defined benefits and shared risk schemes, of an automatic enrolment scheme which is an occupational defined benefits scheme, or
(b) a defined benefits member, with effect from the end of that period, of an automatic enrolment scheme which is a shared risk scheme."

[A reference in this subsection to a scheme does not include a scheme to which section 30(11)(a) or (b) applies.]

(4) If a notice is given under subsection (3) and at any later time in the transitional period for defined benefits and ~~hybrid schemes~~ **shared risk schemes** the condition in subsection (2)(c) or (d) of this section ceases to be satisfied, subsection (5) applies instead of subsection (3) (and the day after the last day on which that condition is satisfied is referred to as "the closure date").

(5) Where this subsection applies, section 3 has effect in relation to the jobholder with the substitution for subsection (2) of the following subsection

(2)"The employer must make prescribed arrangements by which the jobholder either
(a) becomes an active member, with effect from the closure date, of an automatic enrolment scheme which is a ~~defined benefits scheme~~ **an occupational defined benefits scheme** [other than a scheme to which section 30(11)(a) applies], or
(aa) becomes a defined benefits member, with effect from the closure date, of an automatic enrolment scheme which is a ~~hybrid scheme~~ **shared risk scheme** [other than a scheme to which section 30(11)(b) applies],
~~(b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a money purchase scheme or personal pension scheme."~~
(b) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is—

(i) a personal pension scheme other than a shared risk scheme, or

(ii) an occupational pension scheme under which all the benefits that may be provided are money purchase benefits or collective benefits;

(c) becomes a money purchase member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a ~~hybrid scheme~~ **shared risk scheme;**

(d) becomes an active member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a ~~defined benefits scheme~~ **an occupational defined benefits scheme** to which section 30(11)(a) applies, or

(e) becomes a defined benefits member, with effect from the automatic enrolment date, of an automatic enrolment scheme which is a ~~hybrid scheme~~ **shared risk scheme** to which section 30(11)(b) applies."

[Note: the words in square brackets are not in force]

(6) If the jobholder becomes a member of a scheme under arrangements made under subsection (2)(b) of that section (as substituted by subsection (5))

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- (a) the employer's contributions are payable with effect from the automatic enrolment date;
- (b) any requirement of the scheme for contributions to be payable by the jobholder does not apply in respect of the period of the jobholder's membership before the closure date;
- (c) regulations made for the purposes of section 3(2)(b) must secure that the jobholder may pay, within a period prescribed by the regulations, any contributions which would have been payable by the jobholder but for paragraph (b) of this subsection.

(7) Where subsection (3) or (5) of this section applies

(a) section 3(3) and (4) apply as if references to the automatic enrolment date were references to the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder

(b) section 4 applies as if

- (i) the reference in subsection (1) to the employer's staging date were a reference to the employer's first enrolment date;
- (ii) in that subsection, for "the workers's automatic enrolment date is the deferral date" there were substituted "the day with effect from which arrangements fall to be made by virtue of section 30 in respect of the jobholder is changed to the deferral date";
- (iii) in subsections (4) to (6), references to the starting day were references to the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder.

[(c) section 5(2) does not apply in relation to an automatic re-enrolment date that falls before the day with effect from which arrangements would by virtue of this section fall to be made in respect of the jobholder].

[Note: under subsection (7)(c) the words in square brackets are not in force]

(7A) The Secretary of State may by regulations make provision about the form and content of a notice under subsection (3).

(8) The transitional period for defined benefits and ~~hybrid schemes~~ **shared risk schemes** is a prescribed period beginning with the day on which section 3 comes into force.

(9) In this section, the "employer's first enrolment date" means the first day on which section 3 applies in the case of the employer (where that day falls within the transitional period for defined benefits and ~~hybrid schemes~~ **shared risk schemes**).

(10) For the purposes of this section

(a) a person is a "money purchase member" of a ~~hybrid scheme~~ **shared risk scheme** if

- (i) the person is an active member of the scheme, and
- (ii) all the benefits accruing in respect of his or her membership are money purchase benefits, and

(b) a person is a "defined benefits member" of a ~~hybrid scheme~~ **shared risk scheme** if the person is an active member of the scheme other than a money purchase member.

(11) In subsection (2) references to a scheme do not include

(a) a ~~defined benefits scheme~~ **an occupational defined benefits scheme** that satisfies the quality requirement in relation to the jobholder by reason only of section 23A(1)(a), or

(b) a ~~hybrid scheme~~ **shared risk scheme** if

- (i) the appropriate paragraph of section 24(1) for any provisions of the scheme is paragraph (b) (those provisions are referred to below as "the defined benefits section"),
- (ii) the defined benefits section satisfies section 23A(1)(a) as applied by section 24(1)(b), and

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(iii) the defined benefits section does not satisfy any of the other requirements mentioned in section 24(1)(b).

[Note: subsections (10) and (11) not in force]

Miscellaneous

31 Effect of freezing order or assessment period

(1) Where a jobholder is an active member of a qualifying scheme and a freezing event occurs in relation to the scheme, the jobholder does not, for the purposes of this Chapter, cease to be an active member of the scheme, and the scheme does not, for those purposes, cease to be a qualifying scheme, by virtue of any relevant provision.

(2) Where a worker is an active member of a scheme that satisfies the requirements of section 9 and a freezing event occurs in relation to the scheme, the worker does not, for the purposes of section 9(1)(c), cease to be an active member of the scheme by virtue of any relevant provision.

(3) In this section

"freezing event" in relation to a scheme means

(a) the making of a freezing order under section 23 of the Pensions Act 2004 (c. 35) in relation to the scheme, or

(b) the beginning of an assessment period within the meaning of section 132 of that Act in relation to the scheme;

"relevant provision" means

(a) in relation to a freezing order, provision contained in the order, or the provision made with respect to the order by section 23 of the Pensions Act 2004;

(b) in relation to an assessment period, the provision made with respect to the period by section 133 of that Act.

32 Power of trustees or managers to modify by resolution

(1) The trustees or managers of an occupational pension scheme may by resolution modify the scheme

(a) with a view to enabling the scheme to comply with the conditions in section 17(2), or

(b) by increasing the amount required to be paid in contributions, in order for the scheme to satisfy

(i) the requirements contained in section 20(1),

(ii) those requirements as modified under section 24(1)(a), or

(iii) a requirement prescribed under section 28(2)(b).

(2) An increase under subsection (1)(b) may be made only

(a) by increasing the amount of any contribution, directly or by modifying the basis on which it is calculated, or

(b) by increasing the frequency of any contributions.

(3) No modification may be made by virtue of subsection (1) without the consent of the employer in relation to the scheme.

(4) In the application of subsection (3) to a scheme in relation to which there is more than one employer, references to the employer have effect as if they were references to a person nominated by the employers, or by the scheme, to act as the employers' representative for the purposes of this section or, if no such nomination is made, to all of the employers.

(5) Regulations may provide that this section does not apply to occupational pension schemes within a prescribed class or description.

33 Deduction of contributions

(1) An employer who arranges for a person to become a member of a scheme in accordance with section 3(2), 5(2) or 7(3), or of an occupational pension scheme in accordance with section 9(2), may deduct the person's contributions to the scheme from the person's remuneration and pay them to the trustees or managers of the scheme (in the case of an occupational pension scheme) or the provider of the scheme (in the case of a personal pension scheme).

(2) Regulations prescribing arrangements for the purposes of section 3(2), 5(2), 7(3) or 9(2), may require the employer to make such a deduction or payment at any time on or after the

date with effect from which the jobholder is to become an active member of a scheme under the arrangements.

Chapter 2 Compliance

Effect of failure to comply

34 Effect of failure to comply

(1) Contravention of any of the employer duty provisions does not give rise to a right of action for breach of statutory duty.

(2) But nothing in the employer duty provisions or this Chapter affects any right of action arising apart from those provisions.

(3) In this Chapter, references to the employer duty provisions are references to any provision of sections 2 to 11 or of regulations under those sections.

Compliance notices and unpaid contributions notices

35 Compliance notices

(1) The Regulator may issue a compliance notice to a person if the Regulator is of the opinion that the person has contravened one or more of the employer duty provisions.

(2) A compliance notice is a notice directing the person to whom it is issued to take, or refrain from taking, the steps specified in the notice in order to remedy the contravention.

(3) A compliance notice may, in particular

(a) state the period within which any step must be taken or must cease to be taken;

(b) require the person to whom it is issued to provide within a specified period specified information relating to the contravention;

(c) require the person to inform the Regulator, within a specified period, how the person has complied or is complying with the notice;

(d) state that, if the person fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.

(4) The steps specified in the notice may, in particular, include such steps as the Regulator thinks appropriate for placing the worker in the same position (as nearly as possible) as if the contravention had not occurred.

(5) If the compliance notice is issued in respect of a failure to comply with an enrolment duty and the specified steps relate to membership of ~~a defined benefits scheme or a hybrid scheme~~ **an occupational defined benefits scheme or a shared risk scheme**, the notice may, in particular, require the employer to ensure that the worker is entitled to the same benefits under the scheme as if the employer had complied with that duty.

36 Third party compliance notices

(1) The Regulator may issue a third party compliance notice if it is of the opinion that

(a) a person has contravened one or more of the employer duty provisions,

(b) the contravention is or was, wholly or partly, a result of a failure of another person (the "third party") to do any thing, and

(c) that failure is not itself a contravention of any of the employer duty provisions.

(2) A third party compliance notice is a notice directing the third party to take, or refrain from taking, the steps specified in the notice in order to remedy or prevent a recurrence of the failure.

(3) A third party notice may, in particular

(a) state the period within which any step must be taken or must cease to be taken;

(b) require the third party to inform the Regulator, within a specified period, how the third party has complied or is complying with the notice;

(c) state that, if the third party fails to comply with the requirements of the notice, the Regulator may issue a fixed penalty notice under section 40.

(4) A third party notice may give the third party a choice between different ways of remedying or preventing the recurrence of the third party's failure.

37 Unpaid contributions notices

(1) The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date.

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(2) An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of relevant contributions that have not been paid.

(3) "Due date" has the meaning prescribed.

(4) An unpaid contributions notice may, in particular

- (a) specify the scheme to which the contributions are due;
- (b) specify the workers, or category of workers, in respect of whom the contributions are due;
- (c) state the period in respect of which the contributions are due;
- (d) state the due date in respect of the contributions;
- (e) require the employer to take such other steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate;
- (f) state that if the employer fails to comply with the notice, the Regulator may issue a fixed penalty notice under section 40.

(5) In this section, "employer" in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

38 Calculation and payment of contributions

(1) This section applies to

- (a) a compliance notice issued to an employer in respect of a contravention of section 2(1) or a failure to comply with an enrolment duty;
- (b) an unpaid contributions notice.

(2) The notice may, in particular, include

- (a) a requirement to calculate the amount of relevant contributions that are of a description specified in the notice ("unpaid relevant contributions");
- (b) if the contributions are being paid within the prescribed period after the appropriate date, a requirement to pay an amount equal to the amount of unpaid relevant contributions within section 39(2)(a);
- (c) if the contributions are not being paid within the prescribed period after the appropriate date, a requirement to pay (on the employer's own account) an amount equal to the amount of unpaid relevant contributions;
- (d) if paragraph (b) applies, a requirement to ensure
 - (i) that the worker is not required to pay an amount equal to the balance of the unpaid relevant contributions during the prescribed period, and
 - (ii) that, if the worker chooses to pay that amount, it may be paid in instalments;
- (e) if the contributions are payable to ~~a money purchase scheme, a hybrid scheme or a personal pension scheme~~ **defined contributions scheme or a shared risk scheme**, a requirement to pay interest on the amount required by the notice to be paid in respect of unpaid relevant contributions, at a rate and in respect of a period determined in accordance with regulations.

(3) The Secretary of State may by regulations make provision about the way in which the Regulator may (without prejudice to subsection (2)(a)) estimate the amount of contributions that an employer has failed to pay on behalf or in respect of a worker.

(4) Regulations under subsection (3) may include, in particular, provision about the sources of information that the Regulator may use in estimating that amount, other than information provided by the employer.

(5) In this section, "appropriate date" means

- (a) in the case of a compliance notice, such date as may be specified in the notice;
- (b) in the case of an unpaid contributions notice, the due date within the meaning of section 37(3).

(6) In this section, "employer" in relation to a worker means the person by whom the worker is or, if the employment has ceased, was employed.

Schedule 2, paragraph 50

Amends section 99 of the Pensions Act 2008 as follows:

99 Interpretation of Part
In this Part

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"active member"

(a) in relation to an occupational pension scheme, means a person who is in pensionable service under the scheme;

(b) in relation to a personal pension scheme, means a jobholder in relation to whom there is an agreement within section 26(4) between the provider of the scheme and the employer or (where section 9 applies) a worker in relation to whom there are direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993 (c. 48)) between the worker and the employer;

"automatic enrolment scheme" is to be read in accordance with section 3(8);

"average salary benefits" means benefits the rate or amount of which is calculated by reference to the average salary of a member over the period of service on which the benefits are based;

"contract of employment" has the meaning given by section 88;

~~"defined benefits", in relation to a member of an occupational pension scheme, means benefits which are not money purchase benefits (but the rate or amount of which is calculated by reference to earnings or service of the member or any other factor other than an amount available for their provision);~~

~~"defined benefits scheme" means an occupational pension scheme under which all the benefits that may be provided are defined benefits;~~

"defined benefits scheme" has the meaning given by section 2 of the Pension Schemes Act 2014;

"defined contributions scheme" has the meaning given by section 4 of the Pension Schemes Act 2014;

"employer", "employment" and related expressions have the meaning given by section 88;

"enrolment duty" means a duty under section 3(2), 5(2), 7(3) or 9(2);

~~"hybrid scheme" means an occupational pension scheme which is neither a defined benefits scheme nor a money purchase scheme;~~

the "IORP Directive" means Directive 2003/41/EC of the European Parliament and of the Council on the activities and supervision of institutions for occupational retirement provision;

"jobholder" has the meaning given by section 1(1);

"money purchase benefits", in relation to a member of a pension scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which fall within section 99A ;

~~"money purchase scheme" means an occupational pension scheme under which all the benefits that may be provided are money purchase benefits;~~

"occupational pension scheme" has the meaning given by section 18;

"occupational", in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme, means an occupational pension scheme of that description;

"pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act 1993 (c. 48);

"pensionable age" has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995 (c. 26);

"pensionable service", in relation to a member of an occupational pension scheme, means service in any description of employment to which the scheme relates which qualifies the member (on the assumption that it continues for the appropriate period) for pension or other benefits under the scheme;

"personal pension scheme" has the meaning given by section 19;

"prescribed" means prescribed by regulations;

"provider"

(a) in relation to a personal pension scheme to which section 26 applies, means the person referred to in subsection (1)(b) of that section;

(b) in relation to any other personal pension scheme, has the meaning prescribed;

"qualifying earnings" has the meaning given by section 13;

"qualifying scheme" is to be read in accordance with section 2(5);

"regulations" means regulations made by the Secretary of State;

"shared risk scheme" has the meaning given by section 3 of the Pension Schemes Act 2014;

"the Regulator" means the Pensions Regulator;

"tax year" means the 12 months beginning with 6th April in any year;

"trustee or manager"

(a) in relation to England and Wales or Scotland, is to be construed in accordance with section 178 of the Pension Schemes Act 1993 (c. 48) (trustees and managers of schemes: interpretation);

(b) in relation to Northern Ireland, is to be construed in accordance with section 173 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) (trustees or managers of schemes);

"worker" has the meaning given by section 88.

Schedule 2, paragraph 51

Amends Schedule 17 of the Pensions Act 2014 as follows:

Regulations providing for transfer of cash equivalent of transferable benefits

1(1) The Secretary of State must make regulations with a view to ensuring that, where a qualifying member of an automatic transfer scheme has transferable benefits under another pension scheme, the cash equivalent of the transferable benefits—

(a) is transferred to the automatic transfer scheme, and

(b) is used to provide rights for the member under it.

(2) In this Schedule "automatic transfer scheme" means—

(a) a work-based pension scheme, other than a scheme of a prescribed description, which is registered under Chapter 2 of Part 4 of the Finance Act 2004 and is a ~~money purchase scheme~~, **scheme under which all the benefits that may be provided are money purchase benefits**, or

(b) a pension scheme of a prescribed description.

(3) In this Schedule "qualifying member", in relation to an automatic transfer scheme, means an active member of the scheme of a prescribed description.

(4) For the purposes of this Schedule a person has transferable benefits under a pension scheme if—

(a) the scheme is a transferable benefits scheme,

(b) the person is a member of the scheme,

(c) contributions to the scheme by, or on behalf or in respect of, the member have ceased,

(d) the member has accrued rights to benefits under the applicable rules,

(e) all of those rights accrued on or after the prescribed date (which may be a date before the coming into force of this paragraph),

(f) the cash equivalent of those benefits is less than the prescribed amount (but not nil), and

(g) any other prescribed conditions are met.

(5) In this Schedule "transferable benefits scheme" means—

(a) a work-based pension scheme, other than a scheme of a prescribed description, which is registered under Chapter 2 of Part 4 of the Finance Act 2004 and is a ~~money purchase scheme~~ **scheme under which all the benefits that may be provided are money purchase benefits**, or

(b) a pension scheme of a prescribed description.

(6) In sub-paragraph (4)—

"the applicable rules"—

(a) in relation to an occupational pension scheme, has the meaning given by section 94(2) of the Pension Schemes Act 1993;

(b) in relation to a personal pension scheme, means the rules of the scheme;

“benefits” means—

- (a) money purchase benefits other than money purchase benefits of a prescribed description, or
- (b) benefits of a prescribed description.

Interpretation etc

15(1) In this Schedule—

“active member”—

- (a) in relation to an occupational pension scheme, has the meaning given by section 124(1) of the Pensions Act 1995, and
- (b) in relation to a personal pension scheme, means a member of the scheme in respect of whom contributions are being paid into the scheme;

“automatic transfer scheme” has the meaning given by paragraph 1(2);

“managers”, in relation to a pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;

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

~~“money purchase scheme” has the meaning given by section 181(1) of the Pension Schemes Act 1993;~~

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“pension scheme” means—

- (a) an occupational pension scheme, or
- (b) a personal pension scheme;

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993;

“prescribed” means prescribed by regulations made by the Secretary of State;

“qualifying member” has the meaning given by paragraph 1(3);

“the Regulator” means the Pensions Regulator;

“transferable benefits”, and references to a person having transferable benefits, are to be read in accordance with paragraph 1(4);

“transferable benefits scheme” has the meaning given by paragraph 1(5);

“transfer notice” means a notice given under regulations made because of paragraph 3;

“work-based pension scheme” means—

- (a) an occupational pension scheme,
- (b) a personal pension scheme where direct payment arrangements (within the meaning of section 111A of the Pension Schemes Act 1993) exist in respect of one or more members of the scheme who are workers, or
- (c) a personal pension scheme which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes);

“worker” means a person—

- (a) who is a worker for the purposes of Part 1 of the Pensions Act 2008, or
- (b) to whom a provision of Part 1 of that Act applies as if the person were a worker because of a provision of Chapter 8 of that Part;

but for the purposes of paragraph (b), ignore section 92 of that Act.

Schedule 3 – PENSIONS GUIDANCE

Schedule 3, paragraph 2

Amends the Financial Services and Markets Act 2000 to insert a new Part 20A after section 333 as follows:

Part 20A
Pensions guidance

333A Introduction and definitions

- (1) This Part is about the giving of pensions guidance**
- (2) “Pensions guidance” means guidance given for the purpose of helping a member of a pension scheme to make decisions about what to do with the flexible benefits that may be provided to the member.**
- (3) In this Part—**
 - “flexible benefit” has the meaning given by section 72 of the Pension Schemes Act 2014;**
 - “pensions guidance” has the meaning given by subsection (2);**
 - “pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993.**

Giving of pensions guidance

333B Treasury’s role in relation to pensions guidance

- (1) The Treasury must take such steps as they consider appropriate to ensure that people have access to pensions guidance.**
- (2) The Treasury may—**
 - (a) seek to increase awareness of the availability of the guidance;**
 - (b) undertake or commission research relating to the giving of the guidance.**

333C Giving of pensions guidance

- (1) The bodies listed in subsection (2) are to give pensions guidance in accordance with arrangements made with the Treasury.**
- (2) Those bodies are—**
 - (a) the Pensions Advisory Service Limited;**
 - (b) the National Association of Citizens Advice Bureaux;**
 - (c) the Scottish Association of Citizens Advice Bureaux;**
 - (d) the Northern Ireland Association of Citizens Advice Bureaux.**
- (3) The bodies listed in subsection (2) may give pensions guidance by arranging for it to be given by another person (including another listed body).**
- (4) The National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux and the Northern Ireland Association of Citizens Advice Bureaux may jointly carry out their functions of giving pensions guidance.**
- (5) The Treasury may by regulations repeal one or more of paragraphs (a) to (d) of subsection (2).**
- (6) Regulations under subsection (5) may make consequential amendments of this Act.**

333D Financial assistance to bodies involved in giving pensions guidance

- (1) The Treasury may make grants or loans or give any other form of financial assistance to—**
 - (a) the Pensions Advisory Service Limited;**
 - (b) the Northern Ireland Association of Citizens Advice Bureaux.**
- (For the power to make grants to the National Association of Citizens Advice Bureaux and the Scottish Association of Citizens Advice Bureaux see section 40A of the Consumers, Estate Agents and Redress Act 2007.)**

- (2) Any grant, loan or other form of financial assistance under subsection (1)—
- (a) is to be made or given for the purpose of enabling the body to carry out its functions under section 333C(1), and
 - (b) may be made or given subject to such other terms as the Treasury consider appropriate.

Designation of guidance providers

333E Designation of providers of pensions guidance

- (1) In this Part “designated guidance provider” means—
- (a) the Pensions Advisory Service Limited,
 - (b) the National Association of Citizens Advice Bureaux,
 - (c) the Scottish Association of Citizens Advice Bureaux,
 - (d) the Northern Ireland Association of Citizens Advice Bureaux, or
 - (e) a person designated by the Treasury as someone who must, in giving pensions guidance, comply with standards set by the FCA under section 333H.
- (2) Before designating a person under subsection (1)(e), the Treasury must—
- (a) consult the FCA,
 - (b) notify the person to be designated, and
 - (c) consider any representations made.
- (3) The Treasury may revoke a designation under subsection (1)(e).
- (4) The Treasury must give notice in writing of a designation under subsection (1)(e) or the revocation of a designation under subsection (3) to the person designated or (as the case may be) the person whose designation has been revoked.
- (5) The Treasury must send a copy of a notice given under subsection (4) to—
- (a) all other designated guidance providers, and
 - (b) the FCA.
- (6) The Treasury must from time to time publish, in such manner as they consider appropriate, a list of the persons who are designated under subsection (1)(e).

Co-operation and information sharing

333F Co-operation and information sharing

- (1) The following must co-operate with one another in matters relating to the giving of pensions guidance—
- (a) each designated guidance provider;
 - (b) the Treasury.
- (2) Designated guidance providers and the Treasury may share information for the purposes of subsection (1).

False claims when giving pensions guidance

333G Offence of falsely claiming to be giving pensions guidance under Treasury arrangements

(1) It is an offence for a person who is not giving pensions guidance under arrangements made with the Treasury—

- (a) to describe himself (in whatever terms) as a person who is doing so, or
- (b) to behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is doing so.

(2) For the purposes of subsection (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.

(3) In proceedings for an offence under this section it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(4) A person guilty of an offence under this section is liable on summary conviction—

- (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;
- (b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
- (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.

(5) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (4)(a) to 51 weeks is to be read as a reference to 6 months.

(6) In relation to an offence committed before section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (4)(a) to a fine is to be read as a reference to a fine not exceeding level 5 on the standard scale.

Standards for giving of pensions guidance by designated guidance providers

333H Standards for giving of pensions guidance by designated guidance providers

(1) The FCA must from time to time set standards for the giving of pensions guidance by designated guidance providers.

(2) A failure by a designated guidance provider to comply with a standard set under this section is actionable at the suit of a private person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) In subsection (2) “private person” has the same meaning as in section 138D.

(4) Standards set under this section may provide for subsection (2) not to apply to a failure to comply with a specified provision of the standards.

(5) Standards set under this section—

- (a) may make different provision for different cases and may, in particular, make different provision in respect of different classes of designated guidance providers or different types of pensions guidance;
- (b) may include incidental, supplemental, consequential or transitional provision.

(6) The procedural provisions of this Act in the first column of the table apply to the setting of standards under this section as if references in those provisions to the making of rules (however expressed) were references to the setting of standards and with the additional modifications in the second column.

*Procedural provisions
of this Act*

Additional modifications

Sections 138G and 138H

Treat the references to a rule-making instrument as references to a standard-making instrument.

Treat—

(a)

subsection (1)(a) as if it were omitted;

(b)

Section 138I

subsection (2)(d) as if it referred to an explanation of the FCA's reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.

Section 138L

Treat the reference in subsection (1) to consumers (as defined in section 425A) as a reference to recipients of pensions guidance from designated guidance providers.

333I Monitoring of compliance with standards by designated guidance providers

(1) The FCA must maintain arrangements for monitoring compliance by designated guidance providers with the standards set under section 333H.

(2) Sections 165 and 167 apply for the purpose of enabling the FCA to monitor compliance but as if—

(a) references to an authorised person or a former authorised person (other than in section 165(11)(d)) were references to a designated guidance provider or a former designated guidance provider;

(b) section 165(7)(b) to (d) were omitted;

(c) the reference in section 167(5A)(b) to the FCA or the PRA were a reference to the FCA.

(3) Section 175 applies as if a power that the FCA or an investigator has by virtue of subsection (2) were a power under Part 11.

(4) Section 177 applies as if a requirement imposed by virtue of subsection (2) were a requirement imposed under Part 11.

(5) References in a provision of Part 11 to section 165, 167, 175 or 177 include the relevant section as applied with modifications by this section.

333J Failure by designated guidance providers to comply with standards: FCA recommendations

(1) If the FCA considers that a designated guidance provider has failed to comply with a standard set under section 333H the FCA may—

(a) recommend steps that the designated guidance provider might take to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure, and

(b) having made such a recommendation, recommend that the Treasury give a direction under section 333M.

(2) The FCA must publish a recommendation made under subsection (1)(b) unless the FCA considers that to do so—

(a) would be against the public interest, or

(b) would be inappropriate for some other reason.

(3) If the condition in subsection (2)(a) or (b) is satisfied in relation to a recommendation but would not be satisfied if the FCA published part only of the recommendation, the FCA may publish that part.

(4) If the power conferred by section 333E(3) to revoke a designation is exercised before the power in subsection (1) the reference in subsection (1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.

333K FCA policy on making recommendations under section 333

- (1) The FCA must prepare and issue a statement of its policy with respect to the making of recommendations under section 333J.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.
- (4) The FCA may issue a statement under this section only with the consent of the Treasury.
- (5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

333L FCA policy on making recommendations under section 333J: procedure

- (1) Before issuing a statement under section 333K, the FCA must—
 - (a) consult the Treasury, and
 - (b) publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it within the specified time.
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it within the specified time, and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (7) This section also applies to a proposal to alter or replace a statement.

333M Failure by designated guidance providers to comply with standards: Treasury directions

- (1) If the Treasury consider that a designated guidance provider has failed to comply with a standard set under section 333H the Treasury may direct the provider to take such steps as the Treasury consider appropriate—
 - (a) to prevent the continuance or recurrence of the failure;
 - (b) to make redress to those affected by the failure.
- (2) The Treasury may give a direction under subsection (1) only if the FCA has made a recommendation under section 333J(1)(b) (although the terms of the direction need not be the same as that recommended by the FCA).
- (3) The Treasury must—
 - (a) give notice in writing of a direction under subsection (1), and
 - (b) send a copy of the notice to the FCA.
- (4) The notice must inform the designated guidance provider that representations about why the direction should not be published may be made to the Treasury within a specified time.
- (5) Once the time specified under subsection (4) has elapsed, the Treasury must publish the direction unless—
 - (a) the Treasury consider that to do so would be against the public interest;

(b) having considered representations made by the designated guidance provider within the specified time, the Treasury consider that it would be inappropriate to do so for some other reason.

(6) If the condition in subsection (5)(a) or (b) is satisfied in relation to a direction but would not be satisfied if the Treasury published part only of the direction, the Treasury may publish that part.

