



Department
for Work &
Pensions

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

and

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

Public consultation

November 2015

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Introduction

Changes introduced by the Taxation of Pensions Act 2014 and the Pension Schemes Act 2015 introduced the concept of flexible benefits and give pension scheme members with these benefits greater flexibility about how and when they access their pension savings.

A number of changes to pensions secondary legislation were also required, most of which have already been made in time for the April 2015 commencement. However, given the scale of the changes, further changes in other areas are also required. This consultation document deals with the remaining changes required to reflect the new pension flexibilities and some issues which have arisen since.

Chapters 1 to 4 of this consultation seek respondents' views on proposed regulatory changes to four areas, as follows:

1. pension sharing on divorce, including a requirement that, where an attachment order exists, schemes will have to write out to the former spouse at the point the member applies to take their benefits;
2. scheme wind-up, forfeiture and the preservation of benefits;
3. the Pension Protection Fund, including amendments to the Pension Protection Fund (Entry Rules) Regulations 2005 around schemes whose sponsoring employer cannot have an insolvency event;
4. retirement risk warnings on occupational pension schemes, including placing an obligation on trustees of occupational schemes to send generic risk warnings out to members before they take their benefits in a particular form.

Chapter 5 seeks respondents' views on a possible simplification to the valuation of pensions with a guaranteed annuity rate (GAR) for the purposes of the advice safeguard.

Chapter 1: Pension Sharing and Attachment Orders on Divorce etc.

This chapter explores how the existing legislation on pension sharing on divorce can be aligned with changes to the transfer provisions introduced by the Pension Schemes Act 2015. It also seeks views on ensuring that the pension sharing process continues to work where pension rights would not be preserved due to short service and that reductions to transfer values for pension credit members in underfunded schemes are correctly applied. Additionally, where an attachment order has been granted against a pension, the chapter seeks respondents' views about alerting the former spouse that the member intends to take their flexible benefits in order to give the former spouse time to apply to vary the order should the

member be planning to take benefits in a way not envisaged when the order was granted.

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

This chapter seeks respondents' views on allowing occupational pension schemes which are winding up to discharge non-money purchase flexible benefits as a lump sum under the new flexibilities. It also seeks respondents' views on technical amendments in relation to inalienability of pensions and preservation of benefits.

Chapter 3: Pension Protection Fund

This chapter seeks respondents' views on minor changes in relation to the payment of benefits by schemes during an assessment period, and the payment of PPF compensation as a lump sum. It further seeks respondents' views on amending the Pension Protection Fund (Entry Rules) Regulations with regard to entry into the PPF for those eligible schemes whose sponsoring employers cannot have an "insolvency event".

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

This chapter explores how a requirement for occupational pension schemes to provide generic risk warnings to scheme members who wish to take their benefits flexibly could be put onto a statutory footing.

Chapter 5: Valuation of Pensions with a Guaranteed Annuity Rate and the Advice Safeguard: call for evidence

Since April 2015, scheme members with a Guaranteed annuity rate (GAR) pension arrangement with safeguarded benefits valued at over £30,000 have been required to take appropriate independent advice before accessing their pension savings flexibly or transferring them to another provider. This chapter seeks respondents' views on a possible simplification to the valuation of pensions with a GAR for the purposes of the advice safeguard.

Who this consultation is aimed at

This consultation is mainly aimed at those administering and managing workplace pension schemes as the substantive amendments do not apply to other schemes. However, the government also welcomes comments from pension industry professionals, pension schemes, trustees, industry, pension scheme members and member representative organisations, and any other interested parties.

Purpose of the consultation

The aim of this consultation is to draw stakeholders' attention to the proposed regulatory changes, and seek views on the likely impact, including any unintended consequences that the attached draft regulations might have on specific groups. These are expected to come into force in April 2016.

The aim of the call for evidence on the valuation of pensions with a guaranteed annuity rate (GAR) is to elicit stakeholders' views on if, and how, the valuation process for those with GAR pension benefits should be simplified. If the government does proceed to simplify the valuation process a further consultation on draft regulations will be held in spring 2016.

Scope of consultation

This consultation applies to England, Wales and Scotland. It is anticipated that Northern Ireland will make corresponding regulations.

Duration of the consultation

The consultation period begins on 23 November 2015 and runs until 15 January 2016 (extended from 11 January). Please ensure your response reaches us by that date as any replies received after this may not be taken into account.

The government's new Consultation Principles were introduced on 17 July 2012. The new Principles are at <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

How to respond to this consultation

Please send your consultation responses to:

Department for Work and Pensions
Decumulation and Transfers Team
Level 1
6-12 Caxton House
Tothill Street
London
SW1H 9NA

miscregs2016.consultation@dwp.gsi.gov.uk

Government response

We will aim to publish the government response to the consultation on the [GOV.UK](https://www.gov.uk) website. The consultation principles encourage Departments to publish a response within 12 weeks. This response will summarise responses and outline next steps.

How we consult

Consultation principles

This consultation is being conducted in line with the [Cabinet Office consultation principles](#). The key principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and use real discussion with affected parties and experts to make well informed decisions
- departments should explain what responses they have received and how these have been used in formulating policy
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy
- the principles of the [Compact: the agreement between government and the voluntary/community sector](#) will continue to be respected

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
2nd Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:

Email: freedom-of-information-request@dwp.gsi.gov.uk

The Central Fol team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

Chapter 1: Pension Sharing and Attachment Orders on Divorce etc.

1. The value of pension rights can be among a divorcing couple's¹ largest assets and need to be taken into account when agreeing the financial settlement. The Welfare Reform and Pensions Act 1999 introduced the option of sharing the value of any pension rights as part of the settlement. If a couple, or the court, choose this option, a percentage of the value of the member's pension rights are irrevocably transferred to the former spouse either under the same scheme or under a separate pension arrangement in the name of the former spouse.
2. The Pensions on Divorce (Amendment) Regulations 2016 make various amendments to the:
 - Pension Sharing (Pension Credit Benefit) Regulations 2000
 - Pension Sharing (Valuation) Regulations 2000
 - Pensions on Divorce etc (Provision of Information) Regulations 2000
 - Pensions on Divorce etc (Charging) Regulations 2000
 - Pension Scheme Act 2015 (Transitional Protection and Appropriate Advice) Regulations 2015
 - Divorce etc (Pensions) Regulations 2000
 - Divorce etc (Pensions) (Scotland) Regulations 2000

Consequential amendments following the Pension Schemes Act 2015

3. The Pension Schemes Act 2015 and the Taxation of Pensions Act 2014 made a number of changes to tax and pensions legislation, including introducing a requirement for a member to take independent financial advice if they wished to transfer or convert rights to safeguarded benefits valued at £30,000 or more to acquire rights to "flexible benefits" or to receive and uncrystallised funds pension lump sum.
4. A significant number of technical and consequential changes are now needed to the regulations governing pension sharing and attachment on divorce to take account of these primary changes.

¹ Pension sharing is also available on the dissolution of a civil partnership. All references to former spouse also include former civil partners.

Advice requirement

5. The Pension Schemes Act 2015 introduced the requirement for a member to seek independent financial advice if they wished to transfer safeguarded benefits valued at £30,000 or more to another scheme to take advantage of the new flexibilities. The advice requirement also applies if the member wants to convert their safeguarded benefits to flexible benefits within the same scheme.
6. The government has always believed that the same protection should apply to all members, whether the pension rights relate to their own pensionable service under the scheme, or to rights acquired as a result of pension sharing. In each case the member or pension credit member may be giving up valuable rights to benefit. The government believes that it is, therefore, right that pension credit members who, as former spouses, may be less familiar with the rights they are giving up than ordinary members, are protected by the advice safeguard.
7. The requirement to take independent financial advice will apply only to pension credit rights which are safeguarded benefits and which are being transferred or converted to flexible benefits. There is no intention for the advice requirement to apply at the point which the trustees' liability in relation to a pension credit is being discharged, either internally or externally, as part of the implementation of a pension sharing order.