(7) A direction under subsection (1) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

333N Directions to designated guidance providers under section 333M: relationship with power to revoke a designation

(1) The power conferred by section 333M(1) is exercisable in addition to, or instead of, the power conferred by section 333E(3) to revoke a designation.

(2) If the power in section 333E(3) is exercised before the power in section 333M(1) the reference in section 333M(1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.

(3) Subsection (1) does not limit the grounds on which the power in section 333E(3) may be exercised.

FCA's duties and power to give guidance

333O FCA's duties

(1) The FCA must discharge its general pensions guidance functions with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.

(2) In discharging its general pensions guidance functions the FCA must have regard to—

- (a) its strategic and operational objectives in section 1B(2) and (3), and
- (b) the regulatory principles in section 3B.

(3) In this section the FCA's "general pensions guidance functions" means its functions of—

- (a) setting standards under section 333H,
- (b) issuing statements under section 333K,
- (c) giving general guidance under section 333P (see section 333P(9)),
- (d) making rules under section 333Q, and
- (e) determining the general policy and principles by reference to which it performs particular functions under this Part.

333P Power of the FCA to give guidance

(1) The FCA may give guidance consisting of such information and advice relating to its functions under sections 333H, 333I, 333J, 333K and 333Q as it considers appropriate.

(2) Subsection (3) applies where the FCA proposes to give guidance to designated guidance providers generally, or to a class of designated guidance providers, in relation to standards set under section 333H or rules made under section 333Q.

(3) Where this subsection applies, subsections (1)(b), (2)(e) and (3) of section 138I apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in

complying with those provisions would be prejudicial to the interests of recipients of pensions guidance from designated guidance providers.

(4) The FCA may—

- (a) publish its guidance,
- (b) offer copies of its published guidance for sale at a reasonable price, and
- (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(5) On giving any general guidance, the FCA must give written notice to the Treasury without delay.

- (6) If the FCA alters any of its general guidance, it must give written notice to the Treasury without delay.
- (7) The notice under subsection (6) must include details of the alteration.
- (8) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.
- (9) In this section “general guidance” means guidance given by the FCA under this section which is—
- (a) given to persons generally, to designated guidance providers generally or to a class of designated guidance provider,
 - (b) intended to have continuing effect, and
 - (c) given in writing or other legible form.

333Q Funding of FCA’s pensions guidance costs

- (1) For the purpose of meeting the FCA’s pensions guidance costs the FCA must make rules requiring designated guidance providers, or any specified class of designated guidance provider, to pay to the FCA specified amounts or amounts calculated in a specified way.
- (2) Before the FCA publishes a draft of the rules it must consult the Treasury.
- (3) The amounts to be paid under the rules may include a component—
- (a) to cover the expenses of the FCA in collecting the payments;
 - (b) to enable the FCA to maintain an adequate reserve.
- (4) In this section the “FCA’s pensions guidance costs” means the expenses incurred, or expected to be incurred, by the FCA in connection with the carrying out of the functions conferred on it by this Part other than by section 333R.

333R Funding of Treasury’s pensions guidance costs

- (1) The Treasury must, from time to time, notify the FCA of the amount of the Treasury’s pensions guidance costs.
- (2) Having been so notified, the FCA must make rules requiring authorised persons, or any specified class of authorised person, to pay to the FCA specified amounts or amounts calculated in a specified way with a view to recovering the amount notified under subsection (1).
- (3) The amounts to be paid under the rules may include a component to cover the expenses of the FCA in collecting the payments (“collection costs”).
- (4) Before the FCA publishes a draft of the rules it must consult the Treasury.
- (5) The rules may be made only with the consent of the Treasury.
- (6) The Treasury may notify the FCA of matters that they will take into account when deciding whether or not to give consent for the purposes of subsection (5).
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
- (8) The FCA must pay to the Treasury the amounts that it receives under rules made under this section apart from amounts in respect of its collection costs (which it may keep).
- (9) The Treasury must pay into the Consolidated Fund the amounts received by them under subsection (8).
- (10) In this section the “Treasury’s pensions guidance costs” means the expenses incurred, or expected to be incurred, by the Treasury—
- (a) in giving pensions guidance or arranging for it to be given by designated guidance providers,
 - (b) in meeting the expenses of designated guidance providers incurred in connection with the giving of the guidance, whether by means of the power conferred by section 333D or otherwise,
 - (c) in providing services to designated guidance providers to support them in giving the guidance,
 - (d) in increasing awareness of the availability of the guidance,
 - (e) in undertaking or commissioning research relating to the giving of the guidance, and
 - (f) otherwise in connection with the carrying out of its functions under section 333B.

(11) For the purposes of subsection (10)(b) “expenses of designated guidance providers” —

(a) includes expenses incurred by virtue of sections 333H(2), 333J, 333M and 333Q, and

(b) where a recommendation or direction has been made by virtue of section 333J(4) or 333N(2), includes expenses of a former designated guidance provider.

(12) The Treasury may by regulations amend the definition of the “Treasury’s pensions guidance costs” in subsection (10).

Schedule 3, paragraph 3

Amends section 1B of the Financial Services and Markets Act 2000 as follows:

1B The FCA’s general duties

(1) In discharging its general functions the FCA must, so far as is reasonably possible, act in a way which—

(a) is compatible with its strategic objective, and

(b) advances one or more of its operational objectives.

(2) The FCA’s strategic objective is: ensuring that the relevant markets (see section 1F) function well.

(3) The FCA’s operational objectives are—

(a) the consumer protection objective (see section 1C);

(b) the integrity objective (see section 1D);

(c) the competition objective (see section 1E).

(4) The FCA must, so far as is compatible with acting in a way which advances the consumer protection objective or the integrity objective, discharge its general functions in a way which promotes effective competition in the interests of consumers.

(5) In discharging its general functions the FCA must have regard to—

(a) the regulatory principles in section 3B, and

(b) the importance of taking action intended to minimise the extent to which it is possible for a business carried on—

(i) by an authorised person or a recognised investment exchange, or

(ii) in contravention of the general prohibition,

to be used for a purpose connected with financial crime.

(6) For the purposes of this Chapter, the FCA’s general functions are—

(a) its function of making rules under this Act (considered as a whole),

(b) its function of preparing and issuing codes under this Act (considered as a whole),

(c) its functions in relation to the giving of general guidance under this Act (considered as a whole), and

(d) its function of determining the general policy and principles by reference to which it performs particular functions under this Act.

(7) Except to the extent that an order under section 50 of the Financial Services Act 2012 (orders relating to mutual societies functions) so provides, the FCA’s general functions do not include functions that are transferred functions within the meaning of section 52 of that Act.

(7A) The FCA’s general functions do not include its general pensions guidance functions (see section 333O(3)).

(8) “General guidance” has the meaning given in section 139B(5).

Schedule 3, paragraph 4

Amends section 1M of the Financial Services and Markets Act 2000 as follows:

The FCA’s general duty to consult

The FCA must make and maintain effective arrangements for consulting practitioners and consumers on the extent to which its general policies and practices are consistent with its general duties under section 1B **and its duties under section 333O**.

Schedule 3, paragraph 5

Amends section 1S of the Financial Services and Markets Act 2000 as follows:

1S Reviews

- (1) The Treasury may appoint an independent person to conduct a review of the economy, efficiency and effectiveness with which the FCA has used its resources in discharging its functions.
- (2) A review may be limited by the Treasury to such functions of the FCA (however described) as the Treasury may specify in appointing the person to conduct it.
- (3) A review is not to be concerned with the merits of the FCA's general policy or principles in complying with its general duties under section 1B(1) and (4) **or its duties under section 333O(1) and (2)(a)**.
- (4) On completion of a review, the person conducting it must make a written report to the Treasury—
 - (a) setting out the result of the review, and
 - (b) making such recommendations (if any) as the person considers appropriate.
- (5) A copy of the report must be—
 - (a) laid before Parliament, and
 - (b) published in such manner as the Treasury consider appropriate.
- (6) Any expenses reasonably incurred in the conduct of the review are to be met by the Treasury out of money provided by Parliament.
- (7) "Independent" means appearing to the Treasury to be independent of the FCA.

Schedule 3, paragraph 6

Amends the Financial Services and Markets Act 2000 as follows:

137FB FCA general rules: disclosure of information about the availability of pensions guidance

- (1) The FCA must make general rules requiring information about the availability of pensions guidance to be given by the trustees or managers of a relevant pension scheme to members of the scheme with a right or entitlement to flexible benefits.**
- (2) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—**
 - (a) the Secretary of State, and**
 - (b) the Treasury.**
- (3) In determining what provision to include in the rules, the FCA must have regard to any regulations that are for the time being in force under section 113 of the Pension Schemes Act 1993 concerning the giving of information about the availability of pensions guidance to members of pension schemes with a right or entitlement to flexible benefits.**
- (4) In this section—**
"flexible benefit" has the meaning given by section 72 of the Pension Schemes Act 2014;

“pensions guidance” means pensions guidance given by virtue of Part 20A;

“relevant pension scheme” means a pension scheme set up by a person with permission under this Act to establish—

(a) a personal pension scheme within the meaning of an order under section 22, or

(b) a stakeholder pension scheme within the meaning of such an order.

Schedule 3, paragraph 7

Amends section 138F of the Financial Services and Markets Act 2000 as follows

138F Notification of rules

(1) If either regulator makes, alters or revokes any rules, that regulator must without delay give written notice—

(a) to the Treasury, and

(b) to the Bank of England.

(2) Subsection (1)(b) does not apply to rules made under or by virtue of section 137FB, 333Q or 333R.

Schedule 3, paragraph 8

Amends section 138I of the Financial Services and Markets Act 2000 as follows

138I Consultation by the FCA

(1) Before making any rules, the FCA must—

(a) consult the PRA, and

(b) after doing so, publish a draft of the proposed rules in the way appearing to the FCA to be best calculated to bring them to the attention of the public.

(2) The draft must be accompanied by—

(a) a cost benefit analysis,

(b) an explanation of the purpose of the proposed rules,

(c) any statement prepared under section 138K(2),

(d) an explanation of the FCA's reasons for believing that making the proposed rules is compatible with its duties under section 1B(1) and (5)(a), and

(e) notice that representations about the proposals may be made to the FCA within a specified time.

(3) Before making the proposed rules, the FCA must have regard to any representations made to it in accordance with subsection (2)(e).

(4) If the FCA makes the proposed rules, it must publish an account, in general terms, of—

(a) the representations made to it in accordance with subsection (2)(e), and

(b) its response to them.

(5) If the rules differ from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant the FCA must publish—

(a) details of the difference (in addition to complying with subsection (4)) together with a cost benefit analysis, and

(b) any statement prepared under section 138K(4).

(6) The requirements to carry out a cost benefit analysis under this section do not apply in relation to rules made under—

(a) section 136(2);

(aa) section 137FB;

(b) subsection (1) of section 213 as a result of subsection (4) of that section;

(c) section 234;

(ca) section 333Q;

(cb) section 333R

- (d) paragraph 23 of Schedule 1ZA;
(e) paragraph 12 of Schedule 1A.
- (7) "Cost benefit analysis" means—
(a) an analysis of the costs together with an analysis of the benefits that will arise—
(i) if the proposed rules are made, or
(ii) if subsection (5) applies, from the rules that have been made, and
(b) subject to subsection (8), an estimate of those costs and of those benefits.
- (8) If, in the opinion of the FCA—
(a) the costs or benefits referred to in subsection (7) cannot reasonably be estimated, or
(b) it is not reasonably practicable to produce an estimate,
the cost benefit analysis need not estimate them, but must include a statement of the FCA's opinion and an explanation of it.
- (9) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (10) Subsection (1)(a) does not apply to—
(a) **rules made by the FCA under section 137FB, 333Q or 333R, or**
(b) rules made by the FCA in relation to recognised investment exchanges under Part 18.
- (11) This section is subject to section 138L.

Schedule 3, paragraph 9

Amends section 139A of the Financial Services and Markets Act 2000 as follows

139A Power of the FCA to give guidance

- (1) The FCA may give guidance consisting of such information and advice as it considers appropriate—
(a) with respect to the operation of specified parts of this Act and of any rules made by the FCA;
(b) with respect to any other matter relating to functions of the FCA;
(c) with respect to any other matters about which it appears to the FCA to be desirable to give information or advice.

(1A) The FCA may not give guidance under this section relating to its functions under sections 333H, 333I, 333J, 333K and 333Q (see section 333P for provision about the giving of guidance relating to these functions).

(2) The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section.

(3) Subsection (5) applies where the FCA proposes to give guidance to FCA-regulated persons generally, or to a class of FCA-regulated persons, in relation to rules to which those persons are subject.

(4) Subsection (5) also applies in relation to guidance which the FCA proposes to give to persons generally, or to a class of person, in relation to its functions under the short selling regulation.

(5) Where this subsection applies, subsections (1), (2)(e) and (3) of section 138I (consultation) apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of consumers.

- (6) The FCA may—
(a) publish its guidance,
(b) offer copies of its published guidance for sale at a reasonable price, and
(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(7) In this Chapter, references to guidance given by the FCA include references to any recommendations made by the FCA to FCA-regulated persons generally, or to any class of FCA-regulated person.

- (8) “Consumers” has the meaning given in section 1G.
(9) “FCA-regulated person” means—
 (a) an authorised person, or
 (b) any person who is otherwise subject to rules made by the FCA.

Schedule 3, paragraph 10

Amends section 140A of the Financial Services and Markets Act 2000 as follows

140A Interpretation

- (1) In this Chapter—
“the CMA” means the Competition and Markets Authority;
“market in the United Kingdom” includes—
 (a) so far as it operates in the United Kingdom or a part of the United Kingdom, any market which operates there and in another country or territory or in a part of another country or territory, and
 (b) any market which operates only in a part of the United Kingdom;
“practices”, in relation to each regulator, means practices adopted by that regulator in the exercise of functions under this Act;
“regulating provisions” means—
 (a) in relation to the FCA, any—
 (i) rules of the FCA;
 (ii) general guidance (as defined by section 139B(5) **or 333P(9)**);
 (iii) *statement issued by the FCA under section 64*;
 (iv) code issued by the FCA under section 64 or 119;
 (v) standards set under s 333H;
 (vi) statement issued by the FCA under 333K;
 (b) in relation to the PRA, any—
 (i) rules of the PRA;
 (ii) *statement issued by the PRA under section 64*;
 (iii) *code issued by the PRA under section 64*.
(2) . . .
(3) For the purposes of this Chapter, any reference to a feature of a market in the United Kingdom for goods or services is to be read as a reference to—
 (a) the structure of the market concerned or any aspect of that structure,
 (b) any conduct (whether or not in the market concerned) of one or more than one person who supplies or acquires goods or services in the market concerned, or
 (c) any conduct relating to the market concerned of customers of any person who supplies or acquires goods or services.
(4) In subsection (3) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

[N.B. Words in italics repealed – repeal not yet in force]

Schedule 3, paragraph 11

Amends section 168 of the Financial Services and Markets Act 2000 as follows

- 168 Appointment of persons to carry out investigations in particular cases
(1) Subsection (3) applies if it appears to an investigating authority that there are circumstances suggesting that—
 (a) . . .
 (b) a person may be guilty of an offence under section 177, [191F], 346 or 398(1) or under Schedule 4.

- (2) Subsection (3) also applies if it appears to an investigating authority that there are circumstances suggesting that—
- (a) an offence under section 24(1) **or 333G** [or under Part 7 of the Financial Services Act 2012] or under Part V of the Criminal Justice Act 1993 may have been committed;
 - (b) there may have been a breach of the general prohibition;
 - [(ba) an authorised person may have contravened section 20 in relation to a credit-related regulated activity;]
 - (c) there may have been a contravention of section 21 or 238; or
 - (d) market abuse may have taken place.
- (3) The investigating authority may appoint one or more competent persons to conduct an investigation on its behalf.
- (4) Subsection (5) applies if it appears to [an investigating authority] that there are circumstances suggesting that—
- (a) a person may have contravened section 20;
 - (b) a person may be guilty of an offence under prescribed regulations relating to money laundering;
 - [(ba) a person may be guilty of an offence under Schedule 7 to the Counter-Terrorism Act 2008 (terrorist financing or money laundering);]
 - (c) [a person] may have contravened a rule made by the [investigating authority];
 - [(ca) a recognised investment exchange may have contravened the recognition requirements (within the meaning of Part 18);]
 - (d) an individual may not be a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised or exempt person;
 - (e) an individual may have performed or agreed to perform a function in breach of a prohibition order;
 - (f) [a person] may have failed to comply with section 56(6);
 - (g) an authorised person may have failed to comply with section 59(1) or (2);
 - (h) a person in relation to whom [a regulator] has given its approval under section 59 may not be a fit and proper person to perform the function to which that approval relates; . . .
 - [(ha) a person may have performed a controlled function without approval for the purposes of section 63A;]
 - (i) a person may be guilty of misconduct for the purposes of section 66[; . . .
 - (j) a person may have contravened any provision made by or under this Act for the purpose of implementing the markets in financial instruments directive . . .]
 - [(ja) a person may have contravened—
 - (i) any provision made by or under this Act for the purpose of implementing the alternative investment fund managers directive; or
 - (ii) any provision made by the Alternative Investment Fund Managers Regulations 2013; or]
 - [(k) a person may have contravened a qualifying EU provision that is specified, or of a description specified, for the purposes of this subsection by the Treasury by order].
- (5) The [investigating authority] may appoint one or more competent persons to conduct an investigation on its behalf.
- [(6) Investigating authority” means—
- (a) in subsections (1) to (3), the FCA, the PRA or the Secretary of State;
 - (b) in subsections (4) and (5), the FCA or the PRA.]

Schedule 3, paragraph 12

Amends section 429 of the Financial Services and Markets Act 2000 as follows

429 Parliamentary control of statutory instruments

(1) No order is to be made under—

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- (a) section [1J, 3B(4), 3F(6), 55C,] [71A(4),] [138K(6)(c), 144(4), 192(b) or (e)],
192B(6), 204A(7), 213(1A),] 236(5), [285(4), 380(12), 382(15), 384(13),] . . . [404G] or
419, or
(b) . . .

unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(2) No regulations are to be made under section [90B[, [142W,] 214A, 214B][, 214D] ~~or~~ **262, 262, 333C or 333R** unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

[(2A) Regulations to which subsection (2B) applies are not to be made unless a draft of the regulations has been laid before Parliament and approved by a resolution of each House.

(2B) This subsection applies to regulations which contain provision made under section 410A, other than provision made only by virtue of subsection (2) of that section.]

(3) An order to which, if it is made, subsection (4) or (5) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(4) This subsection applies to an order under section 21 if—

- (a) it is the first order to be made, or to contain provisions made, under section 21(4);
- (b) it varies an order made under section 21(4) so as to make section 21(1) apply in circumstances in which it did not previously apply;
- (c) it is the first order to be made, or to contain provision made, under section 21(5);
- (d) it varies a previous order made under section 21(5) so as to make section 21(1) apply in circumstances in which it did not, as a result of that previous order, apply;
- (e) it is the first order to be made, or to contain provisions made, under section 21(9) or (10);
- (f) it adds one or more activities to those that are controlled activities for the purposes of section 21; or
- (g) it adds one or more investments to those which are controlled investments for the purposes of section 21.

(5) This subsection applies to an order under section 38 if—

- (a) it is the first order to be made, or to contain provisions made, under that section; or
- (b) it contains provisions restricting or removing an exemption provided by an earlier order made under that section.

(6) An order containing a provision to which, if the order is made, subsection (7) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

(7) This subsection applies to a provision contained in an order if—

- (a) it is the first to be made in the exercise of the power conferred by subsection (1) of section 326 or it removes a body from those for the time being designated under that subsection; or
- (b) it is the first to be made in the exercise of the power conferred by subsection (6) of section 327 or it adds a description of regulated activity or investment to those for the time being specified for the purposes of that subsection.

(8) Any other statutory instrument made under this Act, apart from one made under section [3G(1), 137D(1)(b),] [165A(2)(d)[, 192A(4)] or] 431(2) or to which [section 22B[, 23A or 142Z] or] paragraph 26 of Schedule 2 applies, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Schedule 3, paragraph 13

Amends paragraph 8 of Schedule 1ZA to the Financial Services and Markets Act 2000 as follows

Arrangements for discharging functions

8

(1) The FCA may make arrangements for any of its functions to be discharged by a committee, sub-committee, officer or member of staff of the FCA, but subject to the following provisions.

- (2) In exercising its legislative functions, the FCA must act through its governing body.
- (3) For that purpose, the following are the FCA's legislative functions—
- (a) making rules;
 - (b) issuing codes under section 64 or 119;
 - (c) issuing statements under—
 - (i) section [63ZD,] 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, [142V,] 192H, 192N, 210 or ~~312J~~, **312J or 333K**,
 - (ii) section 345D (whether as a result of section 345(2)[, section 249(1) or 261K(1)]), or
 - (iii) section 80 of the Financial Services Act 2012;
 - (d) giving directions under section 316, 318 or 328.
 - (e) setting standards under section 333H.**
- (4) The function of issuing general guidance (as defined in section 139B(5) **or 333P(9)**) may not be discharged by an officer or member of staff of the FCA.
- [(5) In respect of the exercise of a function under Part 1 of the Competition Act 1998, the power in sub-paragraph (1) is subject to provision in rules made under section 51 of that Act by virtue of paragraph 1A of Schedule 9 to that Act.]

Schedule 3, paragraph 14

Amends paragraph 11 of Schedule 1ZA to the Financial Services and Markets Act 2000 as follows

Annual report

11

- (1) At least once a year the FCA must make a report to the Treasury on—
- (a) the discharge of its functions,
 - (b) the extent to which, in its opinion, its operational objectives have been advanced,
 - (c) the extent to which, in its opinion, it has acted compatibly with its strategic objective,
 - (d) how, in its opinion, it has complied with the duty in section 1B(4),
 - (e) its consideration of the matter mentioned in section 1B(5)(b),
 - (f) its consideration of the principles in section 3B,
 - (g) how it has complied with section 3D,
 - (h) any direction received under section 3I or 3J during the period to which the report relates,
 - (ha) any rules that it has made as a result of section 137C during the period to which the report relates and the kinds of regulated credit agreement (within the meaning of that section) to which the rules apply,
 - (hb) how, in its opinion, it has complied with its duties in section 333O,**
 - (i) how it has complied with section 354A(1) so far as relating to co-operation with persons outside the United Kingdom, and
 - (j) such other matters as the Treasury may from time to time direct.
- (2) Sub-paragraph (1) does not require the inclusion in the report of any information whose publication would in the opinion of the FCA be against the public interest.
- (3) The report must be accompanied by—
- (a) a statement of the remuneration of the appointed members of the governing body of the FCA during the period to which the report relates, and
 - (b) such other reports or information, prepared by such persons, as the Treasury may from time to time direct.
- (4) The Treasury must lay before Parliament a copy of each report received by them under this paragraph.

Schedule 3, paragraph 15

Amends paragraph 21 of Schedule 1ZA to the Financial Services and Markets Act 2000 as follows

21

(1) The FCA must prepare and operate a scheme (“the financial penalty scheme”) for ensuring that the amounts that, as a result of the deduction for which paragraph 20(1) provides, are retained by the FCA in respect of amounts paid to it by way of penalties imposed under this Act are applied for the benefit of regulated persons.

(2) “Regulated persons” means—

- (a) authorised persons,
- (b) recognised investment exchanges,
- (c) issuers of securities admitted to the official list, ~~and~~
- (d) issuers who have requested or approved the admission of financial instruments to trading on a regulated market, **and**
- (e) designated guidance providers.**

(3) The financial penalty scheme may, in particular, make different provision with respect to different classes of regulated person.

(4) The financial penalty scheme must ensure that those who have become liable to pay a penalty to the FCA in any financial year of the FCA do not receive any benefit under the scheme in the following financial year.

(5) Up-to-date details of the financial penalty scheme must be set out in a document (“the scheme details”).

Schedule 3, paragraph 16

Amends paragraph 23 of Schedule 1ZA to the Financial Services and Markets Act 2000 as follows

Fees

23

(1) The FCA may make rules providing for the payment to it of such fees, in connection with the discharge of any of its qualifying functions, as it considers will (taking account of its expected income from fees and charges provided for by any other provision of this Act **other than sections 333Q and 333R**) enable it—

- (a) to meet expenses incurred in carrying out its functions, **other than its excepted functions**, or for any incidental purpose,
- (b) to repay the principal of, and pay any interest on, any relevant borrowing and to meet relevant commencement expenses, and
- (c) to maintain adequate reserves.

(2) The “qualifying functions” of the FCA are—

- (a) its functions under or as a result of this Act or any of the [other enactments mentioned in section 1A(6)(a) to (ca) **but not its excepted functions**], and
- (b) its functions under or as a result of a qualifying EU provision that is specified, or of a description specified, for the purposes of this sub-paragraph by the Treasury by order.

(2ZA)The “excepted functions” of the FCA are—

- (a) its functions under sections 333E to 333Q, and**
- (b) its functions under section 333R so far as relating to the collection of payments.**

[(2A) The functions referred to in sub-paragraph (1)(a) include functions of the FCA under the Competition Act 1998 or the Enterprise Act 2002 as a result of Part 16A of this Act; but this sub-paragraph is not to be regarded as limiting the effect of the definition of “functions” in paragraph 1.]

(3) In sub-paragraph (1)(b)—

“relevant borrowing” means any money borrowed by the FCA which has been used for the purpose of meeting expenses incurred in relation to its assumption of functions under this Act, and

“relevant commencement expenses” means expenses incurred by the FCA—

- (a) in preparation for the exercise of functions by the FCA under this Act, or
- (b) for the purpose of facilitating the exercise by the FCA of those functions or otherwise in connection with their exercise by it.

- (4) Neither section 1A(6)(d) nor the definition of “functions” in paragraph 1 applies for the purposes of sub-paragraph (2).
- (5) For the purposes of sub-paragraph (3) it is irrelevant when the borrowing of the money, the incurring of the expenses or the assumption of functions took place (and, in particular, it is irrelevant if any of those things were done at a time when the FCA was known as the Financial Services Authority).
- (6) In the case of rules made under Part 6 of this Act, the rules may, in particular, require the payment of fees in respect of—
- (a) the continued inclusion of securities or persons in any list or register required to be kept by the FCA as a result of any provision made by or under that Part,
 - (b) access to any list or register within paragraph (a), and
 - (c) the continued admission of financial instruments to trading on a regulated market.
- (7) In fixing the amount of any fee which is to be payable to the FCA, no account is to be taken of any sums which the FCA receives, or expects to receive, by way of penalties imposed by it under this Act.
- (8) Any fee which is owed to the FCA under any provision made by or under this Act may be recovered as a debt due to the FCA.

Schedule 3, paragraph 17

Amends section 85 the Financial Services Act 2012 as follows:

85 Relevant functions in relation to complaints scheme

- (1) This section has effect for the interpretation of the reference in section 84(1)(a) to the relevant functions of the regulators.
- (2) The relevant functions of the FCA or the PRA are—
- (a) its functions conferred by or under FSMA 2000, other than its legislative functions, and
 - (b) such other functions as the Treasury may by order provide.
- (3) The relevant functions of the Bank of England are—
- (a) its functions under Part 18 of FSMA 2000 (recognised clearing houses) or under Part 5 of the Banking Act 2009 (inter-bank payment systems), other than its legislative functions, and
 - (b) such other functions as the Treasury may by order provide.
- (4) For the purposes of subsection (2)(a), the following are the FCA's legislative functions—
- (a) making rules under FSMA 2000;
 - (b) issuing codes under section 64 or 119 of FSMA 2000;
 - (c) issuing statements under—
 - (i) section [63ZD,] 63C, 64, 69, 88C, 89S, 93, 124, 131J, 138N, 192H, 192N, 210 ~~or 312J~~, **312J or 333K** of FSMA 2000,
 - (ii) section 345D of FSMA 2000 (whether as a result of section 345(2) or 345A(3) or section 249(1) of that Act), or
 - (iii) section 80 of the Financial Services Act 2012;
 - (d) giving directions under section 316, 318 or 328 of FSMA 2000;
 - (e) issuing general guidance, as defined in section 139B(5) **or 333P(9)** of FSMA 2000.
 - (f) setting standards under section 333H of FSMA 2000.**
- (5) For the purposes of subsection (2)(a), the following are the PRA's legislative functions—
- (a) making rules under FSMA 2000;
 - (b) issuing codes under section 64 of FSMA 2000;
 - (c) issuing statements under—
 - (i) section [63ZD,] 63C, 64, 69, 192H, 192N, 210 or 345D of FSMA 2000, or
 - (ii) section 80 of the Financial Services Act 2012;
 - (d) giving directions under section 316 or 318 of FSMA 2000;
 - (e) issuing guidance under section 21 of FSMA 2000.
- (6) For the purposes of subsection (3)(a), the following functions of the Bank of England under Part 18 of FSMA 2000 are legislative functions—
- (a) making rules;
 - (b) issuing statements—
 - (i) under section 312J, or

(ii) by virtue of the application by Schedule 17A of a provision mentioned in subsection (5)(c)(i) of this section.

(7) For the purposes of subsection (3)(a), the following functions of the Bank of England under Part 5 of the Banking Act 2009 are legislative functions—

(a) publishing principles or codes of practice under sections 188 and 189;

(b) preparing statements under section 198(3).

(8) For the purposes of subsection (2), sections 1A(6) and 2A(6) of FSMA 2000 do not apply.

[N.B. words/numbers in italics substituted by the words in square brackets – not yet in force]

Schedule 4 – RIGHTS TO TRANSFER BENEFITS

[PART 1 – GREAT BRITAIN AMENDMENTS]

Schedule 4, paragraphs 1 to 11

Amends sections 97 to 100 of the Pension Schemes Act 1993 as follows:

PART 4ZA

TRANSFERS AND CONTRIBUTION REFUNDS

CHAPTER 1

TRANSFER RIGHTS: GENERAL

~~Chapter IV – Transfer Values~~

~~93 Scope of Chapter IV~~

~~(1) This Chapter applies~~

~~(a) to any member of an occupational pension scheme~~

~~(i) whose pensionable service has terminated at least one year before normal pension age, and~~

~~(ii) who on the date on which his pensionable service terminated had accrued rights to benefit under the scheme,~~

~~except a member of a salary related occupational pension scheme whose pensionable service terminated before 1st January 1986 and in respect of whom prescribed requirements are satisfied~~

~~(b) to any member of a personal pension scheme (other than a scheme which is comprised in an annuity contract made before 4th January 1988) who has accrued rights to benefit under the scheme.~~

~~(1ZA) In subsection (1), references to accrued rights to benefit do not include rights which are attributable (directly or indirectly) to a pension credit.~~

~~(1A) For the purposes of this section and the following provisions of this Chapter, an occupational pension scheme is salary related if~~

~~(a) the scheme is not a money purchase scheme **(a) the scheme is not a scheme under which all the benefits that may be provided are money purchase benefits,**~~
and

~~(b) the scheme does not fall within a prescribed class.~~

~~(1B) Regulations may~~

~~(a) provide for this Chapter not to apply in relation to a person of a prescribed description,~~

~~(aa) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;~~

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~~(b) apply this Chapter with prescribed modifications to occupational pension schemes under which some but not all of the benefits that may be provided are money purchase benefits.~~

- ~~(i) which are not money purchase schemes, but~~
- ~~(ii) where some of the benefits that may be provided are money purchase benefits.~~

~~(2) Any reference to a member of an occupational pension scheme or a personal pension scheme in the following provisions of this Chapter is a reference to a member of such a scheme to whom this Chapter applies.~~

93A Salary related schemes ~~Schemes with a promise or target~~: right to statement of entitlement

~~(1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a "statement of entitlement") of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.~~

~~(1A) In subsection (1) (1ZB), the reference to benefits which have accrued does not include benefits which are attributable (directly or indirectly) to a pension credit.~~

~~(2) In this section~~

~~"the applicable rules" has the same meaning as in section 94;~~

~~"the guarantee date" means the date by reference to which the value of the cash equivalent is calculated, and must be~~

- ~~(a) within the prescribed period beginning with the date of the application, and~~
- ~~(b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.~~

~~(3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.~~

~~(4) If, in the case of any occupational pension scheme, a statement of entitlement has not been provided under this section, section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager who has failed to take all such steps as are reasonable to secure compliance with this section.~~

94 Right to cash equivalent

(1) Subject to the following provisions of this Chapter

~~(a) a member of an occupational pension scheme other than a salary related scheme acquires a right, when his pensionable service terminates (whether before or after 1st January 1986), to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the applicable rules; and~~

~~(aa) a member of a salary related occupational pension scheme who has received a statement of entitlement and has made a relevant application within three months beginning with the guarantee date in respect of that statement acquires a right to his guaranteed cash equivalent;~~

~~(b) a member of a personal pension scheme acquires a right to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the rules of the scheme.~~

~~(1A) For the purposes of subsection (1)(aa) (1)(a), a person's "guaranteed cash equivalent" is the amount stated in the statement of entitlement mentioned in that subsection.~~

~~(1B) In subsection (1), references to benefits which have accrued do not include benefits which are attributable (directly or indirectly) to a pension credit.~~

~~(2) In this section~~

~~"the applicable rules" means~~

- ~~(a) the rules of the scheme, except so far as overridden by a relevant legislative provision;~~
- ~~(b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme; and~~

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~~(c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with Chapter 1 of Part 4 of this Act;~~
~~"the guarantee date" has the same meaning as in section 93A(2);~~
~~"the relevant date" means, subject to regulations under section 98(4)~~
~~(a) the date of the relevant application, or~~
~~(b) in the case of an occupational pension scheme, if it is later, the termination date;~~
~~"the relevant application" means any application which the member has made under section 95 and not withdrawn.~~

~~(2A) For the purposes of subsection (2)~~

- ~~(a) "relevant legislative provision" means any provision contained in any of the following provisions~~
- ~~(i) Schedule 5 to the Social Security Act 1989 (equal treatment for men and women);~~
 - ~~(ii) this Chapter or Chapters 2, 3 or 5 of this Part of this Act or regulations made under this Chapter or any of those Chapters;~~
 - ~~(iii) Part 4A of this Act or regulations made under that Part;~~
 - ~~(iv) section 110(1) of this Act;~~
 - ~~(v) Part 1 of the Pensions Act 1995 (occupational pensions) or subordinate legislation made or having effect as if made under that Part;~~
 - ~~(vi) section 31 of the Welfare Reform and Pensions Act 1999 (pension debits: reduction of benefit);~~
 - ~~(vii) any provision mentioned in section 306(2) of the Pensions Act 2004;~~
- ~~(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions~~
- ~~(i) paragraph 3 of Schedule 5 to the Social Security Act 1989;~~
 - ~~(ii) section 129(1) of this Act;~~
 - ~~(iii) section 117(1) of the Pensions Act 1995;~~
 - ~~(iv) section 31(4) of the Welfare Reform and Pensions Act 1999;~~
 - ~~(v) section 306(1) of the Pensions Act 2004.~~

~~(3) Regulations may provide that, in prescribed circumstances, subsection (1)(aa) does not apply to members of salary related occupational pension schemes or applies to them with prescribed modifications.~~

93 Scope of Chapter 1

- (1) This Chapter applies to a member of a pension scheme if all of the following conditions are met.**
- (2) Condition 1 is that the member has accrued rights to any category of benefits under the scheme rules.**
- (3) Condition 2 is that no crystallisation event has occurred in relation to the member's accrued rights to benefits in that category (see subsection (7)).**
- (4) Condition 3 is that—**
- (a) the member is no longer accruing rights to benefits in that category (see subsection (8)), and**
 - (b) in the case of benefits that are not flexible benefits, the member stopped accruing those rights at least one year before normal pension age.**
- (5) But this Chapter does not apply to—**
- (a) a member of a salary related occupational pension scheme whose pensionable service terminated before 1 January 1986 and in respect of whom prescribed requirements are satisfied;**
 - (b) a member of a personal pension scheme which is comprised in an annuity contract made before 4 January 1988.**
- (6) In this Chapter a reference to a "category" of benefits is to one of the following three categories—**
- (a) money purchase benefits;**
 - (b) flexible benefits other than money purchase benefits;**
 - (c) benefits that are not flexible benefits.**

- (7) For the purposes of Condition 2 a crystallisation event occurs in relation to a member's accrued rights to benefits in a category when—
- (a) payment of a pension in respect of any of the benefits has begun,
 - (b) in the case of money purchase benefits, sums or assets held for the purpose of providing any of the benefits are designated as available for the payment of drawdown pension (as defined by paragraph 4 of Schedule 28 to the Finance Act 2004), or
 - (c) in the case of a personal pension scheme, sums or assets held for the purpose of providing any of the benefits are applied for purchasing an annuity or insurance policy.
- (8) For the purposes of Condition 3 a member stops accruing rights to a category of benefits when there are no longer arrangements in place for the accrual of rights to benefits in that category for or in respect of the member.
- (9) In this section a reference to accrued rights does not include pension credit rights.
- (10) Regulations may—
- (a) provide for this Chapter not to apply in relation to a person of a prescribed description;
 - (b) modify the application of this Chapter in relation to a member who has accrued rights to benefits of a prescribed description.
- (11) In the following provisions of this Chapter—
- (a) a reference to a “member” of a pension scheme is a reference to a member to whom this Chapter applies, and
 - (b) a reference to a member's “transferrable rights” are to any rights in relation to a category of benefits by virtue of which this Chapter applies to the member.

93A Right to statement of entitlement: benefits other than money purchase

- (1) The trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights in relation to categories of benefits other than money purchase benefits.
- (2) In the case of a member with transferrable rights in relation to two categories of benefits other than money purchase benefits, the application may relate to transferrable rights in relation to either or both of those categories.
- (3) For the purposes of this Chapter a member's “statement of entitlement” is a written statement of the amount of the cash equivalent at the guarantee date of the transferrable rights to which the application under subsection (1) relates.
- (4) In this Chapter “the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—
- (a) within the prescribed period beginning with the date of the application, and
 - (b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.
- (5) Regulations may make provision in relation to applications under this section and may, in particular, restrict the making of successive applications.
- (6) If the trustees or managers of a pension scheme fail to comply with subsection (1), section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

94 Right to cash equivalent

- (1) A member of a pension scheme who has received a statement of entitlement under section 93A acquires a right to take the cash equivalent shown in that statement in accordance with this Chapter.
- (2) A member of a pension scheme who has transferrable rights in relation to money purchase benefits acquires a right to take their cash equivalent in accordance with this Chapter.

95 Ways of taking right to cash equivalent

- ~~(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under paragraph (a), (aa) or (b) of section 94(1) may only take it by making an application in writing to the trustees or managers of the scheme~~

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requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection (2) or, as the case may be, subsection (3) he chooses.

(1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below.

(1A) In the case of a right acquired under section 94(1), the application must be made—

(a) within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement, and

(b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.

(2) In the case of a member of an occupational pension scheme, the ways referred to in subsection (1) are

(a) for acquiring transfer credits allowed under the rules of another occupational pension scheme

(i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and

(ii) which satisfies prescribed requirements;

(b) for acquiring rights allowed under the rules of a personal pension scheme

(i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and

(ii) which satisfies prescribed requirements;

(c) for purchasing from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;

(d) for subscribing to other pension arrangements which satisfy prescribed requirements.

(3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are

(a) for acquiring transfer credits allowed under the rules of an occupational pension scheme

(i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and

(ii) which satisfies prescribed requirements;

(b) for acquiring rights allowed under the rules of another personal pension scheme

(i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and

(ii) which satisfies prescribed requirements;

(c) for subscribing to other pension arrangements which satisfy prescribed requirements.

(5) Except in such circumstances as may be prescribed

(a) subsection (2) is to be construed as if paragraph (d) were omitted; and

(b) subsection (3) is to be construed as if paragraph (c) were omitted.

(6) Without prejudice to the generality of subsections (2) and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2), an annuity must satisfy requirements of the Inland Revenue.

~~(7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.~~

~~(8) In subsection (7) "the last option date" means, subject to regulations under section 98, the date which falls~~

~~(a) one year before the date on which the member attains normal pension age; or~~

~~(b) six months after the termination date,~~

~~whichever is the later.~~

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(9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

96 Further provisions concerning exercise of option under s95

~~(1) A member may exercise the option conferred by subsection (1) of section 95 in different ways in relation to different portions of his cash equivalent, but a member who exercises that option must do so~~

~~(a) in relation to the whole of his cash equivalent; or~~

~~(b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection (3).~~

(1) A member who has acquired a right to take a cash equivalent under section 94(1) or (2) may exercise the option conferred by section 95(1) in relation to different portions of that cash equivalent in different ways, but a member who exercises that option must do so—

(a) in relation to the whole of that cash equivalent, or

(b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection (3).

(2) This subsection applies where

(a) the trustees or managers

(i) of an occupational pension scheme which is not a contracted-out scheme, or

(ii) of a personal pension scheme,

are able or willing to accept a transfer payment only in respect of a member's rights other than his accrued rights to guaranteed minimum pensions his accrued rights so far as attributable to service in contracted-out employment on or after the principal appointed day ; and

(b) the member has not required the trustees or managers of the scheme from which he is being transferred to use the portion of his cash equivalent which represents those accrued rights in any of the ways specified in subsection (2) or, as the case may be, subsection (3) of section 95.

(3) Where subsection (2) applies, this section and sections 94, 95 and 97 are to be construed as conferring on the member an option only in respect of the balance of the cash equivalent to which the member would otherwise be entitled, after deduction of an amount sufficient for the trustees or managers of the scheme from which he is being transferred to meet their liability

(a) in the case of a transfer from an occupational pension scheme, in respect of the member's and the member's widow's, widower's or surviving civil partner's (as the case may be) pensions, being guaranteed minimum pensions or pensions so far as attributable to service in contracted-out employment on or after the principal appointed day

~~(4) Where a member of an occupational pension scheme or a personal pension scheme~~

~~(a) is entitled to give a notice under section 101F(1) to the trustees or managers of the scheme, or~~

~~(b) would be entitled to do so, but for section 101G(1),~~

~~he may not, if the scheme so provides, make an application to them under section 95 unless he also gives them a notice under section 101F(1).~~

(4) Where a member of a pension scheme—

(a) is entitled to make an application under section 95(1) in relation to any category of benefits, and

(b) is also entitled to give a transfer notice under section 101F(1) to the trustees or managers of the scheme in relation to benefits in the same category (or would be entitled to do so but for section 101G(2)),

the member may not, if the scheme so provides, make an application under section 95(1) in relation to that category of benefits without also giving a transfer notice under section 101F(1) in relation to that category of benefits.

97 Calculation of cash equivalents

(1) Cash equivalents are to be calculated and verified in the prescribed manner.

(1A) Where a member applies under section 95 to take a cash equivalent that relates to money purchase benefits, the cash equivalent is to be calculated by reference to the date of the application.

(2) Regulations may provide

(a) that in calculating cash equivalents ~~except guaranteed cash equivalents~~ **that relate to money purchase benefits** account shall be taken

(i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 95;

(ii) in a case where subsection (2) of section 96 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent, ~~including a guaranteed cash equivalent~~ **that relates to any category of benefits**, to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of

(i) any pension; or

(ii) any benefit in lieu of pension;

and

(b) that in prescribed circumstances a cash equivalent shall be increased or reduced.

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include

~~(a) in the case of an occupational pension scheme, the length of time which elapses between the termination of a member's pensionable service and his exercise of the option conferred by this Chapter or regulations made under it;~~

(b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date ; and

(c) the state of the funding of the scheme.

~~(3A) For the purposes of subsection (3), the "appropriate date"~~

~~(a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 93A), and~~

~~(b) in any other case, is the date on which the trustees receive an application from the member under section 95.~~

(3A) For the purposes of subsection (3), the "appropriate date"—

(a) in relation to a cash equivalent that relates to benefits other than money purchase benefits, means the guarantee date for the purposes of the relevant statement of entitlement under section 93A, and

(b) in relation to a cash equivalent that relates to money purchase benefits, means the date on which the trustees or managers receive an application from the member under section 95.

(4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

~~98 Variation and loss of rights under s 94~~

~~(1) Regulations may provide that a member of an occupational pension scheme other than a salary related scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates~~

~~(a) only acquires a right to the cash equivalent of such part of the benefits specified in section 94(1) as may be prescribed; or~~

~~(b) acquires no right to a cash equivalent.~~

~~(1A) Regulations may provide that a member of a salary related occupational pension scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates~~

~~(a) acquires a right to only part of his guaranteed cash equivalent, or~~

~~(b) acquires no right to his guaranteed cash equivalent.~~

~~(2) Regulations may provide for the purposes of subsection (1) or (1A) that in prescribed circumstances a number of employments (whether or not consecutive) shall be treated as a single employment.~~

~~(3) Regulations may provide that where~~

~~(a) by virtue of regulations under subsection (1) or (2), a member of an occupational pension scheme other than a salary related scheme does not, on the termination of his pensionable service in an employment to which a scheme applies, acquire a right at the relevant date to the cash equivalent of the whole or a part of the benefits specified in section 94(1); or~~

~~(aa) by virtue of regulations under subsection (1A) or (2), a member of a salary related occupational pension scheme does not, on such a termination, acquire a right to the whole or any part of his guaranteed cash equivalent,~~

~~and his employment terminates at least one year before normal pension age that right shall accrue to him on the date when that employment terminates and be valued accordingly.~~

~~(4) In relation to any case to which regulations under subsection (3) apply, they may substitute~~

~~(a) a new definition of "the relevant date" for the definition in section 94(2); and~~

~~(b) a new definition of "the last option date" for the definition in section 95(8).~~

~~(5) Where the whole or any part of the relevant benefits payable to a member of a personal pension scheme under the scheme have become payable on or before the relevant date, the right which he acquires under section 94 is only to the cash equivalent of benefits which have not become payable.~~

~~(6) A member of an occupational pension scheme or a personal pension scheme loses the right to any cash equivalent under this Chapter if the scheme is wound up.~~

~~(7) A member of an occupational pension scheme also loses that right if~~

~~(b) he fails to exercise the option conferred by section 95 on or before the last option date (within the meaning of subsection (7) of that section).~~

~~(8) In this section~~

~~"relevant benefits" means any benefits not attributable (directly or indirectly) to a pension credit; and~~

~~"the relevant date" has the same meaning as in section 94(2).~~

98 Loss of right to cash equivalent

(1) A member of a pension scheme who acquires the right to take a cash equivalent under section 94(1) loses that right if no application to take the cash equivalent is made within the period specified in section 95(1A) (but this does not prevent the member later acquiring a new right to take a cash equivalent under section 94(1) in relation to the same benefits).

(2) A member of a pension scheme loses the right to take a cash equivalent in accordance with this Chapter if the scheme is wound up.

99 Trustees' duties after exercise of option

(1) Where

(a) a member has exercised the option conferred by section 95; and

(b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,

the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 96(2), to the extent that an obligation to provide such guaranteed minimum pensions continues to subsist.

(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95, they shall do what is needed to carry out what the member requires

(a) in the case of a member of a salary related occupational pension scheme, within 6 months of the guarantee date, or (if earlier) by the date on which the member attains normal pension age,

(b) in the case of a member of any other occupational pension scheme, within 6 months of the date on which they receive the application, or (if earlier) by the date on which the member attains normal pension age, or

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~~(c) in the case of a member of a personal pension scheme, within 6 months of the date on which they receive the application.~~

(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 95 they must do what is needed to carry out what the member requires—

(a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement, and

(b) in the case of an application that relates to money purchase benefits, within 6 months beginning with the date of the application.

(3) If—

(a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme ~~at any time before the expiry of the period of 12 months beginning with the termination date;~~ and

(b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his or her surviving spouse or civil partner being forfeited; and

(c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the period of 3 months after the conclusion of the disciplinary or court proceedings (including any proceedings on appeal),

then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

~~(3A) In this section, "guarantee date" has the same meaning as in section 93A.~~

(4) The Regulatory Authority may, in prescribed circumstances, by direction grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.

(4A) Regulations may make provision requiring applications for extensions under subsection (4) to meet prescribed requirements .

(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within six months of the date mentioned in paragraph (a) or (b) of subsection (2)

(a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and

(b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.

(8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.

100 Withdrawal of applications

(1) Subject to subsections (2) and (2A) , a member of a scheme may withdraw an application under section 95 by giving the trustees or managers of the scheme notice in writing that he no longer wishes them to do what is needed to carry out what he previously required.

(2) Such a notice shall be of no effect if it is given to the trustees or managers at a time when, in order to comply with what the member previously required, they have already entered into an agreement with a third party to use the whole or part of the member's cash equivalent in a way specified in subsection (2) or, as the case may be, subsection (3) of section 95.

(2A) If the making of the application depended on the giving of a notice under section 101F(1), the application may only be withdrawn if the notice is also withdrawn.

(3) A member who withdraws an application may make another.

(4)A notice to the trustees or managers of a scheme under this section is to be taken to have been given if it is delivered to them personally, or sent by post in a registered letter or by recorded delivery service.

100A Prohibition on excluding future accruals etc

Except as mentioned in sections 96(4) and 101G(4), a pension scheme may not contain rules that would have the effect of—

- (a) preventing a member from exercising a right under this Chapter in relation to a category of benefits without also exercising a right under this Chapter or otherwise to require a transfer payment to be made in respect of another category of benefits, or
- (b) preventing a member who exercises a right under this Chapter in relation to a category of benefits from accruing rights to benefits in another category.

100B Meaning of “scheme rules”: occupational pension schemes

(1) In this Chapter references to the scheme rules, in relation to an occupational pension scheme, are references to—

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of this Act.

(2) For the purposes of subsection (1)—

(a) “relevant legislative provision” means any provision contained in any of the following provisions—

- (i) Schedule 5 to the Social Security Act 1989;
- (ii) this Part or Chapters 2 or 3 of Part 4 or regulations made under this Part or either of those Chapters;
- (iii) Part 4A of this Act or regulations made under that Part;
- (iv) section 110(1) of this Act;
- (v) Part 1 of the Pensions Act 1995 or subordinate legislation made or having effect as if made under that Part;
- (vi) section 31 of the Welfare Reform and Pensions Act 1999;
- (vii) any provision mentioned in section 306(2) of the Pensions Act 2004;
- (viii) regulations made under Schedule 17 to the Pensions Act 2014;
- (ix) regulations made under Schedule 18 to the Pensions Act 2014;
- (x) regulations made under Part 2 of the Pension Schemes Act 2014;

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—

- (i) paragraph 3 of Schedule 5 to the Social Security Act 1989;
- (ii) section 129(1) of this Act;
- (iii) section 117(1) of the Pensions Act 1995;
- (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
- (v) section 306(1) of the Pensions Act 2004;
- (vi) regulations made under paragraph 17 of Schedule 17 to the Pensions Act 2014;
- (vii) regulations made under paragraph 6 of Schedule 18 to the Pensions Act 2014;
- (viii) regulations made under section 34 of the Pension Schemes Act 2014.

100C Meaning of “normal pension age” in this Chapter

(1) In this Chapter “normal pension age”, in relation to a category of benefits under a pension scheme, means—

- (a) in a case where the scheme is an occupational pension scheme and those benefits consist only of a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies,
- (b) in a case where the scheme is an occupational pension scheme and the scheme provides for the member to become entitled to receive any of those benefits at a particular age on retirement from any employment to which the scheme applies, the earliest age at which the member becomes entitled to receive any of the benefits, and
- (c) in any other case, normal minimum pension age as defined by section 279(1) of the Finance Act 2004.
- (2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.

**100D Interpretation of Chapter
In this Chapter—**

- “accrued rights”, in relation to a member of a pension scheme, means rights that have accrued to or in respect of the member to benefits under the scheme;
- “category”, in relation to benefits, has the meaning given by section 93(6);
- “flexible benefit” has the meaning given by section 72 of the Pension Schemes Act 2014;
- “guarantee date”, in relation to a member who has received a statement of entitlement, has the meaning given by section 93A;
- “member” is to be read in accordance with section 93(11);
- “normal pension age” has the meaning given by section 100C;
- “pension credit rights”, in relation to a member of a pension scheme, means rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit;
- “salary related occupational pension scheme”: an occupational pension scheme is “salary related” if—
- (a) the scheme is not a scheme under which all the benefits that may be provided are money purchase benefits, and
- (b) the scheme does not fall within a prescribed class;
- “scheme rules”, in relation to an occupational pension scheme, has the meaning given by section 100B;
- “statement of entitlement” has the meaning given by section 93A;
- “transferrable rights” is to be read in accordance with section 93(11).

101 Supplementary provisions

In making any calculation for the purposes of this Chapter

- (a) any charge or lien on, and
- (b) any set-off against,
- the whole or part of a pension shall be disregarded.

~~Chapter 5—Early Leavers: Cash Transfer Sums and Contribution Refunds~~

CHAPTER 2

EARLY LEAVERS: CASH TRANSFER SUMS AND CONTRIBUTION REFUNDS

101AA Scope of Chapter 5

- (1) This Chapter applies to any member of an occupational pension scheme to which Chapter 1 applies (see section 69(3)) if
- (a) his pensionable service terminates before he attains normal pension age, and
- (b) on the date on which his pensionable service terminates
- (i) the three month condition is satisfied, but
- (ii) he does not have relevant accrued rights to benefit under the scheme.
- (2) For the purposes of subsection (1), the three month condition is that the period of the member's pensionable service under the scheme, taken together with

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- (a) any previous period of his pensionable service under the scheme, and
- (b) any period throughout which he was employed in linked qualifying service under another scheme,

amounts to at least three months.

(3) A period counts for the purposes of paragraph (a) or (b) of subsection (2) only so far as it counts towards qualification for long service benefit within the meaning of Chapter 1.

(4) For the purposes of subsection (1), "relevant accrued rights to benefit under the scheme", in relation to a member of a scheme, means rights which

- (a) have accrued to or in respect of him under the scheme, and
- (b) entitle him to the relevant benefits which would have accrued to or in respect of him under the applicable rules if paragraphs (a) and (b) of section 71(1) (and the word "and" immediately preceding them) did not have effect.

(5) References in the following provisions of this Chapter to a member, in relation to an occupational pension scheme, are to a member of the scheme to whom this Chapter applies.

Schedule 4, paragraphs 12 to 14

Amends sections 101F to 101H of the Pension Schemes Act 1993 as follows:

101F Power to give transfer notice

(1) An eligible member of a qualifying scheme may by notice in writing require the trustees or managers of the scheme to use an amount equal to the cash equivalent of his ~~pension credit benefit~~ **pension credit rights** for such one or more of the authorised purposes as he may specify in the notice.

(2) In the case of a member of an occupational pension scheme, the authorised purposes are

- (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme,
- (b) to purchase from one or more insurers such as are mentioned in section 19(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy the prescribed requirements, and
- (c) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.

(3) In the case of a member of a personal pension scheme, the authorised purposes are

- (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme, and
- (b) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.

(3A) An eligible member who has pension credit rights in relation to more than one category of benefits under the scheme may exercise the power to give a transfer notice in relation to the pension credit rights in relation to any one or more of those categories.

~~(4) The cash equivalent for the purposes of subsection (1) shall~~

- ~~(a) in the case of a salary related occupational pension scheme, be taken to be the amount shown in the relevant statement under section 101H, and~~
- ~~(b) in any other case, be determined by reference to the date the notice under that subsection is given.~~

(4) The cash equivalent for the purposes of subsection (1) shall—

- (a) in a case where the pension credit rights relate to a category of benefits other than money purchase benefits, be taken to be the amount shown in the relevant statement under section 101H, and**
- (b) in a case where the pension credit rights relate to money purchase benefits, be determined by reference to the date the notice under that subsection is given.**

(5) The requirements which may be prescribed under subsection (2) or (3) include, in particular, requirements of the Inland Revenue.

(6) In subsections (2) and (3), references to an eligible scheme are to a scheme

- (a) the trustees or managers of which are able and willing to accept payment in respect of the member's pension credit rights, and

(b) which satisfies the prescribed requirements.

~~(6A) Regulations may provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description.~~

(6A) Regulations may—

- (a) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;**
- (b) modify the application of this Chapter in relation to a member who has accrued rights to benefits of a prescribed description.**

(6B) In this Chapter a reference to a “category” of benefits is to one of the following three categories—

- (a) money purchase benefits;**
- (b) flexible benefits other than money purchase benefits;**
- (c) benefits that are not flexible benefits.**

(7) In this Chapter, “transfer notice” means a notice under subsection (1).