Proposed changes

8. Regulation 6 of the Pension Credit Benefit Regulations permits schemes to provide the pension credit benefit in alternative forms to the original benefit. Regulation 2(4) of the draft regulations will insert a provision making it clear that the advice requirement in section 48 of the Pension Schemes Act 2015 applies if the pension credit member's safeguarded benefits are to be provided in another form.
9. Regulation 6 of the draft regulations will amend the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Advice) Regulations to include references to the transfer provisions for pension credit benefits.

Technical and consequential amendments following 2015 changes to the Transfer provisions (Parts 4ZA and IVA of the Pension Schemes Act 1993)

10. The draft regulations make various amendments to the:

- Pension Sharing (Pension Credit Benefit) Regulations 2000
- Pension Sharing (Valuation) Regulations 2000
- Pensions on Divorce etc (Provision of Information) Regulations 2000
- Pensions on Divorce etc (Charging) Regulations 2000
- Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015
- Divorce etc (Pensions) Regulations 2000
- Divorce etc (Pensions)(Scotland) Regulations 2000

in order to ensure that the terminology and cross-references to sections providing for transfers are correct.

The consultation on changes to the last two regulations is being carried out with the agreement of the Ministry of Justice and the Scottish Executive respectively.

11. There are also a few more substantive consequential changes.

12. Regulation 2 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 provides that a money purchase scheme does not become a non-money purchase scheme simply because the scheme also offers a non-money purchase death benefit in addition to money purchase benefits. As the right to a transfer now relates to categories of benefit, the government does not think this provision is necessary and it is omitted by the draft regulations.

13. Both paragraphs (1) and (2) of regulation 29 of the Pension Credit Benefit Regulations refer to “the valuation date”, but the changes to the Pension Schemes Act 1993 mean the reference no longer makes sense in paragraph 2. The draft regulations amend this so that the valuation date is consistent in both paragraphs (1) and (2).

Other technical and consequential amendments

14. We are also taking the opportunity to make a number of minor technical changes which were previously missed.

15. Regulation 3 of the draft regulations will correct a drafting error in the Pensions on Divorce etc. (Provision of Information) Regulations where the year of the Matrimonial Causes Act is incorrect. It also updates references in

the same regulation to the Occupational and Personal Pension Schemes Disclosure of Information Regulations 2013 which were not updated when these regulations replaced the 1996 regulations.

16. Regulation 5 of the draft regulations will correct similar missed consequential amendments regarding disclosure in the Pensions on Divorce (Charging) Regulations 2000.

Impact on business

17. There is no impact on business. These are all technical and consequential amendments to ensure the legislation works smoothly, or to incorporate changes into the separate pension sharing legislation which have already been incorporated into the requirements for ordinary members' benefits.

Questions

1. Do you agree that these various technical amendments ensure that pension sharing legalisation reflects changes which have already been made regarding ordinary scheme benefits?
2. Do you agree that the advice requirement should apply to pension credit members if they wish to transfer safeguarded pension credit rights valued above £30,000?

Attachment orders

Flexible benefits

18. An attachment order is an alternative to a pension sharing order. However, rather than part of the pension being passed irrevocably to the former spouse, all the pension rights remain with the original member. The scheme is required by the order to pay a percentage of the benefits to the former spouse (called the other party) once they are put into payment.
19. The former spouse would normally be aware of the form and timing of payments as this would have been part of the financial settlement. For example, the order may require part of the member's lump sum and regular monthly payments to be paid once the member reaches age 65.
20. However, the option to take money purchase benefits from the age of 55 as a single or series of lump sums means that the member may exercise a choice to take the pension rights at a time and in a form which had not been

envisaged when the attachment order was granted. One option would be to drawdown a series of lump sums, as and when the money was needed. In the example above, this would mean that the former spouse would receive an unknown sum of money at unknown intervals rather than a set monthly income.