~~101G Restrictions on power to give transfer notice~~

~~(1) In the case of a salary related occupational pension scheme, the power to give a transfer notice may only be exercised if~~

- ~~(a) the member has been provided with a statement under section 101H, and~~
- ~~(b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.~~

~~(2) The power to give a transfer notice may not be exercised in the case of an occupational pension scheme if~~

- ~~(a) there is less than a year to go until the member reaches normal benefit age, or~~
- ~~(b) the pension to which the member is entitled by virtue of his pension credit rights, or benefit in lieu of that pension, or any part of it has become payable.~~

~~(3) Where an eligible member of a qualifying scheme~~

- ~~(a) is entitled to make an application under section 95 to the trustees or managers of the scheme, or~~
- ~~(b) would be entitled to do so, but for the fact that he has not received a statement under section 93A in respect of which the guarantee date is sufficiently recent, he may not, if the scheme so provides, exercise the power to give them a transfer notice unless he also makes an application to them under section 95.~~

~~(4) The power to give a transfer notice may not be exercised if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.~~

101G Restrictions on power to give transfer notice

(1) An eligible member may not give a transfer notice in relation to a category of benefits if a crystallisation event has occurred in relation to any of the member’s pension credit rights to benefits in that category.

(2) An eligible member may give a transfer notice in relation to a category of benefits other than money purchase benefits only if—

- (a) the member has been provided with a statement under section 101H in relation to benefits in that category, and**
- (b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.**

(3) An eligible member may not give a transfer notice in relation to benefits other than flexible benefits if there is less than one year to go until the member reaches normal benefit age.

(4) Where an eligible member of a qualifying scheme—

- (a) is entitled to give a transfer notice in relation to any category of benefits, and**
- (b) is also entitled to make an application to the trustees or managers of the scheme under section 95(1) in relation to benefits in the same category (or would be entitled to do so but for section 95(1A)(a)),**

the member may not, if the scheme so provides, give a transfer notice in relation to that category of benefits without also making an application under section 95(1) in relation to that category of benefits.

(5) A transfer notice may not be given if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.

(6) For the purposes of subsection (1) a crystallisation event occurs in relation to a member's pension credit rights to benefits in a category when—

- (a) payment of a pension in respect of any of the benefits has begun,
- (b) in the case of money purchase benefits, sums or assets held for the purpose of providing any of the benefits are designated as available for the payment of drawdown pension (as defined by paragraph 4 of Schedule 28 to the Finance Act 2004), or
- (c) in the case of a personal pension scheme, sums or assets held for the purpose of providing any of the benefits are applied for purchasing an annuity or insurance policy.

101H ~~Salary related schemes~~ **Benefits other than money purchase:** statements of entitlement

~~(1) The trustees or managers of a qualifying scheme which is a salary related occupational pension scheme shall, on the application of an eligible member, provide him with a written statement of the amount of the cash equivalent of his pension credit benefit under the scheme.~~

(1) The trustees or managers of a qualifying scheme must, on the application of an eligible member, provide the member with a written statement of the amount of the cash equivalent of the member's pension credit rights in relation to categories of benefits other than money purchase benefits.

(1A) In the case of a member with pension credit rights in relation to two categories of benefits other than money purchase benefits, the application may relate to pension credit rights in relation to either or both of those categories.

(2) For the purposes of subsection (1), the amount of the cash equivalent shall be determined by reference to a date falling within

- (a) the prescribed period beginning with the date of the application, and
- (b) the prescribed period ending with the date on which the statement under that subsection is provided to the applicant.

(3) Regulations may make provision in relation to applications under subsection (1) and may, in particular, restrict the making of successive applications.

(4) If trustees or managers to whom subsection (1) applies fail to perform an obligation under that subsection, section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to secure that the obligation was performed.

Schedule 4, paragraph 15

Amends section 101J of the Pension Schemes Act 1993 as follows:

101J Time for compliance with transfer notice

(1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice

- ~~(a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and~~
- ~~(b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.~~

- (a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the valuation date, and**
- (b) in the case of an application that relates to money purchase benefits, within 6 months of the date on which the notice is given.**

- (2) The Regulatory Authority may, in prescribed circumstances, by direction extend the period for complying with the notice.
- (4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance
- (a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
 - (b) section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.
- (5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, section 10 of the Pensions Act 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.
- (6) Regulations may
- (a) make provision requiring applications for extensions under subsection (2) to meet prescribed requirements, and
 - (b) provide that subsection (4) shall not apply in prescribed circumstances.
- ~~(7) In this section, "valuation date", in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means~~
- ~~(a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 101H is determined, and~~
 - ~~(b) in the case of any other scheme, the date the notice is given.~~
- (7) In subsection (1)(a), "valuation date" means the date by reference to which the amount shown in the relevant statement under section 101H is determined.**

Schedule 4, paragraph 16

Inserts, after section 101N, section 101NA into the Pension Schemes Act 1993 as follows:

101NA Prohibition on excluding transfers of some rights without others etc
Except as mentioned in sections 96(4) and 101G(4), a pension scheme may not contain rules that would have the effect of—

- (a) preventing a member from exercising a right under this Chapter in relation to a category of benefits without also exercising a right under this Chapter or otherwise to require a transfer payment to be made in respect of another category of benefits, or**
- (b) preventing a member who exercises a right under this Chapter in relation to a category of benefits from accruing rights to benefits in another category.**

Schedule 4, paragraph 17

Amends section 101P of the Pension Schemes Act 1993 as follows:

101P Interpretation of Chapter II

(1) In this Chapter

- "category", in relation to benefits, has the meaning given by section 101F(6B);**
- "eligible member", in relation to a qualifying scheme, means a member who has pension credit rights under the scheme;
- "flexible benefit" has the meaning given by section 72 of the Pension Schemes Act 2014;**
- "normal benefit age", in relation to an eligible member of a qualifying scheme, means the earliest age at which the member is entitled to receive a pension by virtue of his pension credit rights under the scheme (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise);

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"pension credit benefit", in relation to an eligible member of a qualifying scheme, means the benefits payable under the scheme to or in respect of the member by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

"pension credit rights", in relation to a qualifying scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit;

"qualifying scheme" means a funded occupational pension scheme and a personal pension scheme;

"transfer notice" has the meaning given by section 101F(7).

~~(2) For the purposes of this Chapter, an occupational pension scheme is salary related if³⁴~~

~~(a) it is not a money purchase scheme, and~~

~~(b) it does not fall within a prescribed class.~~

(3) In this Chapter, references to the relevant statement under section 101H, in relation to a transfer notice ~~given to the trustees or managers of a salary related occupational pension scheme~~ **in relation to benefits other than money purchase benefits**, are to the statement under that section on which the giving of the notice depended.

(4) For the purposes of this section, an occupational pension scheme is funded if it meets its liabilities out of a fund accumulated for the purpose during the life of the scheme.

~~101Q Power to modify Chapter II in relation to hybrid schemes~~

~~Regulations may apply this Chapter with prescribed modifications to occupational pension schemes~~

~~(a) which are not money purchase schemes, but~~

~~(b) where some of the benefits that may be provided are money purchase benefits.~~

Schedule 4, paragraphs 19 and 20

Amends section 129 and 130 of the Pension Schemes Act 1993 as follows:

129 Overriding requirements

(1) Subject to subsection (2), the provisions of ~~Chapters II, III, IV and V of Part IV~~ **Chapters 2 and 3 of Part 4, Chapters 1 and 2 of Part 4ZA**, Chapters I and II of Part IVA, section 110(1), and any regulations made under any of those Chapters or section 113 or 114 override any provision of a scheme to which they apply to the extent that it conflicts with them.

(2) Chapter II of Part IV (as it applies to occupational pension schemes), and Chapter III of that Part do not override a protected provision of a scheme .

(3) In subsection (2) "protected provision" means

(c) any provision of a scheme which is included in it for the purpose of effecting a transfer of rights or liabilities authorised by regulations under section 20(1);

(d) any provision of a scheme to the extent that it deals with commutation, suspension or forfeiture of the whole or part of a pension; and

(e) any provision of a scheme whereby, as respects so much of a widow's, widower's or surviving civil partner's pension as exceeds the guaranteed minimum pension

(i) no pension or a pension at a reduced rate is payable if the earner and the widow, widower or surviving civil partner married or, as the case may be, formed a civil partnership not more than six months before the earner's death;

(ii) the whole or any part of the pension is not paid to the widow, widower or surviving civil partner, but instead comparable benefits are provided for one or more dependants of the deceased earner; or

(iii) no pension, or a pension at a reduced rate, is payable to the widow, widower or surviving civil partner (or, where a provision such as is mentioned in sub-paragraph (ii) operates, to another dependant of the deceased earner) who was more than ten years younger than the deceased earner.

(4) For the purposes of the application of Chapter II of Part IV to schemes which are not contracted-out, subsection (3) shall have effect with the omission

- (a) from paragraph (c), of the words from "authorised" to the end; and
- (b) from paragraph (e), of the words from "as respects" to "guaranteed minimum pension".

130 Extra-statutory benefits

It is hereby declared that

- (a) nothing in Part III precludes an occupational pension scheme from providing benefits that are more favourable than those required for contracting-out purposes and, in particular, nothing in section 16(3) is to be taken as preventing the scheme from providing increases above the alternative minima there mentioned; and
- (b) nothing in the provisions of ~~Chapter II, IV or V of Part IV~~ **Chapter 2 of Part 4 or Chapter 1 or 2 of Part 4ZA** precludes a scheme from being framed or managed more favourably to beneficiaries than is called for by those provisions.

Schedule 4, paragraph 21

Amends section 153 of the Pension Schemes Act 1993 as follows:

153 Power to modify certain provisions of this Act

(1) The Secretary of State may by regulations direct that ~~Chapters II, III and IV of Part IV~~ **Chapters 2 and 3 of Part 4 and Chapter 1 of Part 4ZA** shall have effect, in such cases as he may specify in the regulations, subject to such modifications as he may specify.

(2) Regulations may modify Chapter I of Part IV

- (a) in its application to cases where an earner is for the time being, or has been, employed in pensionable service under, or in contracted-out employment by reference to, different schemes applying to the same employment;
- (b) in such manner as the Secretary of State thinks fit for securing that the preservation requirements include requirements for provision to be made in a scheme as to the preservation of a member's benefit in the event of the scheme being wound up;
- (c) without prejudice to paragraph (a) or (b), so that the preservation requirements apply with such modifications and exceptions as the Secretary of State considers to be necessary for particular cases or classes of case;

and regulations under paragraph (a) may relate to service under or, as the case may be, by reference to different schemes at the same time, or at different times.

(5) The Secretary of State may make regulations modifying section 129 (so far as it applies to that Chapter) or section 144, in their application

- (a) to any occupational pension scheme which applies to earners in employments under different employers;
- (b) to any occupational pension scheme of which there are no members who are in pensionable service under the scheme; or
- (c) to any case where a partnership is the employer, or one of the employers, in relation to an occupational pension scheme;

(8) The Secretary of State may by order provide that any enactment in Chapter II of Part VII which is specified in the order

- (a) shall not apply to persons or to employments of such classes as may be prescribed in the order; or
- (b) shall apply to persons or employments of such classes as may be so prescribed subject, but without prejudice to paragraph (a), to such exceptions or modifications as may be so prescribed;

and in this subsection "employments" has the same meaning as in that Chapter.

Schedule 4, paragraph 22

Amends section 179 of the Pension Schemes Act 1993 as follows:

179 Linked qualifying service

(1) Subject to subsections (2) to (4), for the purposes of this Act any period of an earner's service in an employment is linked qualifying service in relation to a later period of service (whether in the same or another employment) if

(a) under ~~Chapter 4 or 5 of Part 4~~ **Chapter 1 or 2 of Part 4ZA** or under the rules of a scheme applying to him in the earlier period of service

(i) there was made a transfer of his rights (including any transfer credits allowed) under that scheme, or a transfer payment in respect of those rights, to, or to the trustees or managers of, another scheme applying to him in the later period of service;

(ii) those rights were secured by a policy of insurance or an annuity contract and were subsequently transferred to another scheme applying to him in the later period of service; or

(iii) a cash equivalent (within the meaning of ~~Chapter 4 of Part 4~~ **Chapter 1 of Part 4ZA**) or cash transfer sum (within the meaning of ~~Chapter 5~~ **Chapter 2** of that Part) was paid in respect of him to the trustees or managers of another scheme applying to him in the later period of service; and

(b) in consequence of the transfer of his accrued rights to the second scheme, or the payment to the trustees or managers of that scheme, there are (or were) allowed to him transfer credits under the rules of that other scheme.

(2) For any service to be taken into account as linked qualifying service, it must be actual service and no regard shall be had to any scheme rule which provides for service to be treated for any purposes of benefit or otherwise as longer or shorter than it actually was.

(3) Only so much of the earlier period as is a period of service in respect of which there accrued under the first scheme any of the rights transferred to the second scheme shall be linked qualifying service in relation to the later period of service.

(4) For the purposes of Chapter I of Part IV, as respects any case where the rules of the scheme provide

(a) that an earner is not entitled to become a member unless he satisfies specified conditions, but

(b) that, if he becomes a member, rights are to accrue to him in respect of periods of service before he satisfied any such conditions,

regulations may provide for any such periods to be treated, in such cases and to such extent as may be prescribed, as linked qualifying service with later periods of service.

Schedule 4, paragraph 23

Amends section 181 of the Pension Schemes Act 1993 as follows:

181 General interpretation

(1) In this Act, unless the context otherwise requires

"abolition date" means the day appointed for the commencement of section 15(1) of the Pensions Act 2007;

"age", in relation to any person, shall be construed so that

(a) he is over or under a particular age if he has or, as the case may be, has not attained that age;

(b) he is between two particular ages if he has attained the first but not the second;

"appropriate scheme" and "appropriate scheme certificate" are to be construed in accordance with section 181A ;

"Category A retirement pension" and "Category B retirement pension" mean the retirement pensions of those descriptions payable under Part II of the Social Security Contributions and Benefits Act 1992;

"civil recovery order" means an order under section 266 of the Proceeds of Crime Act 2002 or an order under section 276 imposing the requirement mentioned in section 277(3);

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"contract of service" has the same meaning as in section 122(1) of the Social Security Contributions and Benefits Act 1992;

"contracted-out employment" shall be construed in accordance with section 8;

"contracting-out certificate" and references to a contracted-out scheme and to contracting-out shall be construed in accordance with section 7 and section 181A ;

"contributions equivalent premium" *has the meaning given in* [means a premium that was paid under] [section 55(2)];

"earner" and "earnings" shall be construed in accordance with [section 8(1B) of this Act and] sections 3, 4 and 112 of the Social Security Contributions and Benefits Act 1992;

"earnings factors" shall be construed in accordance with sections 22 and 23 of the Social Security Contributions and Benefits Act 1992;

"employed earner" and "self-employed earner" have the meanings given by section 2 of the Social Security Contributions and Benefits Act 1992;

"employee" means a person gainfully employed in Great Britain either under a contract of service or in an office (including an elective office) with earnings ;

"employer" means

- (a) in the case of an employed earner employed under a contract of service, his employer;
- (b) in the case of an employed earner employed in an office with emoluments
 - (i) such person as may be prescribed in relation to that office; or
 - (ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;

"employment" includes any trade, business, profession, office or vocation and "employed" shall be construed accordingly except in the expression "employed earner";

"Financial Services Compensation Scheme" means the Financial Services Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000.

["the first abolition date" has the meaning given by section 7A;]

"guaranteed minimum pension" has the meaning given section 8(2);

"HMRC" means the Commissioners for Her Majesty's Revenue and Customs;

"independent trade union" has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992;

"employment tribunal" means a tribunal established or having effect as if established under section 1(1) of the Employment Tribunals Act 1996 ;

"the Inland Revenue" means the Commissioners of Inland Revenue;

"linked qualifying service" has the meaning given in section 179;

"long-term benefit" has the meaning given in section 20(2) of the Social Security Contributions and Benefits Act 1992;

"lower earnings limit" and "upper earnings limit" shall be construed in accordance with section 5 of the Social Security Contributions and Benefits Act 1992 and "current", in relation to those limits, means for the time being in force;

"minimum contributions" shall be construed in accordance with sections 43 to 45;

"minimum payment" has the meaning given in section 8(2);

"modifications" includes additions, omissions and amendments, and related expressions shall be construed accordingly;

"money purchase benefits", in relation to a member of a personal or occupational pension scheme or the widow, widower or surviving civil partner of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which fall within section 181B ;

"money purchase contracted-out scheme" is to be construed in accordance with section 181A section 181A [section 7B];]

"money purchase scheme" means a pension scheme under which all the benefits that may be provided are money purchase benefits;

"normal pension age" has the meaning given in section 180;

"occupational pension scheme" has the meaning given in section 1;

"overseas arrangement" means a scheme or arrangement which—

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- (b) is administered wholly or primarily outside Great Britain;
- (c) is not an appropriate scheme; and

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- (d) is not an occupational pension scheme;
- "pension credit" means a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 or under corresponding Northern Ireland legislation;
- "pension debit" means a debit under section 29(1)(a) of the Welfare Reform and Pensions Act 1999;
- "pensionable age"
- (a) so far as any provisions (other than sections 46 to 48) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and
 - (b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 4 to the Pensions Act 1995.
- "pensionable service" has the meaning given in section 70(2);
- "personal pension scheme" has the meaning given in section 1;
- "prescribe" means prescribe by regulations and "prescribed" shall be construed accordingly;
- "the preservation requirements" has the meaning given in section 69(2);
- "primary Class 1 contributions" and "secondary Class 1 contributions" have the same meanings as in the Social Security Contributions and Benefits Act 1992;
- ["the principal appointed day" means 6 April 1997 (which is the day designated as the principal appointed day for the purposes of Part 3 of the Pensions Act 1995);]
- "protected rights" has the meaning given in section 10, as it had effect immediately prior to the abolition date;
- "public service pension scheme" has the meaning given in section 1;
- "regulations" means regulations made by the Secretary of State under this Act;
- "the Regulatory Authority" means the Pensions Regulator;
- "resources", in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme;
- "rights", in relation to accrued rights (within the meaning of section 73, 136 or 179) or transfer credits, includes rights to benefit and also options to have benefits paid in a particular form or at a particular time;
- ["salary related contracted-out scheme" is to be construed in accordance with section 7B;]
- ["the second abolition date" has the meaning given by section 7A;]
- "short service benefit" has the meaning given in section 71(2);
- "tax week" means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in a leap year, the last two days) being treated accordingly as a separate tax week;
- "tax year" means the 12 months beginning with 6th April in any year;
- "trade or business", in relation to a public or local authority, includes the exercise and performance of the powers and duties of the authority;
- "transfer credits" means rights allowed to an earner under the rules of an occupational pension scheme by reference to
- (a) a transfer to the scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than rights attributable (directly or indirectly) to a pension credit, or
 - (b) a cash transfer sum paid under ~~Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** in respect of him, to the trustees or managers of the scheme;
- "the upper accrual point" has the meaning given by section 122 of the Social Security Contributions and Benefits Act 1992;
- "week" means a period of seven days beginning with Sunday;
- "working life", in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with
- (a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or
 - (b) if earlier, the tax year before the one in which the person dies.
- (2) References to employers in the provisions of this Act (other than sections 123 to 127, 157, and 160 ("the excluded provisions")) are to be treated, in relation to persons within the application of an occupational pension scheme and qualifying or prospectively qualifying for

its benefits, as including references to persons who in relation to them and their employment are treated by regulations as being employers for the purposes of those provisions.

(3) Subject to any such regulations, references to an employer in any of the provisions of this Act (other than the excluded provisions or Chapter I of Part IV, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 153(2), 158(1) to (5), 162, 163, and 176) shall, in relation to an earner employed in an office with emoluments, be construed as references to

(a) such person as may be prescribed in relation to that office; or

(b) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of that office.

(4) Regulations may for any purpose of any provision of this Act (other than the excluded provisions or section 31, 43, 111, 160, 164, 165 or 169) prescribe the persons who are to be regarded as members or prospective members of an occupational pension scheme and as to the times at which and the circumstances in which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

(5) In sections 165 and 166

(a) references to the United Kingdom include references to the territorial waters of the United Kingdom; and

(b) references to Great Britain include references to the territorial waters of the United Kingdom adjacent to Great Britain.

(6) Any reference in section 185 or 186 to an order or regulations under this Act includes a reference to an order or regulations made under any provision of an enactment passed after this Act and directed to be construed as one with it; but this subsection applies only so far as a contrary intention is not expressed in the enactment so passed, and shall be without prejudice to the generality of any such direction.

(7) In the application of section 158 to Northern Ireland any reference to a government department is to be taken to be, or to include (as the context may require), a Northern Ireland department.

[N.B. Words in italics substituted by words adjacent in square brackets – in force 6 April 2016. Words in square brackets otherwise, in force 6 April 2016]

Schedule 4, paragraph 25

Amends sections 67A of the Pensions Act 1995 as follows:

67A The subsisting rights provisions: interpretation

(1) In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this section

"regulated modification"

"protected modification"

"detrimental modification"

"affected member"

"subsisting right"

"scheme rules".

(2) "Regulated modification" means a modification which is

(a) a protected modification, or

(b) a detrimental modification,

or is both.

(3) "Protected modification" means a modification of an occupational pension scheme which

(a) on taking effect would or might result in any subsisting right of

(i) a member of the scheme, or

(ii) a survivor of a member of the scheme, which is not a right or entitlement to money purchase benefits becoming, or being replaced with, a right or entitlement to money purchase benefits under the scheme rules,

(b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, or

(c) is of a prescribed description.

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For the purposes of paragraph (a), the reference in the definition of "money purchase benefits" in section 181(1) of the Pension Schemes Act 1993 to the widow or widower of a member of an occupational pension scheme is to be read as including any other survivor of the member.

(4) "Detrimental modification" means a modification of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of

- (a) any member of the scheme, or
- (b) any survivor of a member of the scheme.

(5) A person is an "affected member"

(a) in relation to a protected modification within paragraph (a) or (b) of subsection (3), if, at the time the modification takes effect, he is

- (i) a member of the scheme, or
- (ii) a survivor of a member of the scheme, and, on taking effect, the modification would or might affect any of his subsisting rights as mentioned in that paragraph,

(b) in relation to a protected modification within paragraph (c) of that subsection, if he is of a prescribed description, and

(c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is

- (i) a member of the scheme, or
- (ii) a survivor of a member of the scheme, and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

(6) "Subsisting right" means

(a) in relation to a member of an occupational pension scheme, at any time

- (i) any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or
- (ii) any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and

(b) in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.

For this purpose, "right" includes a pension credit right.

(7) At any time when the pensionable service of a member of an occupational pension scheme is continuing, his subsisting rights are to be determined as if he had opted, immediately before that time, to terminate that service.

(8) "Scheme rules", in relation to a scheme, means

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4 of the Pension Schemes Act 1993 (preservation of benefit under occupational pension schemes).

(9) For the purposes of subsection (8)

(a) "relevant legislative provision" means any provision contained in any of the following provisions

(i) Schedule 5 to the Social Security Act 1989 (equal treatment for men and women);

~~(ii) Chapters 2 to 5 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under any of those Chapters;~~

(ii) Chapter 2 or 3 of Part 4 of the Pension Schemes Act 1993 (certain protection for early leavers) or regulations made under either of those Chapters;

(iia) Chapter 1 or 2 of Part 4ZA of that Act (transfers and contribution refunds) or regulations made under either of those Chapters;

(iii) Part 4A of that Act (requirements relating to pension credit benefit) or regulations made under that Part;

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- (iv) section 110(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);
 - (v) this Part of this Act (occupational pensions) or subordinate legislation made or having effect as if made under this Part;
 - (vi) section 31 of the Welfare Reform and Pensions Act 1999 (pension debits: reduction of benefit);
 - (vii) any provision mentioned in section 306(2) of the Pensions Act 2004;
- (b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions
- (i) paragraph 3 of Schedule 5 to the Social Security Act 1989;
 - (ii) section 129(1) of the Pension Schemes Act 1993;
 - (iii) section 117(1) of this Act;
 - (iv) section 31(4) of the Welfare Reform and Pensions Act 1999;
 - (v) section 306(1) of the Pensions Act 2004.
- (10) For the purposes of this section
- (a) "survivor", in relation to a member of an occupational pension scheme, means a person who
 - (i) is the widow or widower of the member, or
 - (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and
 - (b) a modification would or might adversely affect a person's subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.
- (11) In the subsisting rights provisions, in relation to
- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
 - (b) a modification made, or to be made, in exercise of such a power, references to "the scheme" are to be read as references to the scheme mentioned in paragraph (a).

Schedule 4, paragraph 26

Amends sections 73(9) of the Pensions Act 1995 as follows:

Winding up

73 Preferential liabilities on winding up

- (1) This section applies where an occupational pension scheme to which this section applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.
- (2) This section applies to an occupational pension scheme other than a scheme which is
- (a) a money purchase scheme, or
 - (b) a prescribed scheme or a scheme of a prescribed description.
- (3) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in subsection (4) and, if the assets are insufficient to satisfy those amounts in full, then
- (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier paragraphs of subsection (4) before the amounts of the liabilities mentioned in later paragraphs, and
 - (b) where the amounts of the liabilities mentioned in one of those paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.
- (4) The liabilities referred to in subsection (3) are
- (a) where
 - (i) the trustees or managers of the scheme are entitled to benefits under a relevant pre-1997 contract of insurance entered into in relation to the scheme, and
 - (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract, the liability so secured;

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- (b) any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within paragraph (a);
- (c) any liability for pensions or other benefits which, in the opinion of the trustees or managers, are derived from the payment by any member of voluntary contributions, other than a liability within paragraph (a) or (b);
- (d) any other liability in respect of pensions or other benefits.

(5) For the purposes of subsection (4)

"corresponding PPF liability" in relation to any liability for pensions or other benefits means

- (a) where the liability is to a member of the scheme, the cost of securing benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board of the Pension Protection Fund assumed responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Pensions Act 2004 (pension protection), and

- (b) where the liability is to another person in respect of a member of the scheme, the cost of securing benefits for that person corresponding to the compensation which would be payable to that person in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme in accordance with that Chapter;

"relevant pre-1997 contract of insurance" means a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme's liability for

- (a) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and
- (b) any benefit which will be payable in respect of that person on his death.

(6) For the purposes of this section, when determining the corresponding PPF liability in relation to any liability of a scheme to, or in respect of, a member for pensions or other benefits, the pension compensation provisions apply with such modifications as may be prescribed.

(7) Regulations may modify subsection (4).

(8) For the purposes of that subsection

- (a) regulations may prescribe how it is to be determined whether a liability for pensions or other benefits which, in the opinion of the trustees or managers of the scheme, are derived from the payment by any member of voluntary contributions falls within paragraph (a) or (b) of that subsection;
- (b) no pension or other benefit which is attributable (directly or indirectly) to a pension credit is to be regarded for the purposes of paragraph (c) of that subsection as derived from the payment of voluntary contributions.

(9) Where, on the commencement of the winding up period, a member becomes a person to whom ~~Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies in relation to him with such modifications as may be prescribed.

(10) For the purposes of this section

"assets" of a scheme to which this section applies do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

"liabilities" of such a scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

"the pension compensation provisions" has the same meaning as in Part 2 of the Pensions Act 2004 (see section 162 of that Act);

"scheme rules" has the same meaning as in the Pensions Act 2004 (see section 318 of that Act);

"winding up period", in relation to an occupational pension scheme to which this section applies, means the period which

- (a) begins with the day on which the time immediately after the beginning of the winding up of the scheme falls, and
- (b) ends when the winding up of the scheme is completed.

Schedule 4, paragraph 27

Amends sections 73B(7) of the Pensions Act 1995 as follows:

73B Sections 73 and 73A: supplementary

- (1) Any action taken in contravention of section 73A(3) is void.
- (2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which section 73 applies, section 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.
- (3) For the purposes of subsection (2), when determining whether section 73A(3) has been complied with subsection (1) of this section is to be disregarded.
- (4) Regulations may
 - (a) prescribe how, for the purposes of the winding up provisions
 - (i) the assets and liabilities of a scheme to which section 73 applies, and
 - (ii) their value or amount,are to be determined, calculated and verified;
 - (b) modify any of the winding up provisions as it applies
 - (i) to prescribed schemes or prescribed descriptions of schemes;
 - (ii) in relation to a scheme where only part of the scheme is being wound up;
 - (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under section 135(4) of the Pensions Act 2004 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).
- (5) Without prejudice to the generality of subsection (4), regulations under paragraph (b)(i) of that subsection may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.
- (6) The winding up provisions do not apply
 - (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
 - (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
 - (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
 - (d) in relation to any liability the discharge of which is validated under section 136 of the Pensions Act 2004 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).
- (7) But nothing in subsection (6) prevents the winding up provisions applying in relation to a liability under ~~Chapter 4 of Part 4~~ **Chapter 1 of Part 4ZA** of the Pension Schemes Act 1993 (transfer values) which
 - (a) arose before the commencement of the winding up of the scheme, and
 - (b) was not discharged before the commencement of the winding up period.
- (8) Regulations may provide that, in prescribed circumstances, where
 - (a) an occupational pension scheme to which section 73 applies is being wound up,
 - (b) a member of the scheme died before the winding up began, and
 - (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member,his entitlement to payment of all or part of the benefit is, for the purposes of subsection (6), to be treated as having arisen immediately before the commencement of the winding up period.
- (9) If, immediately before the winding up period in relation to an occupational pension scheme to which section 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of subsection (6), to be regarded as having become entitled to payment of the amount before that period.
- (10) For the purposes of this section
 - (a) "winding up provisions" means this section and sections 73, 73A and 74, and
 - (b) subsection (10) of section 73 applies as it applies for the purposes of that section.