21. Concern has also been expressed that a member, particularly where the attachment order applied to ongoing income rather than a lump sum, could draw all the money out in one go so there would be no ongoing payments to the former spouse.
22. In both cases, it is possible for the former spouse to return to Court and apply to vary the order. This is obviously more difficult if pension payments have already been made.
23. At the moment, there is no obligation for a scheme to notify the former spouse that the member has applied to take benefits, although the scheme will obviously have to initiate contact with the former spouse to confirm where to send the payments. Where the member has flexible benefits, the amendment proposed would require schemes to notify former spouses when the member's application is received, including information about the form in which the member will be taking benefits. This aims to ensure that the former spouse gets as much warning as possible of the payments and has time to return to Court.

Proposed changes

24. The draft regulations insert a requirement on schemes, relating to attachment orders, in the Provisions of Information Regulations 2000.
25. Where there is an attachment order, schemes will be required to write out to the former spouses of members with flexible benefits, once the scheme has received notification that the member wishes to draw any of the benefits. The scheme will have to inform the former spouse that the member has chosen to take benefits from what date and in what form. The letter should also suggest that, if the former spouse feels that the member is breaching the attachment order by taking benefits in a particular way, he or she should take legal advice about varying the order.
26. The government is seeking respondent's views on both the approach and the practicalities of implementing it.

27. The draft regulations only require letters to be sent to members who have flexible benefits because the government believes it is those members who are likely to take their benefits in a way which was not anticipated when the attachment order was granted. However, pensions legislation does allow trustees of defined benefits schemes to pay benefits in different form so a member of a defined benefit scheme may be able to convert safeguarded benefits to flexible benefits. The government is interested to learn whether many schemes allow conversion on benefits in this way, and whether respondents think that the warning letters should also be sent to the former spouses of all pension scheme members at the point the member takes his or her pension.

Impact on business

28. The changes are estimated to impose a modest one-off transition cost in relation to scheme administrators and pension providers and a low ongoing cost as schemes will have to issue an extra letter in relevant cases. Total costs are expected to be less than £1m in any year. A final impact assessment will be published alongside the final regulations.

Questions

3. Are respondents aware of specific problems where an attachment order exists and the member has chosen to take “flexible benefits” (money purchase benefits or cash balance benefits) in a flexible manner? Can you give actual examples and numbers?
4. Do respondents think that notifying the former spouse at an earlier stage in the process is the solution? Do respondents think that this approach is sufficient or do they consider that further action might be more appropriate? If so, could respondents please give details of any action that they would like the Government to consider.
5. What do respondents think would be the practical difficulties of requiring the former spouse to confirm that they had received the notification?
6. Do respondents think that problems will only arise where the member has flexible benefits? Or do respondents think that the former spouses of all members should be notified when the member applies to take benefits, regardless of the type of pension benefits involved?
7. Does your scheme allow members to convert safeguarded benefits to flexible benefits?

Exclusions to shareable rights

29. The Welfare Reform and Pensions Act 1999 states that all of a person’s pension rights under a pension arrangement are shareable, unless specifically excluded by legislation. Regulation 4 of the draft regulations proposes two further exclusions from shareable rights.

Non-preserved rights

30. Except for members who join the scheme after 1 October 2015 and are entitled only to money purchase benefits, the Pension Schemes Act 1993 now provides that an occupational pension scheme must preserve the pension rights of a member who leaves before normal pension age if they have been a member for two years or longer (although it is possible for a scheme to award a preserved pension under its own rules to someone who leaves before the two year period is up).