Schedule 4, paragraph 28

Amends sections 135 of the Learning and Skills Act 2000 as follows:

135 Pensions: interpretation.

(1) This section has effect for the purposes of section 134.

(2) Rights in relation to a person include—

(a) all forms of right to or eligibility for the present or future payment of a pension to or in respect of him;

(b) a right of allocation in respect of the present or future payment of a pension.

(3) A deferred pensioner is a person who has rights under the occupational scheme but is neither a pensioner under it nor a person to whom rights are accruing under it by virtue of his employment.

(4) "Salary related occupational pension scheme" has the meaning given by ~~section 93(1A)~~ **section 100D** of the Pension Schemes Act 1993.

Schedule 4, paragraph 30

Amends sections 18 of the Pensions Act 2004 as follows:

18 Pension liberation: interpretation

(1) In this section and sections 19 to 21

(a) "pension scheme" means an occupational pension scheme or a personal pension scheme,

(b) "deposit-taker" has the meaning given by subsections (8A) and (8B) of section 49 of the Pensions Act 1995, except that, for the purposes of this definition, subsection (8A)(c) of that section has effect with the omission of the words from "or" to the end,

(c) references to money liberated from a pension scheme are to be read in accordance with subsection (2),

(d) "liberated member", in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in subsection (2)(a), and

(e) "restraining order" means a restraining order under section 20.

(2) Money is to be taken to have been liberated from a pension scheme if

(a) the money directly or indirectly represents an amount that, in respect of accrued rights **or an entitlement** of a member of a pension scheme, has been transferred out of the scheme in pursuance of

(i) a relevant statutory provision, or

(ii) a provision of ~~the applicable rules~~ **the scheme rules**, other than a relevant statutory provision,

(b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party ("the liberator") would secure that the amount was used in an authorised way,

(c) the amount has not been used in an authorised way, and

(d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.

(3) The following are "relevant statutory provisions" for the purposes of subsection (2)

~~(a) section 94(1)(a), (aa) or (b) of the Pension Schemes Act 1993 (c. 48) (right to cash equivalent under Chapter 4 of Part 4 of that Act);~~

(a) section 94 of the Pension Schemes Act 1993 (right to cash equivalent under Chapter 1 of Part 4ZA of that Act);

~~(b) section 101AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** of that Act);

~~(c) section 101F(1) of that Act (right to cash equivalent of pension credit benefit).~~

(4) In subsection (2) "authorised way" means

(a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in subsection (3)(a), a way specified in subsection (2) or, as the case may be, subsection (3) of section 95 of the Pension Schemes Act 1993;

- (b) where that amount is transferred out in pursuance of the provision mentioned in subsection (3)(b), a way specified in section 101AE(2) of that Act;
- (c) where that amount is transferred out in pursuance of the provision mentioned in subsection (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 101F of that Act;
- (d) where that amount is transferred out in pursuance of a provision of the kind mentioned in subsection (2)(a)(ii), a way that is authorised by ~~the applicable rules~~ **the scheme rules** for amounts transferred out in pursuance of that provision.

~~(5) In this section "the applicable rules" has the same meaning as, in the case of the pension scheme concerned, that expression has in section 94 of the Pension Schemes Act 1993.~~

Schedule 4, paragraphs 31 and 32

Amends sections 23 and 24 of the Pensions Act 2004 as follows:

23 Freezing orders

- (1) This section applies to an occupational pension scheme which is not a money purchase scheme.
- (2) The Regulator may make a freezing order in relation to such a scheme if and only if
 - (a) the order is made pending consideration being given to the making of an order in relation to the scheme under section 11(1)(c) of the Pensions Act 1995 (c. 26) (power to wind up schemes where necessary to protect the generality of members), and
 - (b) the Regulator is satisfied that
 - (i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and
 - (ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of section 132) in relation to the scheme (see section 135(11)).

- (3) A freezing order is an order directing that during the period for which it has effect
 - (a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and
 - (b) winding up of the scheme may not begin.
- (4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect
 - (a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;
 - (b) a direction that
 - (i) no further contributions or payments, or
 - (ii) no further specified contributions or payments, are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;
 - (c) a direction that any amount or any specified amount which
 - (i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under paragraph (b), and
 - (ii) has been deducted from a payment of any earnings in respect of an employment, is to be repaid to the member in question by the employer;
 - (d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;
 - (e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;
 - (f) a direction that
 - (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or

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- (ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;
- (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 93A of the Pension Schemes Act 1993 (c. 48) (~~salary-related schemes~~ **benefits other than money purchase**: right to statement of entitlement);
- (h) a direction that
- (i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or
 - (ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.
- (5) In subsection (4)(b)
- (a) the references to contributions do not include contributions due to be paid before the order takes effect, and
 - (b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.
- (6) A freezing order may not contain a direction under subsection (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.
- (7) A direction under subsection (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.
- (8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.
- (9) A freezing order containing such a requirement must specify
- (a) the date by reference to which the assets and liabilities are to be valued,
 - (b) the assets and liabilities which are to be taken into account,
 - (c) the manner in which the valuation must be prepared,
 - (d) the information and statements which it must contain, and
 - (e) any other requirements that the valuation must satisfy.
- (10) For the purposes of subsection (8)
- "an actuarial valuation" means a written valuation of the scheme's assets and liabilities prepared and signed by the actuary;
- "the actuary" means
- (a) the actuary appointed under section 47(1)(b) of the Pensions Act 1995 (c. 26) (professional advisers) in relation to the scheme, or
 - (b) if no such actuary has been appointed
 - (i) a person with prescribed qualifications or experience, or
 - (ii) a person approved by the Secretary of State.
- (11) In this section "specified" means specified in the freezing order.

24 Consequences of freezing order

- (1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under section 26.
- (2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue in accordance with the scheme or any enactment during the period for which the order has effect, unless the order contains a direction to the contrary.
- (3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under section 11 of the Pensions Act 1995 (power to wind up occupational pension schemes).

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(4) If a freezing order contains a direction under section 23(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect

(a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and

(b) any obligation to pay those contributions (including any obligation under section 49(8) of the Pensions Act 1995 to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise.

(5) If a freezing order contains a direction under section 23(4)(f) (no transfers or discharge of member's rights) it does not prevent

(a) giving effect to a pension sharing order or provision, or

(b) giving effect to a pension earmarking order in a case where

(i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and

(ii) a direction under section 23(4)(d) or (e) does not prevent the payment becoming due.

(6) For the purposes of subsection (5)

"pension sharing order or provision" means an order or provision falling within section 28(1) of the Welfare Reform and Pensions Act 1999 (c. 30) (activation of pension sharing);

"pension earmarking order" means

(a) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) (financial provision orders in connection with divorce etc) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers to include provision about pensions),

(aa) an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (c.33) (financial relief in the High Court or a county court etc) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provisions about pensions),

(b) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order),

(c) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (S.I. 1978/1045 (N.I.15)) so far as it includes provision made by virtue of Article 27B or 27C of that Order (Northern Ireland powers corresponding to those mentioned in paragraph (a)) , or

(d) an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provisions about pensions)

(7) Regulations may modify any provisions of

~~(a) Chapter 4 of Part 4 of the Pension Schemes Act 1993 (c. 48) (protection for early leavers: transfer values), or~~

~~(b) Chapter 5 of that Part (protection for early leavers: cash transfer sums and contribution refunds),~~

(a) Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 (transfer rights: general), or

(b) Chapter 2 of that Part (early leavers: cash transfer sums and contribution refunds).

in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under section 23(4)(f), (g) or (h) (no transfers etc in respect of member's rights or refunds of contributions etc from the scheme).

(8) Disregarding subsection (1), if a freezing order made in relation to a scheme is not complied with, section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(9) Subsection (8) does not apply in the case of non-compliance with a direction under section 23(4)(c) (direction that certain deducted contributions are to be repaid by the employer).

(10) In such a case, section 10 of the Pensions Act 1995 (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

Schedule 4, paragraph 33

Amends section 73 of the Pensions Act 2004 as follows:

73 Inspection of premises

(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(2) In subsection (1), the “occupational scheme provisions” means provisions contained in or made by virtue of—

(a) any of the following provisions of this Act—
this Part;

Part 3 (scheme funding);

sections 241 to 243 (member-nominated trustees and directors);

sections 247 to 249 (requirement for knowledge and understanding);

section 252 (UK-based scheme to be trust with effective rules);

section 253 (non-European scheme to be trust with UK-resident trustee);

section 255 (activities of occupational pension schemes);

section 256 (no indemnification for fines or civil penalties);

sections 259 and 261 (consultation by employers);

Part 7 (cross-border activities within European Union);

Part 9 (miscellaneous and supplementary);

(b) either of the following provisions of the Welfare Reform and Pensions Act 1999 (c 30)—

section 33 (time for discharge of pension credit liability);

section 45 (information);

(c) any of the provisions of Part 1 of the Pensions Act 1995 (c 26) (occupational pension schemes), other than—

(i) sections 51 to 54 (indexation), and

(ii) sections 62 to 65 (equal treatment);

(d) any of the following provisions of the Pension Schemes Act 1993 (c 48)—

~~Chapter 4 of Part 4~~ **Chapter 1 of Part 4ZA** (transfer values);

~~Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** (early leavers: cash transfer sums and contribution refunds);

Chapter 2 of Part 4A (pension credit transfer values);

section 113 (information);

section 175 (levy);

[(da) section 16 of the Public Service Pensions Act 2013;]

(e) any provisions in force in Northern Ireland corresponding to any provisions within paragraphs (a) to (d) [(da)].

(3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme—

(a) sections 1 and 2(4) of the Welfare Reform and Pensions Act 1999 (stakeholder pension schemes: registration etc), or

(b) any corresponding provisions in force in Northern Ireland,

are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(5) In subsection (4)—

“trust-based personal stakeholder scheme” means a personal pension scheme which—

(a) is a stakeholder scheme, and

(b) is established under a trust;

the “trust-based scheme provisions” means any provisions contained in or made by virtue of—

- (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the Welfare Reform and Pensions Act 1999 (c 30), as the provision applies by virtue of that paragraph, or
 - (b) any corresponding provision in force in Northern Ireland.
- (6) Premises are liable to inspection for the purposes of this section if the inspector has reasonable grounds to believe that—
- (a) members of the scheme are employed there,
 - (b) documents relevant to the administration of the scheme are being kept there, or
 - (c) the administration of the scheme, or work connected with that administration, is being carried out there.
- (7) In this section, “stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under—
- (a) section 2 of the Welfare Reform and Pensions Act 1999 (register of stakeholder schemes), or
 - (b) any corresponding provision in force in Northern Ireland

Schedule 4, paragraph 37

Amends Schedule 7 to the Pensions Act 2004 as follows:

Compensation in respect of scheme right to transfer payment or contribution refund 20

- (1) Compensation is payable in accordance with this paragraph where—
- (a) a person's pensionable service terminates on the commencement of the assessment period,
 - (b) as a result, he has rights, under the admissible rules, to—
 - (i) a transfer payment calculated by reference to the value of benefits which have accrued to him under the scheme (“the protected transfer payment”), or
 - (ii) a cash payment calculated by reference to the amount of contributions made by him or on his behalf to the scheme (“the protected contribution repayment”),
 - (c) ~~Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act 1993 (c 48) (early leavers: cash transfer sums and contribution refunds) does not apply to him, and
 - (d) he does not have relevant accrued rights to benefit (within the meaning of section 101AA(4) of that Act).

Short periods of service which terminate on commencement of assessment period 32

- (1) This paragraph applies to a member of the scheme if—
- (a) his pensionable service terminates on the commencement of the assessment period, and
 - (b) as a result, he has rights, in relation to the scheme, under ~~Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act 1993 (c 48) (early leavers: cash transfer sums and contribution refunds).
- (2) Where this paragraph applies, for the purposes of this Schedule the member is to be treated as if, immediately before the assessment date, he—
- (a) had relevant accrued rights to benefits under the scheme (within the meaning of section 101AA(4) of that Act), and
 - (b) did not have any other rights to benefits (other than benefits attributable (directly or indirectly) to a pension credit) under the scheme.

Schedule 4, paragraph 39

Amends section 34(7) of the Pensions Act 2014 as follows:

34 Power to prohibit offer of incentives to transfer pension rights

- (1) The Secretary of State may by regulations make provision prohibiting a person from offering an incentive to another person with the intention of inducing a member of a salary related occupational pension scheme to—
- (a) exercise a right to require a pensions transfer, or
 - (b) agree to a pensions transfer.
- (2) “Pensions transfer” means a transfer of sums or assets representing any of the member’s pension rights to be used for one or more of the following—
- (a) acquiring rights (whether to present or future benefit) for the member under the rules of another occupational pension scheme or a personal pension scheme;
 - (b) purchasing one or more annuities for the member;
 - (c) subscribing to other pension arrangements for the member.
- (3) “Pension right” means, at any time—
- (a) any right which at that time has accrued to or in respect of the member to future benefits under the scheme rules, or
 - (b) any entitlement to the present payment of a pension or other benefit which the member has at that time, under the scheme rules;
- and for this purpose “right” includes a pension credit right.
- (4) Regulations under this section may in particular—
- (a) provide for the prohibition to apply whether the incentive offered is to be provided by the person making the offer or another person;
 - (b) create exceptions to the prohibition;
 - (c) provide for section 10 of the Pensions Act 1995 (civil penalties) to apply to a person who contravenes the regulations.
- (5) Regulations made by virtue of subsection (4)(c) may in particular provide that for the purposes of section 10 of the Pensions Act 1995 the offer of an incentive is to be regarded as a separate act in relation to each member of a scheme to whom the incentive relates.
- (6) Nothing in any regulations made under this section affects the validity of a pensions transfer (or of the exercise of a right to require a transfer or of an agreement to a transfer).
- (7) In this section—
- “incentive” means a financial or other advantage;
 - “member” has the meaning given by section 124(1) of the Pensions Act 1995;
 - “occupational pension scheme” and “personal pension scheme” have the meanings given by section 1 of the Pension Schemes Act 1993;
 - “pension credit right” has the meaning given by section 124(1) of the Pensions Act 1995;
 - “salary related occupational pension scheme” has the meaning given by ~~section 93(1A)~~ **section 100D** of the Pension Schemes Act 1993;
 - “scheme rules” has the meaning given by section 67A(8) of the Pensions Act 1995.
- (8) This section binds the Crown.

Schedule 4, paragraph 40

Amends paragraph 1 of Schedule 17 of the Pensions Act 2014 as follows:

SCHEDULE 17 Automatic transfer of pension benefits etc

Part 1 Automatic transfer of pension benefits

Regulations providing for transfer of cash equivalent of transferable benefits

1(1) The Secretary of State must make regulations with a view to ensuring that, where a qualifying member of an automatic transfer scheme has transferable benefits under another pension scheme, the cash equivalent of the transferable benefits—

- (a) is transferred to the automatic transfer scheme, and
- (b) is used to provide rights for the member under it.

(2) In this Schedule “automatic transfer scheme” means—

- (a) a work-based pension scheme, other than a scheme of a prescribed description, which is registered under Chapter 2 of Part 4 of the Finance Act 2004 and is a money purchase scheme, or
- (b) a pension scheme of a prescribed description.

(3) In this Schedule “qualifying member”, in relation to an automatic transfer scheme, means an active member of the scheme of a prescribed description.

(4) For the purposes of this Schedule a person has transferable benefits under a pension scheme if—

- (a) the scheme is a transferable benefits scheme,
- (b) the person is a member of the scheme,
- (c) contributions to the scheme by, or on behalf or in respect of, the member have ceased,
- (d) the member has accrued rights to benefits under the ~~applicable rules~~ **scheme rules**,
- (e) all of those rights accrued on or after the prescribed date (which may be a date before the coming into force of this paragraph),
- (f) the cash equivalent of those benefits is less than the prescribed amount (but not nil), and
- (g) any other prescribed conditions are met.

(5) In this Schedule “transferable benefits scheme” means—

- (a) a work-based pension scheme, other than a scheme of a prescribed description, which is registered under Chapter 2 of Part 4 of the Finance Act 2004 and is a money purchase scheme, or
- (b) a pension scheme of a prescribed description.

~~(6) In sub-paragraph (4)—~~

~~“the applicable rules”—~~

- ~~(a)~~
~~in relation to an occupational pension scheme, has the meaning given by section 94(2) of the Pension Schemes Act 1993;~~
- ~~(b)~~
~~in relation to a personal pension scheme, means the rules of the scheme;~~

~~“benefits” means—~~

- ~~(a)~~
~~money purchase benefits other than money purchase benefits of a prescribed description, or~~
- ~~(b)~~
~~benefits of a prescribed description.~~

(6) In sub-paragraph (4)—

- (a) the reference to “scheme rules” is, in relation to an occupational pension scheme, to be read in accordance with section 100B of the Pension Schemes Act 1993;**
- (b) “benefits” means—**
 - (i) money purchase benefits other than money purchase benefits of a prescribed description, or**
 - (ii) benefits of a prescribed description.**

[Part 2 – Northern Ireland Amendments]

Schedule 4, paragraphs 42 to 51

Amends the Pension Schemes (Northern Ireland) Act 1993 as follows:

PART 4ZA

TRANSFERS AND CONTRIBUTION REFUNDS

Scope of Chapter IV

CHAPTER 1

TRANSFER RIGHTS: GENERAL

Provisions supplementary to s. 51

52.—(1)

(2) A premium under section 51 shall be paid by the prescribed person to the Inland Revenue within the prescribed period.

(3)

(4) Where under the rules of the scheme, transfer credits have been allowed—

(a) in respect of the earner's accrued rights under another scheme, or

(b) in respect of the earner by reference to the payment of a cash transfer sum (within the meaning of ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA**) to the trustees or managers of the scheme by the trustees or managers of another occupational pension scheme, the reference in section 51(2) to employment which is contracted-out by reference to the scheme shall include references to employment in any period of linked qualifying service which was contracted-out employment by reference to the other scheme.

(5)

(6) Subject to regulations under paragraph 1 of Schedule 1, service in any employment which ceases with the death of the employer shall be treated for the purposes of section 51(2A) as ceasing immediately before the death.

(7) In this section "prescribed" means prescribed by regulations made by the Secretary of State.

(8) Where a premium under section 51 is payable by the Board of the Pension Protection Fund by virtue of a transfer under Article 145 of the Pensions (Northern Ireland) Order 2005 (effect of the Board assuming responsibility for an occupational pension scheme), then, subject to subsection (9), sections 51 to 64 apply with such modifications as may be prescribed in relation to that premium.

(9) A premium under section 51 in respect of an earner ceases to be payable if—

(a) the liability to pay the premium is transferred to the Board of the Pension Protection Fund by virtue of Article 145 of the Pensions (Northern Ireland) Order 2005, and

(b) prescribed requirements are met.

~~**89.—(1) This Chapter applies—**~~

~~(a) to any member of an occupational pension scheme—~~

~~(i) whose pensionable service has terminated at least one year before normal pension age, and~~

~~(ii) who on the date on which his pensionable service terminated had accrued rights to benefit under the scheme,~~

~~except a member of a salary related occupational pension scheme whose pensionable service terminated before 1st January 1986 and in respect of whom prescribed requirements are satisfied; and~~

~~(b) to any member of a personal pension scheme (other than a scheme which is comprised in an annuity contract made before 4th January 1988) who has accrued rights to benefit under the scheme.~~

~~(1ZA) In subsection (1), references to accrued rights to benefit do not include rights which are attributable (directly or indirectly) to a pension credit.~~

~~(1A) For the purposes of this section and the following provisions of this Chapter, an occupational pension scheme is salary related if—~~

~~(a) the scheme is not a money purchase scheme, and~~

- ~~(b) the scheme does not fall within a prescribed class.~~
- ~~(1B) Regulations may—~~
 - ~~(a) provide for this Chapter not to apply in relation to a person of a prescribed description, or~~
 - ~~(aa) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;~~
 - ~~(b) apply this Chapter with prescribed modifications to occupational pension schemes—~~
 - ~~—(i) which are not money purchase schemes, but~~
 - ~~—(ii) where some of the benefits that may be provided are money purchase benefits.~~
- ~~(2) Any reference to a member of an occupational pension scheme or a personal pension scheme in the following provisions of this Chapter is a reference to a member of such a scheme to whom this Chapter applies.~~

Salary related schemes: right to statement of entitlement

~~89A.—(1) The trustees or managers of a salary related occupational pension scheme must, on the application of any member, provide the member with a written statement (in this Chapter referred to as a “statement of entitlement”) of the amount of the cash equivalent at the guarantee date of any benefits which have accrued to or in respect of him under the applicable rules.~~

~~(1A) In subsection (1), the reference to benefits which have accrued does not include benefits which are attributable (directly or indirectly) to a pension credit.~~

~~(2) In this section—~~

~~“the applicable rules” has the same meaning as in section 90;~~

~~“the guarantee date” means the date by reference to which the value of the cash equivalent is calculated, and must be—~~

- ~~(a) within the prescribed period beginning with the date of the application, and~~
- ~~(b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.~~

~~(3) Regulations may make provision in relation to applications for a statement of entitlement, including, in particular, provision as to the period which must elapse after the making of such an application before a member may make a further such application.~~

~~(4) If, in the case of any scheme, a statement of entitlement has not been provided under this section, Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) applies to any trustee or manager who has failed to take all such steps as are reasonable to secure compliance with this section.~~

Right to cash equivalent

~~90.—(1) Subject to the following provisions of this Chapter—~~

- ~~(a) a member of an occupational pension scheme ⁶⁹ other than a salary related scheme ⁶⁹ acquires a right, when his pensionable service terminates ⁶⁹ (whether before or after 1st January 1986), to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the applicable rules;~~
- ~~(aa) a member of a salary related occupational pension scheme who has received a statement of entitlement and has made a relevant application within three months beginning with the guarantee date in respect of that statement acquires a right to his guaranteed cash equivalent; and~~
- ~~(b) a member of a personal pension scheme acquires a right to the cash equivalent at the relevant date of any benefits which have accrued to or in respect of him under the rules of the scheme.~~

~~(1A) For the purposes of subsection (1)(aa), a person’s “guaranteed cash equivalent” is the amount stated in the statement of entitlement mentioned in that subsection.~~

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~~(1B) In subsection (1), references to benefits which have accrued do not include benefits which are attributable (directly or indirectly) to a pension credit.~~

~~(2) In this section—~~

~~“the applicable rules” means—~~

- ~~(a) the rules of the scheme, except so far as overridden by a relevant legislative provision;~~
- ~~(b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme; and~~
- ~~(c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with Chapter 1 of Part IV of this Act;~~

~~“the guarantee date” has the same meaning as in section 89A(2);~~

~~“the relevant date” means, subject to regulations under section 94(4)—~~

- ~~(a) the date of the relevant application, or~~
- ~~(b) in the case of an occupational pension scheme, if it is later, the termination date;~~

~~“the relevant application” means any application which the member has made under section 91 and not withdrawn.~~

~~(2A) For the purposes of subsection (2)—~~

~~(a) “relevant legislative provision” means any provision contained in any of the following provisions—~~

- ~~(i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment for men and women);~~
- ~~(ii) this Chapter or Chapter 2, 3 or 5 or regulations made under this Chapter or any of those Chapters;~~
- ~~(iii) Part IVA or regulations made under that Part;~~
- ~~(iv) section 106(1);~~
- ~~(v) Part II of the Pensions (Northern Ireland) Order 1995 (occupational pensions) or orders or regulations made or having effect as if made under that Part;~~
- ~~(vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension debits: reduction of benefit);~~
- ~~(vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005,~~

~~(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—~~

- ~~(i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;~~
- ~~(ii) section 125(1);~~
- ~~(iii) Article 114(1) of the Pensions (Northern Ireland) Order 1995;~~
- ~~(iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;~~
- ~~(v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.~~

~~(3) Regulations may provide that, in prescribed circumstances, subsection (1)(aa) does not apply to members of salary related occupational pension schemes or applies to them with prescribed modifications.~~

89 Scope of Chapter 1

(1) This Chapter applies to a member of a pension scheme if all of the following conditions are met.

(2) Condition 1 is that the member has accrued rights to any category of benefits under the scheme rules.

(3) Condition 2 is that no crystallisation event has occurred in relation to the member's accrued rights to benefits in that category (see subsection (7)).

(4) Condition 3 is that—

(a) the member is no longer accruing rights to benefits in that category (see subsection (8)), and

(b) in the case of benefits that are not flexible benefits, the member stopped accruing those rights at least one year before normal pension age.

(5) But this Chapter does not apply to—

(a) a member of a salary related occupational pension scheme whose pensionable service terminated before 1 January 1986 and in respect of whom prescribed requirements are satisfied;

(b) a member of a personal pension scheme which is comprised in an annuity contract made before 4 January 1988.

(6) In this Chapter a reference to a "category" of benefits is to one of the following three categories—

(a) money purchase benefits;

(b) flexible benefits other than money purchase benefits;

(c) benefits that are not flexible benefits.

(7) For the purposes of Condition 2 a crystallisation event occurs in relation to a member's accrued rights to benefits in a category when—

(a) payment of a pension in respect of any of the benefits has begun,

(b) in the case of money purchase benefits, sums or assets held for the purpose of providing any of the benefits are designated as available for the payment of drawdown pension (as defined by paragraph 4 of Schedule 28 to the Finance Act 2004), or

(c) in the case of a personal pension scheme, sums or assets held for the purpose of providing any of the benefits are applied for purchasing an annuity or insurance policy.

(8) For the purposes of Condition 3 a member stops accruing rights to a category of benefits when there are no longer arrangements in place for the accrual of rights to benefits in that category for or in respect of the member.

(9) In this section a reference to accrued rights does not include pension credit rights.

(10) Regulations may—

(a) provide for this Chapter not to apply in relation to a person of a prescribed description;

(b) modify the application of this Chapter in relation to a member who has accrued rights to benefits of a prescribed description.

(11) In the following provisions of this Chapter—

(a) a reference to a "member" of a pension scheme is a reference to a member to whom this Chapter applies, and

(b) a reference to a member's "transferrable rights" are to any rights in relation to a category of benefits by virtue of which this Chapter applies to the member.

89A Right to statement of entitlement: benefits other than money purchase

(1) The trustees or managers of a pension scheme must, on the application of any member, provide the member with a statement of entitlement in respect of the member's transferrable rights in relation

to categories of benefits other than money purchase benefits.

(2) In the case of a member with transferrable rights in relation to two categories of benefits other than money purchase benefits, the application may relate to transferrable rights in relation to either or both of those categories.

(3) For the purposes of this Chapter a member's "statement of entitlement" is a written statement of the amount of the cash equivalent at the guarantee date of the transferrable rights to which

the application under subsection (1) relates.

(4) In this Chapter "the guarantee date" means the date by reference to which the value of the cash equivalent is calculated, and must be—

(a) within the prescribed period beginning with the date of the application, and

(b) within the prescribed period ending with the date on which the statement of entitlement is provided to the member.

(5) Regulations may make provision in relation to applications under this section and may, in particular, restrict the making of successive applications.

(6) If the trustees or managers of a pension scheme fail to comply with subsection (1), Article 10 of the Pensions (Northern Ireland) Order 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.

90 Right to cash equivalent

(1) A member of a pension scheme who has received a statement of entitlement under section 89A acquires a right to take the cash equivalent shown in that statement in accordance with this Chapter.

(2) A member of a pension scheme who has transferrable rights in relation to money purchase benefits acquires a right to take their cash equivalent in accordance with this Chapter.

Ways of taking right to cash equivalent

~~91.—(1) A member of an occupational pension scheme or a personal pension scheme who acquires a right to a cash equivalent under paragraph (a), (aa) or (b) of section 90(1) may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent to which he has acquired a right in whichever of the ways specified in subsection~~

(1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below.

(1A) In the case of a right acquired under section 90(1), the application must be made—
(a) within the period of 3 months beginning with the guarantee date shown in the relevant statement of entitlement, and
(b) if the cash equivalent relates to benefits that are not flexible benefits, by no later than the date that falls one year before the member attains normal pension age.

(2) or, as the case may be, subsection (3) he chooses.

(2) In the case of a member of an occupational pension scheme, the ways referred to in subsection (1) are—

- (a) for acquiring transfer credits allowed under the rules of another occupational pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;
- (b) for acquiring rights allowed under the rules of a personal pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's accrued rights, and
 - (ii) which satisfies prescribed requirements;
- (c) for purchasing from one or more insurers such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy prescribed requirements;
- (d) for subscribing to other pension arrangements which satisfy prescribed requirements.

(3) In the case of a member of a personal pension scheme, the ways referred to in subsection (1) are—

- (a) for acquiring transfer credits allowed under the rules of an occupational pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;
- (b) for acquiring rights allowed under the rules of another personal pension scheme—
 - (i) the trustees or managers of which are able and willing to accept payment in respect of the member's ~~accrued rights~~ **transferrable rights**, and
 - (ii) which satisfies prescribed requirements;

- (c) for subscribing to other pension arrangements which satisfy prescribed requirements.
- (4)
- (5) Except in such circumstances as may be prescribed—
- (a) subsection (2) is to be construed as if paragraph (d) were omitted; and
 - (b) subsection (3) is to be construed as if paragraph (c) were omitted.
- (6) Without prejudice to the generality of subsections (2) and (3), the powers conferred by those subsections include power to provide that a scheme or pension arrangement or, in the case of subsection (2), an annuity must satisfy requirements of the Inland Revenue.
- ~~(7) A member of an occupational pension scheme may only exercise the right conferred by this section on or before the last option date.~~
- ~~(8) In subsection (7) "the last option date" means, subject to regulations under section 94, the date which falls—~~
- ~~(a) one year before the date on which the member attains normal pension age; or~~
 - ~~(b) six months after the termination date,~~
- ~~whichever is the later.~~
- (9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service.

Further provisions concerning exercise of option under s. 91

~~92.—(1) A member may exercise the option conferred by subsection (1) of section 91 in different ways in relation to different portions of his cash equivalent, but a member who exercises that option must do so—~~

- ~~(a) in relation to the whole of his cash equivalent; or~~
- ~~(b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection(3).~~

(1) A member who has acquired a right to take a cash equivalent under section 90(1) or (2) may exercise the option conferred by section 91(1) in relation to different portions of that cash equivalent in different ways, but a member who exercises that option must do so—

- (a) in relation to the whole of that cash equivalent, or**
- (b) if subsection (2) applies, in relation to the whole of the balance mentioned in subsection (3).**

- (2) This subsection applies where—
- (a) the trustees or managers—
 - (i) of an occupational pension scheme which is not a contracted-out scheme, or
 - (ii) of a personal pension scheme,are able or willing to accept a transfer payment only in respect of a member's rights other than his accrued rights to guaranteed minimum pensions, his accrued rights so far as attributable to service in contracted-out employment on or after the principal appointed day; and
 - (b) the member has not required the trustees or managers of the scheme from which he is being transferred to use the portion of his cash equivalent which represents those accrued rights in any of the ways specified in subsection (2) or, as the case may be, subsection (3) of section 91.
- (3) Where subsection (2) applies this section and sections 90, 91 and 93 are to be construed as conferring on the member an option only in respect of the balance of the cash equivalent to which the member would otherwise be entitled, after deduction of an amount sufficient for the trustees or managers of the scheme from which he is being transferred to meet their liability—
- (a) in the case of a transfer from an occupational pension scheme, in respect of the member's and the member's widow's, widower's or surviving civil partner's (as the case may be) pensions, being guaranteed minimum pensions or pensions so far as attributable to service in contracted-out employment on or after the principal appointed day.
- ~~(4) Where a member of an occupational pension scheme or a personal pension scheme—~~
- ~~(a) is entitled to give a notice under section 97F(1) to the trustees or managers of the scheme, or~~
 - ~~(b) would be entitled to do so, but for section 97G(1),~~
- ~~he may not, if the scheme so provides, make an application to them under section 91 unless he also gives them a notice under section 97F(1).~~

(4) Where a member of a pension scheme—

(a) is entitled to make an application under section 91(1) in relation to any category of benefits, and

(b) is also entitled to give a transfer notice under section 97F(1) to the trustees or managers of the scheme in relation to benefits in the same category (or would be entitled to do so

but for section 97G(2)), the member may not, if the scheme so provides, make an application

under section 91(1) in relation to that category of benefits without also giving a transfer notice under section 97F(1) in relation to that category of benefits.

Calculation of cash equivalents

93.—(1) Cash equivalents are to be calculated and verified in the prescribed manner.

(1A) Where a member applies under section 91 to take a cash equivalent that relates to money purchase benefits, the cash equivalent is to be calculated by reference to the date of the application.

(2) Regulations may provide—

(a) that in calculating cash equivalents ~~except guaranteed cash equivalents (as defined in section~~

~~90(1A))~~ **that relate to money purchase benefits** account shall be taken—

(i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 91;

(ii) in a case where subsection (2) of section 92 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent, ~~including a guaranteed cash equivalent~~ **that relate to any category of benefits** to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

(i) any pension; or

(ii) any benefit in lieu of pension; and

(b) that in prescribed circumstances a cash equivalent shall be increased or reduced.

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

(a) ~~in the case of an occupational pension scheme, the length of time which elapses between the termination of a member's pensionable service and his exercise of the option conferred by this Chapter or regulations made under it;~~

(b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date; and

(c) the state of the funding of the scheme.

~~(3A) For the purposes of subsection (3), the "appropriate date"—~~

~~(a) in the case of a salary related occupational pension scheme, is the guarantee date (within the meaning of section 89A), and~~

~~(b) in any other case, is the date on which the trustees receive an application from the member under section 91.~~

(3A) For the purposes of subsection (3), the "appropriate date"—

(a) in relation to a cash equivalent that relates to benefits other than money purchase benefits, means the guarantee date for the purposes of the relevant statement of entitlement under section 89A, and

(b) in relation to a cash equivalent that relates to money purchase benefits, means the date on which the trustees or managers receive an application from the member under section 91.

(4) Regulations under subsection (2) may specify as the amount by which a cash equivalent is to be reduced such an amount that a member has no right to receive anything.

Variation and loss of rights under s. 90

~~94.—(1) Regulations may provide that a member of an occupational pension scheme other than a salary related scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates—~~

- ~~(a) only acquires a right to the cash equivalent of such part of the benefits specified in section 90(1) as may be prescribed; or~~
- ~~(b) acquires no right to a cash equivalent.~~

~~(1A) Regulations may provide that a member of a salary related occupational pension scheme who continues in employment to which the scheme applies after his pensionable service in that employment terminates—~~

- ~~(a) acquires a right to only part of his guaranteed cash equivalent, or~~
- ~~(b) acquires no right to his guaranteed cash equivalent.~~

~~(2) Regulations may provide for the purposes of subsection (1) or (1A) that in prescribed circumstances a number of employments (whether or not consecutive) shall be treated as a single employment.~~

~~(3) Regulations may provide that where—~~

- ~~(a) by virtue of regulations under subsection (1) or (2), a member of an occupational pension scheme other than a salary related scheme does not, on the termination of his pensionable service in an employment to which a scheme applies, acquire a right at the relevant date to the cash equivalent of the whole or a part of the benefits specified in section 90(1); or~~

~~(aa) by virtue of regulations under subsection (1A) or (2), a member of a salary related occupational pension scheme does not, on such a termination, acquire a right to the whole or any part of his guaranteed cash equivalent, and his employment terminates at least one year before normal pension age, that right shall accrue to him on the date when that employment terminates and be valued accordingly.~~

~~(4) In relation to any case to which regulations under subsection (3) apply, they may substitute—~~

- ~~(a) a new definition of “the relevant date” for the definition in section 90(2); and~~
- ~~(b) a new definition of “the last option date” for the definition in section 91(8).~~

~~(5) Where the whole or any part of the relevant benefits payable to a member of a personal pension scheme under the scheme have become payable on or before the relevant date, the right which he acquires under section 90 is only to the cash equivalent of ²²⁹ benefits ~~f~~ which have not become payable.~~

~~(6) A member of an occupational pension scheme or a personal pension scheme loses the right to any cash equivalent under this Chapter if the scheme is wound up.~~

~~(7) A member of an occupational pension scheme also loses that right if—~~

- ~~(b) he fails to exercise the option conferred by section 91 on or before the last option date (within the meaning of subsection (7) of that section).~~

~~(8) In this section—~~

~~“relevant benefits” means any benefits not attributable (directly or indirectly) to a pension credit; and~~

~~“the relevant date” has the same meaning as in section 90(2).~~

94 Loss of right to cash equivalent

(1) A member of a pension scheme who acquires the right to take a cash equivalent under section 90(1) loses that right if no application to take the cash equivalent is made within the period specified in section 91(1A) (but this does not prevent the member later acquiring a new right to take a cash equivalent under section 90(1) in relation to the same benefits).

(2) A member of a pension scheme loses the right to take a cash equivalent in accordance with this Chapter if the scheme is wound up.

Trustees’ duties after exercise of option

95.—(1) Where—

- (a) a member has exercised the option conferred by section 91; and**
- (b) the trustees or managers of the scheme have done what is needed to carry out what the member requires,**

the trustees or managers shall be discharged from any obligation to provide benefits to which the cash equivalent related except, in such cases as are mentioned in section 92(2), to the extent that an obligation to provide such guaranteed minimum pensions continues to subsist.

~~(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 91, they shall do what is needed to carry out what the member requires—~~

- ~~(a) in the case of a member of a salary related occupational pension scheme, within 6 months of the guarantee date, or (if earlier) by the date on which the member attains normal pension age,~~
- ~~(b) in the case of a member of any other occupational pension scheme, within 6 months of the date on which they receive the application, or (if earlier) by the date on which the member attains normal pension age, or~~
- ~~(c) in the case of a member of a personal pension scheme, within 6 months of the date on which they receive the application.~~

(2) Subject to the following provisions of this section, if the trustees or managers of a scheme receive an application under section 91 they must do what is needed to carry out what the member requires—

(a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the guarantee date shown in the relevant statement of entitlement, and

(b) in the case of an application that relates to money purchase benefits, within 6 months beginning with the date of the application.

(3) If—

- (a) disciplinary proceedings or proceedings before a court have been begun against a member of an occupational pension scheme ~~at any time before the expiry of the period of 12 months beginning with the termination date;~~ and
- (b) it appears to the trustees or managers of the scheme that the proceedings may lead to the whole or part of the pension or benefit in lieu of a pension payable to the member or his widow being forfeited; and
- (c) the date before which they would (apart from this subsection) be obliged under subsection (2) to carry out what the member requires is earlier than the end of the period of 3 months after the conclusion of the disciplinary or court proceedings (including any proceedings on appeal),

then, subject to the following provisions of this section, they must instead do so before the end of that period of 3 months.

~~(3A) In this section, “guarantee date” has the same meaning as in section 89A.~~

(4) The Regulatory Authority may, in prescribed circumstances, by direction, grant an extension of the period within which the trustees or managers of the scheme are obliged to do what is needed to carry out what a member of the scheme requires.

(4A) Regulations may make provision requiring applications for extensions under subsection (4) to meet prescribed requirements.

(6)

(7) Where the trustees or managers of an occupational pension scheme have not done what is needed to carry out what a member of the scheme requires within 6 months of the date mentioned in paragraph (a) or (b) of subsection (2)—

- (a) they must, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and
- (b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that it was so done.

(8) Regulations may provide that in prescribed circumstances subsection (7) shall not apply in relation to an occupational pension scheme.

Withdrawal of applications

96.—(1) Subject to subsections (2) and (2A), a member of a scheme may withdraw an application under section 91 by giving the trustees or managers of the scheme notice in writing that he no longer wishes them to do what is needed to carry out what he previously required.

(2) Such a notice shall be of no effect if it is given to the trustees or managers at a time when, in order to comply with what the member previously required, they have already entered into an agreement with a third party to use the whole or part of the member's cash equivalent in a way specified in subsection (2) or, as the case may be, subsection (3) of section 91.

(2A) If the making of the application depended on the giving of a notice under section 97F(1), the application may only be withdrawn if the notice is also withdrawn.

(3) A member who withdraws an application may make another.

(4) A notice to the trustees or managers of a scheme under this section is to be taken to have been given if it is delivered to them personally, or sent by post in a registered letter or by recorded delivery service.

96A Prohibition on excluding future accruals etc

Except as mentioned in sections 92(4) and 97G(4), a pension scheme may not contain rules that would have the effect of—

- (a) preventing a member from exercising a right under this Chapter in relation to a category of benefits without also exercising a right under this Chapter or otherwise to require a transfer payment to be made in respect of another category of benefits, or**
- (b) preventing a member who exercises a right under this Chapter in relation to a category of benefits from accruing rights to benefits in another category.**

96B Meaning of “scheme rules”: occupational pension schemes

(1) In this Chapter references to the scheme rules, in relation to an occupational pension scheme, are references to—

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,**
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and**
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part 4.**

(2) For the purposes of subsection (1)—

(a) “relevant legislative provision” means any provision contained in any of the following provisions—

- (i) Schedule 5 to the Social Security (Northern Ireland) Order 1989;**
- (ii) this Part or Chapters 2 or 3 of Part 4 or regulations made under this Part or either of those Chapters;**
- (iii) Part 4A or regulations made under that Part;**
- (iv) section 106(1);**
- (v) Part 2 of the Pensions (Northern Ireland) Order 1995 or orders or regulations made or having effect as if made under that Part;**
- (vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999;**
- (vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005;**

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—

- (i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;**
- (ii) section 125(1);**
- (iii) Article 114(1) of the Pensions (Northern Ireland) Order 1995;**
- (iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;**
- (v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.**

96C Meaning of “normal pension age” in this Chapter

(1) In this Chapter “normal pension age”, in relation to a category of benefits under a pension scheme, means—

(a) in a case where the scheme is an occupational pension scheme and those benefits consist only of a guaranteed minimum pension, the earliest age at which the member is entitled to receive the guaranteed minimum pension on retirement from any employment to which the scheme applies,

(b) in a case where the scheme is an occupational pension scheme and the scheme provides for the member to become entitled to receive any of those benefits at a particular age on retirement from any employment to which the scheme applies, the earliest age at which the member becomes entitled to receive any of the benefits, and

(c) in any other case, normal minimum pension age as defined by section 279(1) of the Finance Act 2004.

(2) For the purposes of subsection (1) any scheme rule making special provision as to early retirement on grounds of ill-health or otherwise is to be disregarded.

96D Interpretation of Chapter

In this Chapter—

“accrued rights”, in relation to a member of a pension scheme, means rights that have accrued to or in respect of the member to benefits under the scheme;

“category”, in relation to benefits, has the meaning given by section 89(6);

“flexible benefit” has the meaning given by section 72 of the Pension Schemes Act 2014;

“guarantee date”, in relation to a member who has received a statement of entitlement, has the meaning given by section 89A;

“member” is to be read in accordance with section 89(11);

“normal pension age” has the meaning given by section 96C;

“pension credit rights”, in relation to a member of a pension scheme, means rights to benefits under the scheme which are attributable (directly or indirectly) to a pension credit;

“salary related occupational pension scheme”: an occupational pension scheme is “salary related” if—

(a) the scheme is not a scheme under which all the benefits that may be provided are money purchase benefits, and

(b) the scheme does not fall within a prescribed class;

“scheme rules”, in relation to an occupational pension scheme, has the meaning given by section 96B;

“statement of entitlement” has the meaning given by section 89A;

“transferrable rights” is to be read in accordance with section 89(11).

Schedule 4, paragraphs 51 to 58

Amends the Pension Schemes (Northern Ireland) Act 1993 as follows:

CHAPTER II

TRANSFER VALUES

Power to give transfer notice

97F.—(1) An eligible member of a qualifying scheme may by notice in writing require the trustees or managers of the scheme to use an amount equal to the cash equivalent of his ~~pension credit benefit~~ **pension credit rights** for such one or more of the authorised purposes as he may specify in the notice.

(2) In the case of a member of an occupational pension scheme, the authorised purposes are—

(a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme;

- (b) to purchase from one or more insurers such as are mentioned in section 15(4)(a), chosen by the member and willing to accept payment on account of the member from the trustees or managers, one or more annuities which satisfy the prescribed requirements; and
 - (c) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.
- (3) In the case of a member of a personal pension scheme, the authorised purposes are—
- (a) to acquire rights allowed under the rules of an occupational pension scheme, or personal pension scheme, which is an eligible scheme; and
 - (b) in such circumstances as may be prescribed, to subscribe to other pension arrangements which satisfy prescribed requirements.

(3A) An eligible member who has pension credit rights in relation to more than one category of benefits under the scheme may exercise the power to give a transfer notice in relation to the pension credit rights in relation to any one or more of those categories.

- ~~(4) The cash equivalent for the purposes of subsection (1) shall—~~
- ~~(a) in the case of a salary related occupational pension scheme, be taken to be the amount shown in the relevant statement under section 97H, and~~
 - ~~(b) in any other case, be determined by reference to the date the notice under that subsection is given.~~

(4) The cash equivalent for the purposes of subsection (1) shall—

- (a) in a case where the pension credit rights relate to a category of benefits other than money purchase benefits, be taken to be the amount shown in the relevant statement under section 97H, and**
- (b) in a case where the pension credit rights relate to money purchase benefits, be determined by reference to the date the notice under that subsection is given.**

(5) The requirements which may be prescribed under subsection (2) or (3) include, in particular, requirements of the Inland Revenue.

(6) In subsections (2) and (3), references to an eligible scheme are to a scheme—

- (a) the trustees or managers of which are able and willing to accept payment in respect of the member's pension credit rights, and
- (b) which satisfies the prescribed requirements.

~~(6A) Regulations may provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description.~~

(6A) Regulations may—

- (a) provide for this Chapter not to apply in prescribed circumstances in relation to a member of a prescribed scheme or schemes of a prescribed description;**
- (b) modify the application of this Chapter in relation to a member who has accrued rights to benefits of a prescribed description.**

(6B) In this Chapter a reference to a “category” of benefits is to one of the following three categories—

- (a) money purchase benefits;**
- (b) flexible benefits other than money purchase benefits;**
- (c) benefits that are not flexible benefits.**

(7) In this Chapter, “transfer notice” means a notice under subsection (1).

Restrictions on power to give transfer notice

~~**97G.**—(1) In the case of a salary related occupational pension scheme, the power to give a transfer notice may only be exercised if—~~

- ~~(a) the member has been provided with a statement under section 97H, and~~
- ~~(b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.~~

~~(2) The power to give a transfer notice may not be exercised in the case of an occupational pension scheme if—~~

- ~~(a) there is less than a year to go until the member reaches normal benefit age, or~~
- ~~(b) the pension to which the member is entitled by virtue of his pension credit rights, or benefit in lieu of that pension, or any part of it has become payable.~~

~~(3) Where an eligible member of a qualifying scheme—~~

- ~~(a) is entitled to make an application under section 91 to the trustees or managers of the scheme, or~~

~~(b) would be entitled to do so, but for the fact that he has not received a statement under section 89A in respect of which the guarantee date is sufficiently recent, he may not, if the scheme so provides, exercise the power to give them a transfer notice unless he also makes an application to them under section 91.~~

~~(4) The power to give a transfer notice may not be exercised if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.~~

97G Restrictions on power to give transfer notice

(1) An eligible member may not give a transfer notice in relation to a category of benefits if a crystallisation event has occurred in relation to any of the member's pension credit rights to benefits in that category.

(2) An eligible member may give a transfer notice in relation to a category of benefits other than money purchase benefits only if—

(a) the member has been provided with a statement under section 97H in relation to benefits in that category, and

(b) not more than 3 months have passed since the date by reference to which the amount shown in the statement is determined.

(3) An eligible member may not give a transfer notice in relation to benefits other than flexible benefits if there is less than one year to go until the member reaches normal benefit age.

(4) Where an eligible member of a qualifying scheme—

(a) is entitled to give a transfer notice in relation to any category of benefits, and

(b) is also entitled to make an application to the trustees or managers of the scheme under section 91(1) in relation to benefits in the same category (or would be entitled to do so

but for section 91(1A)(a)), the member may not, if the scheme so provides, give a transfer notice in relation to that category of benefits without also making an application under section 91(1) in relation to that category of benefits.

(5) A transfer notice may not be given if a previous transfer notice given by the member to the trustees or managers of the scheme is outstanding.

(6) For the purposes of subsection (1) a crystallisation event occurs in relation to a member's pension credit rights to benefits in a category when—

(a) payment of a pension in respect of any of the benefits has begun,

(b) in the case of money purchase benefits, sums or assets held for the purpose of providing any of the benefits are designated as available for the payment of drawdown pension (as defined by paragraph 4 of Schedule 28 to the Finance Act 2004), or

(c) in the case of a personal pension scheme, sums or assets held for the purpose of providing any of the benefits are applied for purchasing an annuity or insurance policy.

Salary related schemes Benefits other than money purchase: statements of entitlement

~~**97H.—**(1) The trustees or managers of a qualifying scheme which is a salary related occupational pension scheme shall, on the application of an eligible member, provide him with a written statement of the amount of the cash equivalent of his pension credit benefit under the scheme.~~

(1) The trustees or managers of a qualifying scheme must, on the application of an eligible member, provide the member with a written statement of the amount of the cash equivalent of the member's pension credit rights in relation to categories of benefits other than money purchase benefits.

(1A) In the case of a member with pension credit rights in relation to two categories of benefits other than money purchase benefits, the application may relate to pension credit rights in relation to either or both of those categories.

(2) For the purposes of subsection (1), the amount of the cash equivalent shall be determined by reference to a date falling within—

(a) the prescribed period beginning with the date of the application, and

(b) the prescribed period ending with the date on which the statement under that subsection is provided to the applicant.

(3) Regulations may make provision in relation to applications under subsection (1) and may, in particular, restrict the making of successive applications.

(4) If trustees or managers to whom subsection (1) applies fail to perform an obligation under that subsection, Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to secure that the obligation was performed.

Calculation of cash equivalents

97I. Cash equivalents for the purposes of this Chapter shall be calculated and verified in the prescribed manner.

Time for compliance with transfer notice

97J.—(1) Trustees or managers of a qualifying scheme who receive a transfer notice shall comply with the notice—

~~(a) in the case of an occupational pension scheme, within 6 months of the valuation date or, if earlier, by the date on which the member to whom the notice relates reaches normal benefit age, and~~

~~(b) in the case of a personal pension scheme, within 6 months of the date on which they receive the notice.~~

(a) in the case of an application that relates to benefits other than money purchase benefits, within 6 months beginning with the valuation date, and

(b) in the case of an application that relates to money purchase benefits, within 6 months of the date on which the notice is given.

(2) The Regulatory Authority may, in prescribed circumstances, by direction, extend the period for complying with the notice.

(3)

(4) Where the trustees or managers of an occupational pension scheme have failed to comply with a transfer notice before the end of the period for compliance—

(a) they shall, except in prescribed cases, notify the Regulatory Authority of that fact within the prescribed period, and

(b) Article 10 of the Pensions (Northern Ireland) Order 1995 (power of the Regulatory Authority to impose civil penalties) shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the notice was complied with before the end of the period for compliance.

(5) If trustees or managers to whom subsection (4)(a) applies fail to perform the obligation imposed by that provision, Article 10 of the Pensions (Northern Ireland) Order 1995 shall apply to any trustee or manager who has failed to take all such steps as are reasonable to ensure that the obligation was performed.

(6) Regulations may—

(a) make provision requiring applications for extensions under subsection (2) to meet prescribed requirements, and

(b) provide that subsection (4) shall not apply in prescribed circumstances.

~~(7) In this section “valuation date”, in relation to a transfer notice given to the trustees or managers of an occupational pension scheme, means—~~

~~(a) in the case of a salary related scheme, the date by reference to which the amount shown in the relevant statement under section 97H is determined, and~~

~~(b) in the case of any other scheme, the date the notice is given.~~

(7) In subsection (1)(a), “valuation date” means the date by reference to which the amount shown in the relevant statement under section 97H is determined.

Withdrawal of transfer notice

97K.—(1) Subject to subsections (2) and (3), a person who has given a transfer notice may withdraw it by giving the trustees or managers to whom it was given notice in writing that he no longer requires them to comply with it.

(2) A transfer notice may not be withdrawn if the trustees or managers have already entered into an agreement with a third party to use the whole or part of the amount they are required to use in accordance with the notice.

(3) If the giving of a transfer notice depended on the making of an application under section 91, the notice may only be withdrawn if the application is also withdrawn.

Variation of the amount required to be used

97L.—(1) Regulations may make provision for the amount required to be used under section 97F(1) to be increased or reduced in prescribed circumstances.

(2) Without prejudice to the generality of subsection (1), the circumstances which may be prescribed include—

- (a) failure by the trustees or managers of a qualifying scheme to comply with a notice under section 97F(1) within 6 months of the date by reference to which the amount of the cash equivalent falls to be determined, and
 - (b) the state of funding of a qualifying scheme.
- (3) Regulations under subsection (1) may have the effect of extinguishing an obligation under section 97F(1).

Effect of transfer on trustees' duties

97M. Compliance with a transfer notice shall have effect to discharge the trustees or managers of a qualifying scheme from any obligation to provide the pension credit benefit of the eligible member who gave the notice.

Matters to be disregarded in calculations

97N. In making any calculation for the purposes of this Chapter—

- (a) any charge or lien on, and
- (b) any set-off against,

the whole or part of a pension shall be disregarded.

97NA Prohibition on excluding transfers of some rights without others etc
Except as mentioned in sections 92(4) and 97G(4), a pension scheme may not contain rules that would have the effect of—

- (a) preventing a member from exercising a right under this Chapter in relation to a category of benefits without also exercising a right under this Chapter or otherwise to require a transfer payment to be made in respect of another category of benefits, or**
- (b) preventing a member who exercises a right under this Chapter in relation to a category of benefits from accruing rights to benefits in another category.**

Service of notices

97O. A notice under section 97F(1) or 97K(1) shall be taken to have been given if it is delivered to the trustees or managers personally or sent by post in a registered letter or by recorded delivery service.

Interpretation of Chapter II

97P.—(1) In this Chapter—

“category”, in relation to benefits, has the meaning given by section 97F(6B);

“eligible member”, in relation to a qualifying scheme, means a member who has pension credit rights under the scheme;

“flexible benefit” has the meaning given by section 72 of the Pension Schemes Act 2014;

“normal benefit age”, in relation to an eligible member of a qualifying scheme, means the earliest age at which the member is entitled to receive a pension by virtue of his pension credit rights under the scheme (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill-health or otherwise);

“pension credit benefit”, in relation to an eligible member of a qualifying scheme, means the benefits payable under the scheme to or in respect of the member by virtue of rights under the scheme attributable (directly or indirectly) to a pension credit;

“pension credit rights”, in relation to a qualifying scheme, means rights to future benefits under the scheme which are attributable (directly or indirectly) to a pension credit;

“qualifying scheme” means a funded occupational pension scheme and a personal pension scheme;

“transfer notice” has the meaning given by section 97F(7).

~~(2) For the purposes of this Chapter, an occupational pension scheme is salary related if—~~

- ~~(a) it is not a money purchase scheme, and~~
- ~~(b) it does not fall within a prescribed class.~~

~~(3) In this Chapter, references to the relevant statement under section 97H, in relation to a transfer notice given to the trustees or managers of a salary related occupational pension~~

~~scheme~~ **in relation to benefits other than money purchase benefits**, are to the statement under that section on which the giving of the notice depended.

(4) For the purposes of this section, an occupational pension scheme is funded if it meets its liabilities out of a fund accumulated for the purpose during the life of the scheme.