31. When pension sharing was introduced in 2000, members leaving the scheme before being entitled to a preserved pension were normally offered a refund of their own contributions. The government believes that it was clear that members who did not have, or would not have had, preserved rights under the pension scheme, did not have shareable rights under pension sharing legislation.
32. However, to allay concerns that people who left a series of jobs before the two years was up were losing out on pension rights, from April 2006, early leavers without preserved rights under scheme rules who had been members for between three months and two years were given the option of transferring the value of their pension rights (employer and employee contributions) to another pension arrangement as an alternative to a refund of their own contributions.
33. This change introduced some rights in relation to payments made to a pension scheme which are not preserved rights under the scheme. Section 101AB of the Pension Schemes Act 1993 set out the right to payment of a cash transfer sum, rather than the cash equivalent value (of rights under the scheme).
34. Since rights to a cash transfer sum or contribution refund under section 101AB are not rights to benefits under the scheme, the government does not consider that they should be shareable rights for the purposes of pensions sharing. It would be very difficult in practice to share them since, if a member left and chose a refund of contributions, the right to a cash transfer sum ceases to exist so could not be shared. And a cash refund to the member is no longer a right under a pension arrangement so could not be shared into another pension arrangement – although the cash may be taken into account as a separate asset in the divorce settlement.
35. From October 2015, the period before which an early leaver does not receive a preserved pension was reduced to 30 days where all the benefits are money purchase benefits. In these cases, the legislation is already clear: after 30 days, a preserved pension would be payable so the rights are shareable rights.
36. The Government is not aware that schemes have generally been valuing these rights or that courts are attempting to share them. However, the intention is to amend the Pensions on Divorce (Valuation) Regulations (SI 2000/1052) to put the issue beyond doubt that rights to which section 101AA(1) of the Pensions Schemes Act 1993 applies are not shareable rights.

Pension rights arising through being a dependant etc. of a pension scheme member who has died

37. Pension benefits in payment to a person as a widow, widower, surviving civil partner or other dependent of a person who has died have never been shareable rights.
38. Recent changes to tax law have introduced the concept of nominee and successor benefits. The government believes it is sensible to additionally exclude these from shareable rights since they are also Pension Death Benefits under Part 2 of Schedule 28 to the Finance Act 2004.
39. This does not mean that the courts are not permitted to take the existence of such rights, amounts or payments into account when considering a financial settlement; it simply means that actual rights cannot be shared.

Proposed changes

40. Under the proposed changes, regulation 4 of the draft regulations
 - a) will make it clear that any pension rights in payment arising from Pension Death Benefits under Part 2 of Schedule 28 to the Finance Act 2004 are not shareable rights
 - b) add an additional exclusion at regulation 2 of the Valuation² regs. This makes it clear that rights to which section 101AA(1) of the Pension Schemes Act 1993 applies are not shareable rights

Impact on business

41. There will be no impact on business and no impact assessment is required. These are technical changes to ensure that the original policy intention is clear.

Questions

8. Do respondents agree that only pension rights which rise to a preserved pension should be shareable rights and the value of a cash transfer sum should be excluded?
9. Do respondents agree that all Pension Death Benefits in payment and mentioned in Part 2 of Schedule 28 of the Finance Act 2004 should be excluded from shareable rights?

² The Pensions Sharing (Valuation) Regulations SI2000/1052

Reduction of cash equivalent where the scheme is underfunded

42. It has always been the intention that an underfunded scheme may reduce the value of the cash equivalent if the person with pension credit rights chooses to transfer the pension credit out of the scheme to another pension arrangement. Failing to reduce the cash equivalent could give the former spouse a disproportionate share of the assets of the scheme at the expense of other scheme members.
43. Regulation 16 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (SI2000/1053) makes it clear that, if the pension credit is being discharged externally once the former spouse has declined the option of an internal discharge, a reduction for underfunding can take place. This reduction cannot be a higher percentage than the percentage by which the equivalent category of benefits under the scheme is underfunded.
44. However, since the Pension Sharing Regulations were first drafted, the secondary legislation on valuing pension transfer rights has changed. Regulation 4 of the Valuation Regulations links through to the Occupational Pension Schemes (Transfer Values) Regulations (SI 1996/1847). Regulation 4, like regulation 16, allows for a cash equivalent to be reduced in accordance with Schedule 1A of the Transfer Values Regulations.
45. It is therefore possible to read the regulations as requiring the deduction for underfunding to be made twice: once when the pension rights are valued and again if the pension credit rights are transferred out to another pension arrangement. This is obviously not the intention and the amendments made by regulation 4 of the draft regulations are intended to clarify the position.
46. However, concerns have been expressed that the current wording of the legislation may mean that trustees of underfunded schemes have been providing the courts with a cash equivalent value which has already been reduced for underfunding. The government is interested to know what schemes are doing in practice and what information they are providing.

Proposed changes

47. The proposed changes will amend regulation 4(2) of the Valuation Regulations by removing the requirement for the initial cash equivalent to be reduced for underfunding under regulation 7D of the Transfer Values Regulations, except in cases where the scheme is winding up.

Impact on business

48. There will be no impact on business, apart from the removal of potential confusion for trustees and administrators. The intention of this amendment is to correct a drafting error and restore the original policy. No impact assessment is required.

Questions

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

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

1. The new pension flexibilities have provided a new way of taking a pension for money purchase and cash balance benefits. Members can now withdraw cash in the form of a drawdown pension or an uncrystallised fund pension lump sum. In April 2015 a number of amendments were made to pensions legislation to allow for these flexibilities to be adopted by relevant schemes.
2. The government is now considering whether any other amendments are needed to ensure the pension flexibilities operate as intended in specific situations.

The Occupational Pension Schemes (Winding Up) Regulations 1996 (SI1996/3126)

3. Draft regulation 2 would amend regulations 6 and 8 to allow a pension scheme to discharge its liabilities in wind up by the payment of an uncrystallised funds pension lump sum where:
 - a. the member consents to this method of discharge; and
 - b. the payment would be permitted under the Finance Act 2004 (i.e. where the arrangement is money purchase under the tax definition and the other conditions under that Act are satisfied).
4. As a result of the tax changes which limit trivial commutation to a defined benefit arrangement, it will no longer be possible to discharge cash balance benefits by lump sum without member consent. (That is, unless the conditions in regulation 11 and 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 are met and the benefits are below £10,000.)

Questions

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

The Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (SI1997/785)

5. Generally entitlement to a pension from an occupational pension scheme cannot be assigned, commuted (i.e. given up in exchange for a lump sum) or surrendered. These regulations specify the circumstances under which such actions can occur in addition to those set out in the Pensions Act 1993.
6. Draft regulation 3 amends regulation 2(1B). This regulation currently allows for the commutation of a pension where the member has reached the tax normal minimum pension age and *has “not retired from the employment of the employer in relation to the scheme”*. This seems to reflect Section 91(5)(c)(i) of the Pensions Act 1995 which permits commutation of benefits “on or after retirement”.
7. However, there appears to be no reason for the requirement that the member is still employed by the sponsoring employer and the government therefore intends to remove that condition.

Questions

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

The Occupational Pension Schemes (Preservation of Benefit) Regulations 1991 (SI 1991/167)

8. The basic principle under the Pension Schemes Act 1993 is that schemes must make arrangements to pay members a benefit when they reach a specified age, as long as the member has at least two years' pensionable service (or 30 days where the benefit is money purchase) in the scheme or has been given credits in respect of a transfer into the scheme. The Preservation of Benefit Regulations set out further detail in relation to the methods of securing and paying of this short service benefit.
9. Regulations 7, 10 and 11 of these regulations list the benefits that may be provided instead of short service benefit. Regulation 8 permits early or late payment of benefits and regulations 11 and 11A permit the transfer of short service benefits rights to another scheme.
10. Section 48 of the Pension Schemes Act 2015 requires scheme trustees or managers to check that independent financial advice has been received before taking certain actions listed in that section. Section 48 will apply in relation to the alternatives listed in these regulations in cases where provision of an alternative benefit involves the transfer or conversion of "safeguarded benefits" so as to acquire "flexible benefits".