~~Power to modify Chapter II in relation to hybrid schemes~~

~~97Q. Regulations may apply this Chapter with prescribed modifications to occupational pension schemes—~~

- ~~(a) which are not money purchase schemes, but~~
- ~~(b) where some of the benefits that may be provided are money purchase benefits.~~

Schedule 4, paragraphs 59 and 60

Amends the Pension Schemes (Northern Ireland) Act 1993 as follows:

PART VIII

RELATIONSHIP BETWEEN REQUIREMENTS AND SCHEME RULES

Overriding requirements

125.—(1) Subject to subsection (2), the provisions of ~~Chapters II, III, IV and V of Part IV~~ **Chapters 2 and 3 of Part 4, Chapters 1 and 2 of Part 4ZA**, Chapters I and II of Part IVA, section 106(1), and any regulations made under any of those Chapters or section 109 override any provision of a scheme to which they apply to the extent that it conflicts with them.

(2) Chapter II of Part IV (as it applies to occupational pension schemes), and Chapter III of that Part do not override a protected provision of a scheme.

(3) In subsection (2) “protected provision”^{*} means—

- (c) any provision of a scheme which is included in it for the purpose of effecting a transfer of rights or liabilities authorised by regulations under section 16(1);
- (d) any provision of a scheme to the extent that it deals with commutation, suspension or forfeiture of the whole or part of a pension; and
- (e) any provision of a scheme whereby, as respects so much of a widow’s, widower’s or surviving civil partner’s pension as exceeds the guaranteed minimum pension—
 - (i) no pension or a pension at a reduced rate is payable if the earner and the ³¹⁷widow, widower or surviving civil partner married or, as the case may be, formed a civil partnership not more than six months before the earner’s death;
 - (ii) the whole or any part of the pension is not paid to the widow, widower or surviving civil partner, but instead comparable benefits are provided for one or more dependants of the deceased earner; or
 - (iii) no pension, or a pension at a reduced rate, is payable to the widow, widower or surviving civil partner (or, where a provision such as is mentioned in subparagraph (ii) operates, to another dependant of the deceased earner) who was more than ten years younger than the deceased earner.

(4) For the purposes of the application of Chapter II of Part IV to schemes which are not contracted-out, subsection (3) shall have effect with the omission—

- (a) from paragraph (c), of the words from “authorised” to the end; and
- (b) from paragraph (e), of the words from “as respects” to “guaranteed minimum pension”.

Extra-statutory benefits

126. It is hereby declared that—

- (a) nothing in Part III precludes an occupational pension scheme from providing benefits that are more favourable than those required for contracting-out purposes and, in particular, nothing in section 12(3) is to be taken as preventing the scheme from providing increases above the alternative minima there mentioned; and
- (b) nothing in the provisions of ~~Chapter II, IV or V of Part IV~~ **Chapter 2 of Part 4 or Chapters 1 or 2 of Part 4ZA** precludes a scheme from being framed or managed more favourably to beneficiaries than is called for by those provisions.

Schedule 4, paragraph 61

Amends the Pension Schemes (Northern Ireland) Act 1993 as follows:

PART XI
GENERAL AND MISCELLANEOUS PROVISIONS
Modification powers

Power to modify certain provisions of this Act

149.—(1) The Department may by regulations direct that ~~Chapters II, III and IV of Part IV~~ **Chapters 2 and 3 of Part 4ZA** shall have effect, in such cases as it may specify in the regulations, subject to such modifications as it may specify.

(2) Regulations may modify Chapter I of Part IV—

- (a) in its application to cases where an earner is for the time being, or has been, employed in pensionable service under, or in contracted-out employment by reference to, different schemes applying to the same employment;
- (b) in such manner as the Department thinks fit for securing that the preservation requirements include requirements for provision to be made in a scheme as to the preservation of a member's benefit in the event of the scheme being wound up;
- (c) without prejudice to paragraph (a) or (b), so that the preservation requirements apply with such modifications and exceptions as the Department considers to be necessary for particular cases or classes of case;

and regulations under paragraph (a) may relate to service under or, as the case may be, by reference to different schemes at the same time, or at different times.

(3) - (7)

(8) The Department may by order provide that any enactment in Chapter II of Part VII which is specified in the order shall not apply to persons or to employments of such classes as may be prescribed in the order.

In this subsection "employments" has the same meaning as in that Chapter.

Schedule 4, paragraph 62

Amends the Pension Schemes (Northern Ireland) Act 1993 as follows:

Linked qualifying service

174.—(1) Subject to subsections (2) to (4), for the purposes of this Act any period of an earner's service in an employment is linked qualifying service in relation to a later period of service (whether in the same or another employment) if—

- (a) under ~~Chapter 4 or 5 of Part IV~~ **Chapter 1 or 2 of Part 4ZA** or under the rules of a scheme applying to him in the earlier period of service—
 - (i) there was made a transfer of his rights (including any transfer credits allowed) under that scheme, or a transfer payment in respect of those rights, to, or to the trustees or managers of, another scheme applying to him in the later period of service;
 - (ii) those rights were secured by a policy of insurance or an annuity contract and were subsequently transferred to another scheme applying to him in the later period of service; or
 - (iii) a cash equivalent (within the meaning of ~~Chapter 4 of Part IV~~ **Chapter 1 of Part 4ZA**) or cash transfer sum (within the meaning of ~~Chapter 5~~ **Chapter 2** of that Part) was paid in respect of him to the trustees or managers of another scheme applying to him in the later period of service; and
- (b) in consequence of the transfer of his accrued rights to the second scheme, or the payment to the trustees or managers of that scheme, there are (or were) allowed to him transfer credits under the rules of that other scheme.

(2) For any service to be taken into account as linked qualifying service, it must be actual service and no regard shall be had to any scheme rule which provides for service to be treated for any purposes of benefit or otherwise as longer or shorter than it actually was.

(3) Only so much of the earlier period as is a period of service in respect of which there accrued under the first scheme any of the rights transferred to the second scheme shall be linked qualifying service in relation to the later period of service.

(4) For the purposes of Chapter I of Part IV, as respects any case where the rules of the scheme provide—

(a) that an earner is not entitled to become a member unless he satisfies specified conditions, but

(b) that, if he becomes a member, rights are to accrue to him in respect of periods of service before he satisfied any such conditions,

regulations may provide for any such periods to be treated, in such cases and to such extent as may be prescribed, as linked qualifying service with later periods of service.

Schedule 4, paragraph 63

Amends the Pension Schemes (Northern Ireland) Act 1993 as follows:

General interpretation

176.—(1) In this Act—

“abolition date” means the day appointed for the commencement of section 13(1) of the Pensions Act (Northern Ireland) 2007;

“age”, in relation to any person, shall be construed so that—

(a) he is over or under a particular age if he has or, as the case may be, has not attained that age;

(b) he is between two particular ages if he has attained the first but not the second;

“appropriate scheme” and “appropriate scheme certificate” are to be construed in accordance with section 176A;

“the Assembly” means the Northern Ireland Assembly;

“Category A retirement pension” and “Category B retirement pension” mean the retirement pensions of those descriptions payable under Part II of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“civil recovery order” means an order under section 266 of the Proceeds of Crime Act 2002 or an order under section 276 imposing the requirement mentioned in section 277(3);

“contract of service” has the same meaning as in section 121(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“contracted-out employment” shall be construed in accordance with section 4;

“contracting-out certificate” and references to a contracted-out scheme and to contracting-out shall be construed in accordance with section 3 and section 176A;

“contributions equivalent premium” has the meaning given in section 51(2);

“the Department” means the Department of Health and Social Services for Northern Ireland;

“the Department of Finance and Personnel” means the Department of Finance and Personnel in Northern Ireland;

“earner” and “earnings” shall be construed in accordance with sections 3, 4 and 112 of the Social Security (Contributions and Benefits (Northern Ireland)) Act 1992;

“earnings factors” shall be construed in accordance with sections 22 and 23 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, as modified or supplemented from time to time;

“EEA state”, in relation to any time, means—

(a) a state which at that time is a member State, or

(b) any other state which at that time is a party to the EEA agreement;

“employed earner” and “self-employed earner” have the meanings given by section 2 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“employee” means a person gainfully employed in Northern Ireland either under a contract of service or in an office (including an elective office) with earnings;

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“employer” means—

- (a) in the case of an employed earner employed under a contract of service, his employer;
- (b) in the case of an employed earner employed in an office with emoluments—
 - (i) such person as may be prescribed in relation to that office; or
 - (ii) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of the office;

“employment” includes any trade, business, profession, office or vocation and “employed” shall be construed accordingly except in the expression “employed earner”;

“Financial Services Compensation Scheme” means the Financial Services Compensation Scheme referred to in section 213(2) of the Financial Services and Markets Act 2000;

“the flat rate introduction year” has the meaning given by section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“government department” includes a department of the government of the United Kingdom;

“guaranteed minimum pension” has the meaning given in section 4(2);

“HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;

“independent trade union” has the meaning given in Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992;

“industrial tribunal” means a tribunal established or having effect as if established under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996;

“the Inland Revenue” means the Commissioners of Inland Revenue;

“linked qualifying service” has the meaning given in section 174;

“long-term benefit” has the meaning given in section 20(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;

“lower earnings limit” and “upper earnings limit” shall be construed in accordance with section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 and “current”, in relation to those limits, means for the time being in force;

“minimum contributions” shall be construed in accordance with sections 39 to 41;

“minimum payment” has the meaning given in section 4(2);

“modifications” includes additions, omissions and amendments;

“money purchase benefits”, in relation to a member of a personal or occupational pension scheme or the widow, widower or surviving civil partner of a member of such a scheme, means benefits the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member and which are not average salary benefits;

“money purchase contracted-out scheme” is to be construed in accordance with section 176A;”

“money purchase scheme” means a pension scheme under which all the benefits that may be provided are money purchase benefits;

“National Insurance Fund” means the Northern Ireland National Insurance Fund;

“normal pension age” has the meaning given in section 175;

“occupational pension scheme” has the meaning given in section 1;

“overseas arrangement” means a scheme or arrangement which—

- (a) has effect, or is capable of having effect, so as to provide benefits on termination of employment or on death or retirement to or in respect of earners;
- (b) is administered wholly or primarily outside Northern Ireland;
- (c) is not an appropriate scheme; and
- (d) is not an occupational pension scheme;

“pension credit” means a credit under Article 26(1)(b) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or under section 29(1)(b) of the Welfare Reform and Pensions Act 1999;f

“pension debit” means a debit under Article 26(1)(a) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;

“pensionable age”—

- (a) so far as any provisions (other than sections 42 to 44) relate to guaranteed minimum pensions, means the age of 65 in the case of a man and the age of 60 in the case of a woman, and
- (b) in any other case, has the meaning given by the rules in paragraph 1 of Schedule 2 to the Pensions (Northern Ireland) Order 1995; “pensionable age” has the same

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- meaning as in section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “pensionable service” has the meaning given in section 66(2);
- “personal pension scheme” has the meaning given in section 1;
- “prescribe” means prescribe by regulations;
- “the preservation requirements” has the meaning given in section 65(2);
- “the principal appointed day” has the meaning assigned by section 3(2B);
- “primary Class 1 contributions” and “secondary Class 1 contributions” have the same meanings as in section 6 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “protected rights” has the meaning given in section 6, as it had effect immediately prior to the abolition date;
- “public service pension scheme” has the meaning given in section 1;
- “regulations” means regulations made by the Department under this Act;
- “the Regulatory Authority” means the Pensions Regulator;
- “resources”, in relation to an occupational pension scheme, means the funds out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or annuity contract entered into, for the purposes of the scheme;
- “rights”, in relation to accrued rights (within the meaning of section 69 „³⁴f or 174) or transfer credits, includes rights to benefit and also options to have benefits paid in a particular form or at a particular time;
- “short service benefit” has the meaning given in section 67(2);
- “tax week” means one of the successive periods in a tax year beginning with the first day of that year and every seventh day thereafter, the last day of a tax year (or, in a leap year, the last two days) being treated accordingly as a separate tax week;
- “tax year” means the 12 months beginning with 6th April in any year;
- “transfer credits” means rights allowed to an earner under the rules of an occupational pension scheme by reference to—
- (a) a transfer to the scheme of, or transfer payment to the trustees or managers of the scheme in respect of, any of his rights (including transfer credits allowed) under another occupational pension scheme or a personal pension scheme, other than rights attributable (directly or indirectly) to a pension credit, or
 - (b) a cash transfer sum paid under ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** in respect of him, to the trustees or managers of the scheme;
- “the upper accrual point” has the meaning given by section 121 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- “week” means a period of seven days beginning with Sunday;
- “working life”, in relation to a person, means the period beginning with the tax year in which the person attains the age of 16 and ending with—
- (a) the tax year before the one in which the person attains the age of 65 in the case of a man or 60 in the case of a woman, or
 - (b) if earlier, the tax year before the one in which the person dies.
- (2) References to employers in the provisions of this Act (other than sections 119 to 123, 153 and 156 (“the excluded provisions”)) are to be treated, in relation to persons within the application of an occupational pension scheme and qualifying or prospectively qualifying for its benefits, as including references to persons who in relation to them and their employment are treated by regulations as being employers for the purposes of those provisions.
- (3) Subject to any such regulations, references to an employer in any of the provisions of this Act (other than the excluded provisions or Chapter I of Part IV, Part VIII so far as it applies for the purposes of Chapter I of Part IV, sections 149(2), 154(1) to (5), 158, 159 and 171) shall, in relation to an earner employed in an office with emoluments, be construed as references to—
- (a) such person as may be prescribed in relation to that office; or
 - (b) if no person is prescribed, the government department, public authority or body of persons responsible for paying the emoluments of that office.
- (4) Regulations may for any purpose of any provision of this Act (other than the excluded provisions or section, 107, 156, 160 or 161) prescribe the persons who are to be regarded as members or prospective members of an occupational pension scheme and as to the times at

which and the circumstances in which a person is to be treated as becoming, or as ceasing to be, a member or prospective member.

(5) In sections 161 and 162—

- (a) references to the United Kingdom include references to the territorial waters of the United Kingdom; and
- (b) references to Northern Ireland include references to the territorial waters of the United Kingdom adjacent to Northern Ireland.

(6) Any reference in section 180 or 181 to an order or regulations under this Act includes a reference to an order or regulations made under any provision of an enactment passed after this Act and directed to be construed as one with it; but this subsection applies only so far as a contrary intention is not expressed in the enactment so passed, and shall be without prejudice to the generality of any such direction.

(7) The Interpretation Act (Northern Ireland) 1954 shall apply to this Act—

- (a) as it applies to a Measure of the Assembly;
- (b) as if any reference in that Act to an enactment or an Act included a reference to this Act.

(8) For the purposes of Part III of the Northern Ireland Constitution Act 1973 (validity of Measures of the Assembly, including Orders in Council under the Northern Ireland Act 1974), provisions of this Act which re-enact provisions of such an Order are to be treated as provisions of such an Order.

Schedule 4, paragraph 65

Amends paragraph 9(a) of Article 67A of the Pensions (Northern Ireland) Order 1995 (SI 1995/3213 (NI 22)) as follows:

The subsisting rights provisions: interpretation

67A.—(1) In the subsisting rights provisions, each of the following expressions has the meaning given to it by the following provisions of this Article—

“regulated modification”

“protected modification”

“detrimental modification”

“affected member”

“subsisting right”

“scheme rules”.

(2) “Regulated modification” means a modification which is—

- (a) a protected modification, or
- (b) a detrimental modification,

or is both.

(3) “Protected modification” means a modification of an occupational pension scheme which—

- (a) on taking effect would or might result in any subsisting right of—
 - (i) a member of the scheme, or
 - (ii) a survivor of a member of the scheme, which is not a right or entitlement to money purchase benefits becoming, or being replaced with, a right or entitlement to money purchase benefits under the scheme rules,
- (b) would or might result in a reduction in the prevailing rate of any pension in payment under the scheme rules, or
- (c) is of a prescribed description.

For the purposes of sub-paragraph (a), the reference in the definition of “money purchase benefits” in section 176(1) of the Pension Schemes Act to the widow or widower of a member of an occupational pension scheme is to be read as including any other survivor of the member.

(4) “Detrimental modification” means a modification of an occupational pension scheme which on taking effect would or might adversely affect any subsisting right of—

- (a) any member of the scheme, or
- (b) any survivor of a member of the scheme.

(5) A person is an “affected member”—

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(a) in relation to a protected modification within sub-paragraph (a) or (b) of paragraph (3), if, at the time the modification takes effect, he is—

- (i) a member of the scheme, or
- (ii) a survivor of a member of the scheme, and, on taking effect, the modification would or might affect any of his subsisting rights

as mentioned in that sub-paragraph,

(b) in relation to a protected modification within sub-paragraph (c) of that paragraph, if he

is of a prescribed description, and

(c) in relation to a detrimental modification which is not a protected modification if, at the time the modification takes effect, he is—

- (i) a member of the scheme, or
- (ii) a survivor of a member of the scheme, and, on taking effect, the modification would or might adversely affect any of his subsisting rights.

(6) “Subsisting right” means—

(a) in relation to a member of an occupational pension scheme, at any time—

- (i) any right which at that time has accrued to or in respect of him to future benefits under the scheme rules, or
- (ii) any entitlement to the present payment of a pension or other benefit which he has at that time, under the scheme rules, and

(b) in relation to the survivor of a member of an occupational pension scheme, at any time, any entitlement to benefits, or right to future benefits, which he has at that time under the scheme rules in respect of the member.

For this purpose, “right” includes a pension credit right.

(7) At any time when the pensionable service of a member of an occupational pension scheme is continuing, his subsisting rights are to be determined as if he had opted, immediately before that time, to terminate that service.

(8) “Scheme rules”, in relation to a scheme, means—

- (a) the rules of the scheme, except so far as overridden by a relevant legislative provision,
- (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and
- (c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part IV of the Pension Schemes Act (preservation of benefit under occupational pension schemes).

(9) For the purposes of paragraph (8)—

(a) “relevant legislative provision” means any provision contained in any of the following provisions—

- (i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (equal treatment for men and women);
- ~~(ii) Chapters 2 to 5 of Part IV of the Pension Schemes Act (certain protection for early leavers) or regulations made under any of those Chapters;~~
- (ii) Chapter 2 or 3 of Part 4 of the Pension Schemes Act (certain protection for early leavers) or regulations made under either of those Chapters;**
- (iii) Chapter 1 or 2 of Part 4ZA of that Act (transfers and contribution refunds) or regulations**
- (iii) Part IVA of that Act (requirements relating to pension credit benefit) or regulations made under that Part;
- (iv) section 106(1) of that Act (requirement as to resources for annual increase of guaranteed minimum pensions);
- (v) this Part (occupational pensions) or orders or regulations made or having effect as if made under this Part;
- (vi) Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (pension debits: reduction of benefit);
- (vii) any provision mentioned in Article 279(2) of the Pensions (Northern Ireland) Order 2005;

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions—

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- (i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;
 - (ii) section 125(1) of the Pension Schemes Act;
 - (iii) Article 114(1);
 - (iv) Article 28(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999;
 - (v) Article 279(1) of the Pensions (Northern Ireland) Order 2005.
- (10) For the purposes of this Article—
- (a) “survivor”, in relation to a member of an occupational pension scheme, means a person who—
 - (i) is the widow or widower of the member, or
 - (ii) has survived the member and has any entitlement to benefit, or right to future benefits, under the scheme rules in respect of the member, and
 - (b) a modification would or might adversely affect a person’s subsisting right if it would alter the nature or extent of the entitlement or right so that the benefits, or future benefits, to which the entitlement or right relates would or might be less generous.
- (11) In the subsisting rights provisions, in relation to—
- (a) the exercise of a power to modify an occupational pension scheme to which the subsisting rights provisions apply, or
 - (b) a modification made, or to be made, in exercise of such a power, references to “the scheme” are to be read as references to the scheme mentioned in subparagraph (a).

Schedule 4, paragraph 66

Amends paragraph 9 of Article 73 of the Pensions (Northern Ireland) Order 1995 (SI 1995/3213 (NI 22)) as follows:

Winding up

Preferential liabilities on winding up

73.—(1) This Article applies where an occupational pension scheme to which this Article applies is being wound up to determine the order in which the assets of the scheme are to be applied towards satisfying the liabilities of the scheme in respect of pensions and other benefits.

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

- (a) a money purchase scheme, or
- (b) a prescribed scheme or a scheme of a prescribed description.

(3) The assets of the scheme must be applied first towards satisfying the amounts of the liabilities mentioned in paragraph (4) and, if the assets are insufficient to satisfy those amounts in full, then—

- (a) the assets must be applied first towards satisfying the amounts of the liabilities mentioned in earlier sub-paragraphs of paragraph (4) before the amounts of the liabilities mentioned in later sub-paragraphs, and
- (b) where the amounts of the liabilities mentioned in one of those sub-paragraphs cannot be satisfied in full, those amounts must be satisfied in the same proportions.

(4) The liabilities referred to in paragraph (3) are—

- (a) where—
 - (i) the trustees or managers of the scheme are entitled to benefits under a relevant pre-1997 contract of insurance entered into in relation to the scheme, and
 - (ii) either that contract may not be surrendered or the amount payable on surrender does not exceed the liability secured by the contract, the liability so secured;
- (b) any liability for pensions or other benefits to the extent that the amount of the liability does not exceed the corresponding PPF liability, other than a liability within subparagraph (a);

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(c) any liability for pensions or other benefits which, in the opinion of the trustees or managers, are derived from the payment by any member of voluntary contributions, other than a liability within sub-paragraph (a) or (b);

(d) any other liability in respect of pensions or other benefits.

(5) For the purposes of paragraph (4)—

“corresponding PPF liability” in relation to any liability for pensions or other benefits means—

(a) where the liability is to a member of the scheme, the cost of securing benefits for or in respect of the member corresponding to the compensation which would be payable to or in respect of the member in accordance with the pension compensation provisions if the Board of the Pension Protection Fund assumed responsibility for the scheme in accordance with Chapter 3 of Part III of the Pensions (Northern Ireland) Order 2005 (pension protection), and

(b) where the liability is to another person in respect of a member of the scheme, the cost of securing benefits for that person corresponding to the compensation which would be payable to that person in respect of the member in accordance with the pension compensation provisions if the Board assumed responsibility for the scheme in accordance with that Chapter;

“relevant pre-1997 contract of insurance” means a contract of insurance which was entered into before 6th April 1997 with a view to securing the whole or part of the scheme’s liability for—

(a) any pension or other benefit payable to or in respect of one particular person whose entitlement to payment of a pension or other benefit has arisen, and

(b) any benefit which will be payable in respect of that person on his death.

(6) For the purposes of this Article, when determining the corresponding PPF liability in relation to any liability of a scheme to, or in respect of, a member for pensions or other benefits, the pension compensation provisions apply with such modifications as may be prescribed.

(7) Regulations may modify paragraph (4).

(8) For the purposes of that paragraph—

(a) regulations may prescribe how it is to be determined whether a liability for pensions or other benefits which, in the opinion of the trustees or managers of the scheme, are derived from the payment by any member of voluntary contributions falls within subparagraph (a) or (b) of that paragraph;

(b) no pension or other benefit which is attributable (directly or indirectly) to a pension credit is to be regarded for the purposes of sub-paragraph (c) of that paragraph as derived from the payment of voluntary contributions.

(9) Where, on the commencement of the winding up period, a member becomes a person to whom ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies, that Chapter applies in relation to him with such modifications as may be prescribed.

(10) For the purposes of this Article—

“assets” of a scheme to which this Article applies do not include any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

“liabilities” of such a scheme do not include any liabilities in respect of money purchase benefits under the scheme rules;

“the pension compensation provisions” has the same meaning as in Part III of the Pensions (Northern Ireland) Order 2005 (see Article 146 of that Order);

“scheme rules” has the same meaning as in the Pensions (Northern Ireland) Order 2005 (see Article 2 of that Order);

“winding up period”, in relation to an occupational pension scheme to which this Article applies, means the period which—

(a) begins with (and includes) the day on which the time immediately after the beginning of the winding up of the scheme falls, and

(b) ends when the winding up of the scheme is completed.

Schedule 4, paragraph 67

Amends paragraph 7 of Article 73B of the Pensions (Northern Ireland) Order 1995 (SI 1995/3213 (NI 22)) as follows:

Articles 73 and 73A: supplementary

73B.—(1) Any action taken in contravention of Article 73A(3) is void.

(2) If any provision made by or by virtue of the winding up provisions is not complied with in relation to a scheme to which Article 73 applies, Article 10 applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(3) For the purposes of paragraph (2), when determining whether Article 73A(3) has been complied with paragraph (1) of this Article is to be disregarded.

(4) Regulations may—

(a) prescribe how, for the purposes of the winding up provisions—

- (i) the assets and liabilities of a scheme to which Article 73 applies, and
 - (ii) their value or amount,
- are to be determined, calculated and verified;

(b) modify any of the winding up provisions as it applies—

- (i) to prescribed schemes or prescribed descriptions of schemes;
- (ii) in relation to a scheme where only part of the scheme is being wound up;
- (iii) in relation to a case where any liability of the scheme in respect of a member has been discharged by virtue of regulations under Article 119(4) of the Pensions (Northern Ireland) Order 2005 (power to make regulations permitting discharge of scheme's liabilities during an assessment period).

(5) Without prejudice to the generality of paragraph (4), regulations under sub-paragraph (b)(i) of that paragraph may, in particular, modify any of the winding up provisions as it applies in relation to a scheme in relation to which there is more than one employer.

(6) The winding up provisions do not apply—

- (a) in relation to any liability for an amount by way of pensions or other benefits which a person became entitled to payment of, under the scheme rules, before commencement of the winding up period,
- (b) in prescribed circumstances, in relation to any liability in respect of rights of a prescribed description to which a member of the scheme became entitled under the scheme rules by reason of his pensionable service under the scheme terminating before the commencement of the winding up period,
- (c) in relation to any liability in respect of rights of prescribed descriptions to which a member of the scheme had become entitled under the scheme rules before the commencement of the winding up period, or
- (d) in relation to any liability the discharge of which is validated under Article 120 of the Pensions (Northern Ireland) Order 2005 (power to validate actions taken during an assessment period to discharge liabilities of a scheme).

(7) But nothing in paragraph (6) prevents the winding up provisions applying in relation to a liability under ~~Chapter 4 of Part IV~~ **Chapter 1 of Part 4ZA** of the Pension Schemes Act (transfer values) which—

- (a) arose before the commencement of the winding up of the scheme, and
- (b) was not discharged before the commencement of the winding up period.

(8) Regulations may provide that, in prescribed circumstances, where—

- (a) an occupational pension scheme to which Article 73 applies is being wound up,
- (b) a member of the scheme died before the winding up began, and
- (c) during the winding up period a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member, his entitlement to payment of all or part of the benefit is, for the purposes of paragraph (6), to be treated as having arisen immediately before the commencement of the winding up period.

(9) If, immediately before the winding up period in relation to an occupational pension scheme to which Article 73 applies, a person is entitled to an amount but has postponed payment of it, he is not, for the purposes of paragraph (6), to be regarded as having become entitled to payment of the amount before that period.

(10) For the purposes of this Article—

- (a) “winding up provisions” means this Article and Articles 73, 73A and 74, and

(b) paragraph (10) of Article 73 applies as it applies for the purposes of that Article.

Schedule 4, paragraph 69

Amends paragraph (4)(a) of Article 2 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Interpretation

General interpretation

2.(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order, unless the context otherwise requires

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995 (NI 22);

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999 (NI 11);

“the 2000 Act” means the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c. 4);

“active member” has the meaning given by Article 121(1) of the 1995 Order;

“the Board” means the Board of the Pension Protection Fund;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7);

“the Department” means the Department for Social Development;

“the Determinations Panel” means the committee established by the Regulator under section 9 of the Pensions Act 2004 (c. 35);

“direct payment arrangements”, in relation to a personal pension scheme, has the same meaning as in section 107A of the Pension Schemes Act;

“earnings” has the meaning given by section 176(1) of the Pension Schemes Act;

“employee” has the meaning given by section 176(1) of the Pension Schemes Act;

“employer”

(a) in relation to an occupational pension scheme, means the employer of persons in the

description of employment to which the scheme in question relates (but see

paragraph

(5)), and

(b) in relation to a personal pension scheme, where direct payment arrangements exist in respect of one or more members of the scheme who are employees, means an employer with whom those arrangements exist;

“enactment” includes any statutory provision;

“First-tier Tribunal” and “Upper Tribunal” mean those tribunals established under section 3 of the Tribunals, Courts and Enforcement Act 2007;_

“government department” means a Northern Ireland department or a department of the government of the United Kingdom;

“the Insolvency Order” means the Insolvency (Northern Ireland) Order 1989 (NI 19);

“managers”, in relation to an occupational or personal pension scheme (other than a scheme established under a trust), means the persons responsible for the management of the scheme;

“member”, in relation to an occupational pension scheme, means any active, deferred, pensioner or pension credit member within the meaning of Article 121(1) of the 1995 Order (but see paragraph (6));

“modifications” includes additions, omissions and amendments;

“money purchase benefit” has the meaning given by section 176(1) of the Pension Schemes Act;

“money purchase scheme” has the meaning given by section 176(1) of the Pension Schemes Act;

“occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act;

“pension board” has the same meaning as in the Public Service Pensions Act (Northern Ireland) 2014 (see section 5 of that Act);_

“pension credit” has the meaning given by Article 121(1) of the 1995 Order;

“the Pension Schemes Act” means the Pension Schemes (Northern Ireland) Act 1993 (c. 49);

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“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act;
“the PPF Ombudsman” means the Ombudsman for the Board of the Pension Protection Fund;

“prescribed” means prescribed by regulations;

“professional adviser”, in relation to an occupational pension scheme, has the meaning given by Article 47 of the 1995 Order;

“public service pension scheme” means, subject to paragraph (6A)—

(a) a scheme under section 1 of the Public Service Pensions Act (Northern Ireland) 2014

(new public service schemes);

(b) a new public body pension scheme (within the meaning of that Act), and

(c) any statutory pension scheme which is connected with a scheme referred to in paragraph (a) or (b) (and for this purpose “statutory pension scheme” and “connected” have the meanings given in that Act);_

“regulations” means regulations made by the Department;

“the Regulator” means the Pensions Regulator;

“scheme manager”, in relation to a public service pension scheme, has the same meaning as in the Public Service Pensions Act (Northern Ireland) 2014 (see section 4 of that Act);_

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“Tribunal Procedure Rules” has the same meaning as in the Tribunals, Courts and Enforcement Act 2007.

(3) In this Order, unless the context otherwise requires, references to the scheme rules, in relation to an occupational pension scheme, are references to

(a) the rules of the scheme, except so far as overridden by a relevant legislative

provision, (b) the relevant legislative provisions, to the extent that they have effect in relation to the scheme and are not reflected in the rules of the scheme, and

(c) any provision which the rules of the scheme do not contain but which the scheme must contain if it is to conform with the requirements of Chapter 1 of Part IV of the Pension Schemes Act (preservation of benefit under occupational pension schemes).

(4) For the purposes of paragraph (3)

(a) “relevant legislative provision” means any provision contained in any of the following provisions

(i) Schedule 5 to the Social Security (Northern Ireland) Order 1989 (NI 13) (equal treatment for men and women);

~~(ii) Chapters 2 to 5 of Part IV of the Pension Schemes Act (certain protection for early leavers) or regulations made under any of those Chapters;~~

(ii) Chapter 2 or 3 of Part 4 of the Pension Schemes Act (certain protection for early leavers) or regulations made under either of those Chapters;

(iia) Chapter 1 or 2 of Part 4ZA of that Act (transfers and contribution refunds) or regulations made under either of those Chapters;

(iii) Part IVA of that Act (requirements relating to pension credit benefit) or regulations

made under that Part;

(iv) section 106(1) of that Act (requirement as to resources for annual increase of

guaranteed minimum pensions);

(v) Part II of the 1995 Order (occupational pensions) or orders or regulations made or

having effect as if made under that Part;

(vi) Article 28 of the 1999 Order (pension debits: reduction of benefit);

(vii) any provision mentioned in Article 279(2);

(b) a relevant legislative provision is to be taken to override any of the provisions of the scheme if, and only if, it does so by virtue of any of the following provisions

(i) paragraph 3 of Schedule 5 to the Social Security (Northern Ireland) Order 1989;

(ii) section 125(1) of the Pension Schemes Act;

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- (iii) Article 114(1) of the 1995 Order;
 - (iv) Article 28(4) of the 1999 Order;
 - (v) Article 279(1).
- (5) Regulations may, in relation to occupational pension schemes, extend for the purposes of this Part and Parts II, III and V to VII the meaning of “employer” to include
- (a) persons who have been the employer in relation to the scheme;
 - (b) such other persons as may be prescribed.
- (6) Regulations may for any purpose of any provision of this Order
- (a) prescribe the persons who are to be regarded as members or prospective members of an occupational or personal pension scheme, and
 - (b) make provision as to the times at which and circumstances in which a person is to be treated as becoming, or as ceasing to be, such a member or prospective member.
- (6A) A scheme which would otherwise fall within the definition of “public service pension scheme” in paragraph (2) does not fall within that definition if—
- (a) it is an injury or compensation scheme (within the meaning of the Public Service Pensions Act (Northern Ireland) 2014), or
 - (b) it is specified in an order made by the Department after consulting the Department of Finance and Personnel.
- (7) In the application, for the purposes of this Order, of
- (a) section 24(1) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (service of documents by post) omit the word “registering”;
 - (b) section 39(2) of that Act (time beginning on a particular day), omit the word “not”.

Schedule 4, paragraph 70

Amends Article 14 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Pension liberation: interpretation

- 14.(1) In this Article and Articles 15 to 17
- (a) “pension scheme” means an occupational pension scheme or a personal pension scheme,
 - (b) “deposit-taker” has the meaning given by paragraphs (8A) and (8B) of Article 49 of the 1995 Order, except that, for the purposes of this definition, paragraph (8A)(c) of that Article has effect with the omission of the words from “or” to the end,
 - (c) references to money liberated from a pension scheme are to be read in accordance with paragraph (2),
 - (d) “liberated member”, in relation to money liberated from a pension scheme, means the member of the pension scheme who is referred to in paragraph (2)(a), and
 - (e) “restraining order” means a restraining order under Article 16.
- (2) Money is to be taken to have been liberated from a pension scheme if
- (a) the money directly or indirectly represents an amount that, in respect of accrued rights **or an entitlement** of a member of a pension scheme, has been transferred out of the scheme in pursuance of
 - (i) a relevant statutory provision, or
 - (ii) a provision of ~~the applicable rules~~ **the scheme rules**, other than a relevant statutory provision,
 - (b) the trustees or managers of the scheme transferred the amount out of the scheme on the basis that a third party (“the liberator”) would secure that the amount was used in an authorised way,
 - (c) the amount has not been used in an authorised way, and
 - (d) the liberator has not secured, and is not likely to secure, that the amount will be used in an authorised way.
- (3) The following are “relevant statutory provisions” for the purposes of paragraph (2)
- ~~(a) section 90(1)(a), (aa) or (b) of the Pension Schemes Act (right to cash equivalent under Chapter 4 of Part IV of that Act);~~

(a) section 90 of the Pension Schemes Act (right to cash equivalent under Chapter 1 of Part 4ZA of that Act)

~~(b) section 97AB(1)(a) of that Act (right to cash transfer sum under Chapter 5 of Part 4~~ **Chapter 2 of Part 4ZA** of that Act);

(c) section 97F(1) of that Act (right to cash equivalent of pension credit benefit).

(4) In paragraph (2) “authorised way” means

(a) where the amount concerned is transferred out of the scheme in pursuance of a provision mentioned in paragraph (3)(a), a way specified in subsection (2) or, as the case may be, subsection (3) of section 91 of the Pension Schemes Act;

(b) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(b), a way specified in section 97AE(2) of that Act;

(c) where that amount is transferred out in pursuance of the provision mentioned in paragraph (3)(c), a way specified in subsection (2) or, as the case may be, subsection (3) of section 97F of that Act;

(d) where that amount is transferred out in pursuance of a provision of the kind mentioned in paragraph (2)(a)(ii), a way that is authorised by ~~the applicable rules~~ **the scheme rules** for amounts transferred out in pursuance of that provision.

~~(5) In this Article “the applicable rules” has the same meaning as, in the case of the pension scheme concerned, that expression has in section 90 of the Pension Schemes Act.~~

Schedule 4, paragraphs 71 and 72

Amends Article 19 and 20 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Freezing orders

19.(1) This Article applies to an occupational pension scheme which is not a money purchase scheme.

(2) The Regulator may make a freezing order in relation to such a scheme if and only if

(a) the order is made pending consideration being given to the making of an order in relation to the scheme under Article 11(1)(c) of the 1995 Order (power to wind up schemes where necessary to protect the generality of members), and

(b) the Regulator is satisfied that

(i) there is, or is likely to be if the order is not made, an immediate risk to the interests of members under the scheme or the assets of the scheme, and

(ii) it is necessary to make the freezing order to protect the interests of the generality of the members of the scheme.

But no freezing order may be made in relation to a scheme during an assessment period (within the meaning of Article 116) in relation to the scheme (see Article 119(11)).

(3) A freezing order is an order directing that during the period for which it has effect

(a) no benefits are to accrue under the scheme rules to, or in respect of, members of the scheme, and

(b) winding up of the scheme may not begin.

(4) A freezing order may also contain one or more of the following directions which have effect during the period for which the order has effect

(a) a direction that no new members, or no specified classes of new member, are to be admitted to the scheme;

(b) a direction that

(i) no further contributions or payments, or

(ii) no further specified contributions or payments, are to be paid towards the scheme by or on behalf of the employer, any members or any specified members of the scheme;

(c) a direction that any amount or any specified amount which

(i) corresponds to any contribution which would be due to be paid towards the scheme on behalf of a member but for a direction under sub-paragraph (b), and

(ii) has been deducted from a payment of any earnings in respect of an employment, is to be repaid to the member in question by the employer;

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- (d) a direction that no benefits, or no specified benefits, are to be paid to or in respect of any members or any specified members under the scheme rules;
- (e) a direction that payments of all benefits or specified benefits under the scheme rules to or in respect of all the members or specified members may only be made from the scheme if they are reduced in a specified manner or by a specified amount;
- (f) a direction that
 - (i) no transfers or no specified transfers of, or no transfer payments or no specified transfer payments in respect of, any member's rights under the scheme rules are to be made from the scheme, or
 - (ii) no other steps or no specified other steps are to be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of pensions or other benefits;
- (g) a direction that no statements of entitlement are to be provided to members of the scheme under section 89A of the Pension Schemes Act (~~salary related schemes~~ **benefits other than money purchase**: right to statement of entitlement);
- (h) a direction that
 - (i) no refunds of, or no specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme are to be made from the scheme, or
 - (ii) refunds or specified refunds of, or in respect of, contributions paid by or in respect of a member towards the scheme may only be made from the scheme if they are determined in a specified manner and satisfy such other conditions as may be specified.

(5) In paragraph (4)(b)

(a) the references to contributions do not include contributions due to be paid before the order takes effect, and

(b) the references to payments towards a scheme include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.

(6) A freezing order may not contain a direction under paragraph (4)(d) or (e) which reduces the benefits payable to or in respect of a member, for the period during which the order has effect, below the level to which the trustees or managers of the scheme would have power to reduce them if a winding up of the scheme had begun at the time when the freezing order took effect.

(7) A direction under paragraph (4)(f) may, in particular, provide that transfers or specified transfers of, or transfer payments or specified transfer payments in respect of, any member's rights under the scheme rules may not be made from the scheme unless the amounts paid out from the scheme in respect of the transfers or transfer payments are determined in a specified manner and the transfer or transfer payments satisfy such other conditions as may be specified.

(8) A freezing order may also require the trustees or managers of the scheme to obtain an actuarial valuation within a specified period.

(9) A freezing order containing such a requirement must specify

- (a) the date by reference to which the assets and liabilities are to be valued,
- (b) the assets and liabilities which are to be taken into account,
- (c) the manner in which the valuation must be prepared,
- (d) the information and statements which it must contain, and
- (e) any other requirements that the valuation must satisfy.

(10) For the purposes of paragraph (8)

“an actuarial valuation” means a written valuation of the scheme's assets and liabilities prepared and signed by the actuary,

“the actuary” means

- (a) the actuary appointed under Article 47(1)(b) of the 1995 Order (professional advisers) in relation to the scheme, or
- (b) if no such actuary has been appointed
 - (i) a person with prescribed qualifications or experience, or
 - (ii) a person approved by the Department.

(11) In this Article “specified” means specified in the freezing order.

Consequences of freezing order

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- 20.(1) If a freezing order is made in relation to a scheme any action taken in contravention of the order is void except to the extent that the action is validated by an order under Article 22.
- (2) A freezing order in relation to a scheme does not prevent any increase in a benefit which is an increase which would otherwise accrue in accordance with the scheme or any statutory provision during the period for which the order has effect, unless the order contains a direction to the contrary.
- (3) A freezing order in relation to a scheme does not prevent the scheme being wound up in pursuance of an order under Article 11 of the 1995 Order (power to wind up occupational pension schemes).
- (4) If a freezing order contains a direction under Article 19(4)(b) that no further contributions, or no further specified contributions, are to be paid towards a scheme during the period for which the order has effect
- (a) any contributions which are the subject of the direction and which would otherwise be due to be paid towards the scheme during that period are to be treated as if they do not fall due, and
 - (b) any obligation to pay those contributions (including any obligation under Article 49(8) of the 1995 Order to pay amounts deducted corresponding to such contributions) is to be treated as if it does not arise.
- (5) If a freezing order contains a direction under Article 19(4)(f) (no transfers or discharge of member's rights) it does not prevent
- (a) giving effect to a pension sharing order or provision, or
 - (b) giving effect to a pension earmarking order in a case where
 - (i) the order requires a payment to be made if a payment in respect of any benefits under the scheme becomes due to a person, and
 - (ii) a direction under Article 19(4)(d) or (e) does not prevent the payment becoming due.
- (6) For the purposes of paragraph (5)
"pension sharing order or provision" means an order or provision falling within Article 25(1) of the 1999 Order (activation of pension sharing);
"pension earmarking order" means
- (a) an order under Article 25 of the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) (financial provision orders in connection with divorce etc.) so far as it includes provision made by virtue of Article 27B or 27C of that Order (powers to include provision about pensions), (aa) an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 15 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.: Northern Ireland) so far as it includes provision made by virtue of paragraphs 20 and 21 of Part 5 of that Schedule (powers to include provisions about pensions),
 - (b) an order under section 23 of the Matrimonial Causes Act 1973 (c. 18) so far as it includes provision made by virtue of section 25B or 25C of that Act (powers in England and Wales corresponding to those mentioned in paragraph (a)),
 - (c) an order under section 12A(2) or (3) of the Family Law (Scotland) Act 1985 (c. 37) (powers in relation to pension lump sums when making a capital sum order), or
 - (d) an order under Part 1 (financial provision in connection with dissolution, nullity or separation) of Schedule 5 to the Civil Partnership Act 2004 (financial relief in the High Court or a county court etc.) so far as it includes provision made by virtue of paragraphs 25 and 26 of Part 6 of that Schedule (powers to include provisions about pensions).
- (7) Regulations may modify any provisions of
- ~~(a) Chapter 4 of Part IV of the Pension Schemes Act (protection for early leavers: transfer values), or~~
 - ~~(b) Chapter 5 of that Part (protection for early leavers: cash transfer sums and contribution refunds),~~
 - (a) Chapter 1 of Part 4ZA of the Pension Schemes Act (transferrights: general), or**
 - (b) Chapter 2 of that Part (early leavers: cash transfer sums and contribution refunds).**
- in their application to an occupational pension scheme in relation to which a freezing order is made containing a direction under Article 19(4)(f), (g) or (h) (no transfers etc. in respect of, member's rights or refunds of contributions etc. from the scheme).

(8) Disregarding paragraph (1), if a freezing order made in relation to a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.

(9) Paragraph (8) does not apply in the case of non-compliance with a direction under Article 19(4)(c) (direction that certain deducted contributions are to be repaid by the employer).

(10) In such a case, Article 10 of the 1995 Order (civil penalties) applies to an employer who, without reasonable excuse, fails to repay an amount as required by the direction.

Schedule 4, paragraph 73

Amends Article 68 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Inspection of premises

68.(1) An inspector may, for the purposes of investigating whether, in the case of any occupational pension scheme, the occupational scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(2) In paragraph (1), the “occupational scheme provisions” means provisions contained in or made by virtue of

(a) any of the following provisions of this Order

Part I (introductory);

this Part;

Part IV (scheme funding);

Articles 218 to 220 (member-nominated trustees and directors);

Articles 224 to 226 (requirement for knowledge and understanding);

Article 229 (UK-based scheme to be trust with effective rules);

Article 230 (non-European scheme to be trust with UK resident trustee);

Article 232 (activities of occupational pension schemes);

Article 233 (no indemnification for fines or civil penalties);

Articles 236 and 238 (consultation by employers);

Part VII (cross-border activities within European Union);

Part IX (miscellaneous and supplementary);

(b) either of the following provisions of the 1999 Order

Article 30 (time for discharge of pension credit liability);

Article 42 (information);

(c) any of the provisions of Part II of the 1995 Order (occupational pension schemes), other than

(i) Articles 51 to 54 (indexation), and

(ii) Articles 62 to 65 (equal treatment);

(d) any of the following provisions of the Pension Schemes Act

~~Chapter 4 of Part IV~~ **Chapter 1 of Part 4ZA** (transfer values);

~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** (early leavers: cash transfer sums and contribution refunds);

Chapter 2 of Part IVA (pension credit transfer values);

section 109 (information);

section 170 (levy);

(e) any provisions in force in Great Britain corresponding to any provisions within subparagraphs

(a) to (d).

(3) An inspector may, for the purposes of investigating whether, in the case of a stakeholder scheme

(a) Articles 3 and 4(4) of the 1999 Order (stakeholder pension schemes: registration etc.), or

(b) any corresponding provisions in force in Great Britain, are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(4) An inspector may, for the purposes of investigating whether, in the case of any trust-based personal stakeholder scheme, the trust-based scheme provisions are being, or have been, complied with, at any reasonable time enter premises liable to inspection.

(5) In paragraph (4)

“trust-based personal stakeholder scheme” means a personal pension scheme which^{3/4}

- (a) is a stakeholder scheme, and
- (b) is established under a trust;

the “trust-based scheme provisions” means any provisions contained in or made by virtue of

- (a) any provision which applies in relation to trust-based personal stakeholder schemes by virtue of paragraph 1 of Schedule 1 to the 1999 Order, as the provision applies by virtue of that paragraph, or
- (b) any corresponding provision in force in Great Britain.

(6) Premises are liable to inspection for the purposes of this Article if the inspector has reasonable grounds to believe that

- (a) members of the scheme are employed there,
- (b) documents relevant to the administration of the scheme are being kept there, or
- (c) the administration of the scheme, or work connected with that administration, is being carried out there.

(7) In this Article, “stakeholder scheme” means an occupational pension scheme or a personal pension scheme which is or has been registered under

- (a) Article 4 of the 1999 Order (register of stakeholder schemes), or
- (b) any corresponding provision in force in Great Britain.

Schedule 4, paragraph 74

Amends Article 119 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Restrictions on winding up, discharge of liabilities etc.

119.(1) This Article applies where there is an assessment period in relation to an eligible scheme.

(2) Subject to paragraph (3), the winding up of the scheme must not begin during the assessment period.

(3) Paragraph (2) does not apply to the winding up of the scheme in pursuance of an order by the Regulator under Article 11(3A) of the 1995 Order (Regulator’s powers to wind up occupational pension schemes to protect Pension Protection Fund) directing the scheme to be wound up (and Article 198 makes provision for the backdating of the winding up).

(4) During the assessment period, except in prescribed circumstances and subject to prescribed conditions

- (a) no transfers of, or transfer payments in respect of, any member’s rights under the scheme rules are to be made from the scheme, and
- (b) no other steps may be taken to discharge any liability of the scheme to or in respect of a member of the scheme in respect of
 - (i) pensions or other benefits, or
 - (ii) such other liabilities as may be prescribed.

(5) Paragraph (4)

- (a) is subject to Article 122, and
- (b) applies whether or not the scheme was being wound up immediately before the assessment period or began winding up by virtue of paragraph (3).

(6) Paragraph (7) applies where, on the commencement of the assessment period

- (a) a member’s pensionable service terminates, and
- (b) he becomes a person to whom ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies.

Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b).

(7) Where this paragraph applies, during the assessment period

- (a) no right or power conferred by that Chapter may be exercised, and
- (b) no duty imposed by that Chapter may be discharged.

(8) Where a person is entitled to a pension credit derived from another person's shareable rights (within the meaning of Chapter 1 of Part V of the 1999 Order (sharing of rights under pension arrangements)) under the scheme, nothing in paragraph (4) prevents the trustees or managers of the scheme discharging their liability in respect of the credit in accordance with that Chapter.

(9) Any action taken in contravention of this Article is void, except to the extent that the Board validates the action (see Article 120).

(10) Disregarding paragraph (9), where there is a contravention of this Article, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with this Article.

(11) The Regulator may not make a freezing order (see Article 19) in relation to the scheme during the assessment period.

Schedule 4, paragraph 75

Amends Article 122 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Payment of scheme benefits

122.(1) Paragraphs (2) and (3) apply where there is an assessment period in relation to an eligible scheme.

(2) The benefits payable to or in respect of any member under the scheme rules during the assessment period must be reduced to the extent necessary to ensure that they do not exceed the compensation which would be payable to or in respect of the member in accordance with this Chapter if

- (a) the Board assumed responsibility for the scheme in accordance with this Chapter, and
- (b) the assessment date referred to in Schedule 6 were the date on which the assessment period began.

(3) But where, on the commencement of the assessment period

- (a) a member's pensionable service terminates, and
- (b) he becomes a person to whom ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) applies, no benefits are payable to or in respect of him under the scheme during the assessment period.

(4) Article 134(5) (retrospective accrual of benefits in certain circumstances) is to be disregarded for the purposes of determining whether a member falls within sub-paragraph (a) or (b) of paragraph (3).

(5) Nothing in paragraph (3) prevents the payment of benefits attributable (directly or indirectly) to a pension credit during the assessment period in accordance with paragraph (2).

(6) Where at any time during the assessment period the scheme is being wound up, subject to any reduction required under paragraph (2) and to paragraph (3), the benefits payable to or in respect of any member under the scheme rules during that period are the benefits that would have been so payable in the absence of the winding up of the scheme.

(7) Paragraphs (2), (3) and (6) are subject to Articles 134(1) to (3) and 138(13) (which provide for the adjustment of amounts paid during an assessment period when that period ends other than as a result of the Board assuming responsibility for the scheme).

(8) For the purposes of paragraphs (2) and (3) the trustees or managers of the scheme may take such steps as they consider appropriate (including steps adjusting future payments under the scheme rules) to recover any overpayment or pay any shortfall.

(9) Article 10 of the 1995 Order (civil penalties) applies to a trustee or manager of a scheme who fails to take all reasonable steps to secure compliance with paragraphs (2) and (3).

(10) Regulations may provide that, where there is an assessment period in relation to an eligible scheme

- (a) in such circumstances as may be prescribed paragraph (2) does not operate to require the reduction of benefits payable to or in respect of any member;
- (b) the commencement of a member's pension or payment of a member's lump sum or other benefits is, in such circumstances and on such terms and conditions as may be prescribed, to be postponed for the whole or any part of the assessment period for which he continues in employment after attaining normal pension age.
- (11) For the purposes of paragraph (10)
- (a) "normal pension age", in relation to an eligible scheme and any pension or other benefit under it, means the age specified in the scheme rules as the earliest age at which the pension or other benefit becomes payable without actuarial adjustment (disregarding any scheme rule making special provision as to early payment on the grounds of ill health), and (b) where different ages are so specified in relation to different parts of a pension or other benefit^{3/4}
- (i) paragraph (10) has effect as if those parts were separate pensions or, as the case may be, benefits, and
- (ii) in relation to a part of a pension or other benefit, the reference in that paragraph to normal pension age is to be read as a reference to the age
- (12) Regulations may provide that, in prescribed circumstances, where
- (a) a member of the scheme died before the commencement of the assessment period, and
- (b) during the assessment period, a person becomes entitled under the scheme rules to a benefit of a prescribed description in respect of the member, the benefit, or any part of it, is, for the purposes of paragraph (2), to be treated as having become payable before the commencement of the assessment period.
- (13) Nothing in paragraph (2) or (3) applies to money purchase benefits.

Schedule 4, paragraph 76

Amends paragraphs 20(1)(c) and 32(1)(b) of Schedule 6 of the Pensions (Northern Ireland) Order 2005 (SI 2005/255 (NI 1)) as follows:

Compensation in respect of scheme right to transfer payment or contribution refund

- 20.(1) Compensation is payable in accordance with this paragraph where
- (a) a person's pensionable service terminates on the commencement of the assessment period,
- (b) as a result, he has rights, under the admissible rules, to
- (i) a transfer payment calculated by reference to the value of benefits which have accrued to him under the scheme ("the protected transfer payment"), or
- (ii) a cash payment calculated by reference to the amount of contributions made by him or on his behalf to the scheme ("the protected contribution repayment"),
- (c) ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds) does not apply to him, and
- (d) he does not have relevant accrued rights to benefit (within the meaning of section 97AA(4) of that Act).
- (2) That person is entitled to compensation in the form of a lump sum in respect of the protected transfer payment or protected contribution repayment.

Short periods of service which terminate on commencement of assessment period

- 32.(1) This paragraph applies to a member of the scheme if
- (a) his pensionable service terminates on the commencement of the assessment period, and
- (b) as a result, he has rights, in relation to the scheme, under ~~Chapter 5 of Part IV~~ **Chapter 2 of Part 4ZA** of the Pension Schemes Act (early leavers: cash transfer sums and contribution refunds).

- (2) Where this paragraph applies, for the purposes of this Schedule the member is to be treated as if, immediately before the assessment date, he
- (a) had relevant accrued rights to benefits under the scheme (within the meaning of section 97AA(4) of that Act), and
 - (b) did not have any other rights to benefits (other than benefits attributable (directly or indirectly) to a pension credit) under the scheme.

Schedule 5 – PENSION SCHEME FOR FEE-PAID JUDGES: CONSEQUENTIAL AMENDMENTS

Schedule 5, paragraph 2

Amends section 19(2) of the Pensions (Increase) Act 1971 (extent to Northern Ireland) as follows:

- 19(2) This Act extends to Great Britain only, except that—
- (a) it extends to Northern Ireland in relation to pensions payable under Schedule 8 to the Government of Ireland Act 1920 (former Irish civil servants) or payable to or in respect of an existing Irish officer within the meaning of that Act under the Superannuation Acts 1834 to 1965, or payable under or by virtue of any other Act extending to Northern Ireland out of the Consolidated Fund of the United Kingdom or out of moneys provided by the Parliament of the United Kingdom or out of the Parliamentary Contributory Pension Fund or payable under Part I or section 18A or 19 of the Judicial Pensions and Retirement Act 1993 (otherwise than under or by virtue of section 10 of that Act **or provision made under section 18A of that Act that is corresponding or similar to the provision that may be made by regulations under section 10 of that Act.**)

Schedule 5, paragraph 3

Inserts paragraph 4A into Schedule 2 of the Pensions (Increase) Act 1971 Section (extent to Northern Ireland) as follows:

- 4AA** A pension payable under a scheme made under section 18A of the Judicial pensions and Retirement Act 1993, other than a pension payable under or by virtue of provision that is corresponding or similar to the provision that may be made by regulations under section 10 of that Act.

Schedule 5, paragraphs 4 to 7

Amends the Judicial Pensions and Retirement Act 1993 section 22 (application of the Pensions (Increase) Act 1971), as follows:

- 22(2) The pensions in relation to which the Pensions (Increase) Act 1971 extends to Northern Ireland shall include—
- (a) pensions payable under Part I or section 19 above, other than pensions payable under or by virtue of section 10 above; **and**
 - (b) **pensions payable under a scheme made under section 18A above, other than pensions payable under or by virtue of provision that is corresponding or similar to the provision that may be made by regulations under section 10 above.**

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- 28(2) Except as provided by subsection (1) above--
(a) any pension or lump sum payable under Part I above,
(aa) any pension or other benefits payable under a scheme made under section 18A above; and
(b) any payment authorised to be made under section 19 above,
- shall be met out of money provided by Parliament.
- 28(7) Nothing in this section applies in relation to any pension or other benefits payable under or by virtue of— ~~section 10 above.~~
(a) section 10 above, or
(b) provision made under section 18A above that is corresponding or similar to the provision that may be made by regulations under section 10 above.
- 28A The Lord Chancellor and the Department of Justice in Northern Ireland may make arrangements under which the Department is to make contributions to the cost of the liabilities under this Act for pensions, lump sums or other payments in respect of persons' service in qualifying judicial office in Northern Ireland **or as a fee-paid judge in Northern Ireland (within the meaning given by section 18A).**