Questions

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

Chapter 3: Pension Protection Fund (PPF)

1. The Pension Protection Fund (PPF) is a statutory fund that protects members of defined benefit and hybrid occupational pension schemes by paying them pension compensation if:
 - their scheme's sponsoring employer experiences a qualifying insolvency event;
 - there is no possibility of a scheme rescue; and
 - there are insufficient assets in the scheme to pay benefits at PPF compensation levels.
2. Usually in this situation, when a scheme's sponsoring employer becomes insolvent the scheme enters a PPF assessment period. During this period the PPF assesses whether or not it must assume responsibility for a scheme.
3. When the PPF assumes responsibility for a scheme it pays eligible members pension compensation. Pension compensation is based on what the member could have reasonably expected from their scheme. There are two levels of compensation:
 - 100 per cent level of compensation, subject to PPF rules, for people who have reached their scheme's normal pension age at the start of a PPF assessment period, and for those under the scheme's normal pension age who are either in receipt of survivors' benefit or already in receipt of a pension on the grounds of ill health;
 - for the majority of people below their scheme's normal pension age, the PPF will pay the 90 per cent level of compensation, subject to the compensation cap and PPF rules.

PPF and pension flexibilities

4. Currently money purchase benefits can be discharged in full during a PPF assessment period or after a scheme transfers into the PPF. Non-money purchase benefits can not, except in certain circumstances, be transferred out, discharged or converted into money purchase benefits; instead members receive pension compensation. This position will continue in future.
5. The amendments will make minor changes in relation to the minimum age at which PPF compensation can commence payment; the minimum age at which

a money purchase lump sum can be taken; the payment of PPF compensation as a lump sum; and the circumstances in which, during an assessment period, flexible benefits other than money purchase benefits may be converted into money purchase benefits, or paid as a lump sum.

Amendments to PPF Regulations

6. Draft regulation 4 amends the Pension Protection Fund Compensation Regulations 2005 (SI 2005/670).
7. Paragraph (2) of draft regulation 4 updates the provisions on PPF trivial commutation lump sums to bring the upper and lower age limits in line with those for trivial commutation lump sums paid by pension schemes. Trivial commutation allows a member to commute all of their pension rights, in all their schemes and plans combined, where their total value is £30,000 or less. The government is reducing the age at which members can trivially commute PPF compensation to 55 from 60, and removing the upper age limit of 75.
8. The Regulations have provisions for those members who wish to take their compensation early. At present, the Regulations allow them to do this from age 55. Paragraph (3) of regulation 4 will amend this to refer to normal minimum pension age (as defined in the Finance Act 2004). This will mean that instead of having a static age the Regulations can move with any changes in the normal minimum pension age in future.
9. Draft regulation 4(5) inserts a new regulation, 25A, into the PPF Compensation Regulations. This will provide modifications where members have cash balance benefits. It will make it clear that no right to pension compensation in the form of a lump sum arises in respect of a right under scheme rules to payment of an UFPLS.
10. Draft regulation 5 amends the Pension Protection Fund (Entry Rules) Regulations 2005 (SI 2005/590). Regulation 5(7) amends regulation 16 to provide an exception to the restriction that non-money purchase benefits can not be converted into or replaced with money purchase benefits during an assessment period. The exception will apply where, before the start of the assessment period, a member has applied to convert such flexible benefits into money purchase benefits for the purpose of designating a drawdown fund under the scheme, but the process has not completed before the assessment period. As is the case where a member has applied for a transfer before an assessment period, the conversion will be allowed to proceed only if the scheme's trustees are satisfied that it is consistent with ensuring that the scheme's assets do not exceed its liabilities, and if the benefits are reduced so

that they do not exceed the compensation the member would have received from the PPF.

11. Similarly, although the payment of an Uncrystallised Funds Pension Lump Sum (UFPLS) in respect of flexible benefits other than money purchase benefits is not permitted during an assessment period, the amendments made by regulation 5(8) will make a limited exception to this. If a member had applied to be paid an UFPLS prior to the start of the assessment period but the transaction had not completed when the assessment period started, the payment of the UFPLS will be permitted, subject to the same restrictions as apply to transfers and conversions. This means that the trustees or managers of the scheme have to reduce the value of the lump sum so that it does not exceed the compensation to which the member would be entitled from the PPF.
12. Draft regulation 6 amends the Pension Protection Fund (General and Miscellaneous) Regulations (SI 2006/580). It amends regulation 7 of those Regulations, which sets out the manner of discharge of money purchase benefit liabilities after a scheme has transferred into the PPF. It removes the option of a trivial commutation lump sum payment, as this is no longer available on money purchase benefits due to changes to tax rules.
13. We will amend regulation 8 of the PPF General and Miscellaneous Regulations to provide that where a member has money purchase benefits and their scheme has transferred into the PPF the PPF will point them towards the guidance available from Pension Wise. The PPF will do this for these members where they are within 6 months of normal minimum pension age or where they meet the ill health conditions, so that members have time to consider their options. Members will be informed that they can access this guidance on the internet, by phone, or face to face, and that it is free and impartial.
14. We will amend regulation 9A to reduce the minimum age at which a PPF money purchase lump sum can be taken from age 60 to the normal minimum pension age, which is currently age 55, or earlier if the ill-health condition under tax legislation is met.
15. Changes may be needed to tax legislation to enable the proposed measures to work. HMRC are currently considering this. If changes to tax legislation are needed, they will need to take effect at the same time as the changes to PPF legislation in relation to the flexibilities. Therefore the proposed amendments in relation to the pension flexibilities may need to take effect later than the other PPF changes.

Impact on business

16. There will be no impact on business. The changes are minor and technical.

Questions

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

Entry into the PPF where a sponsoring employer can not have an “insolvency event”

17. Some schemes which are eligible for the PPF have sponsoring employers who are unable to have a qualifying insolvency event in order to trigger access to the PPF. In this situation the legislation provides an alternative route for such schemes to enter the PPF. This is set out in sections 128 to 130 of the Pensions Act 2004. Where such an employer is unlikely to continue as a going concern, the scheme trustees can apply to the PPF for it to assume responsibility for the scheme.
18. Regulation 7 of the PPF Entry Rules Regulations 2005 sets out the types of employers these schemes must have in order to utilise this route.
19. Over the years the government has had to expand regulation 7 to cover more types of employers. Last year the government was approached by an external stakeholder about a further type of employer which they considered should be covered, and which regulation 7 did not include.
20. The government is concerned that such issues could continue to arise, and therefore considered it appropriate to have a more principle-based look at regulation 7. The government wanted to think about what regulation 7 was trying to achieve. This led to the conclusion that rather than listing the types of employers that could use this route, the government should exclude those that could use the qualifying insolvency event route.
21. The government hopes that this approach will provide greater clarity and avoid the need to amend regulation 7 in future. This is because types of employers that are not covered by the insolvency event route should normally be covered by the alternative route, where the trustees make an application to the Board of the PPF within the required time frame.

22. As part of this we have considered the position of schemes whose sponsoring employers principally carry out their business in EU member states other than the UK, and which may not, at the time of becoming insolvent, have a sufficient presence in the UK to be able to commence insolvency proceedings which will trigger a PPF assessment period.
23. Further details of our proposals, including related changes to the entry rules governing scheme notices, are given in paragraphs 23–34 below. Some of these apply where the sponsoring employer is able to have an insolvency event.

Amendments to PPF Entry Rules

24. Draft regulation 5 amends regulation 7 of the Pension Protection Fund (Entry Rules) Regulations 2005 (SI 2005/590).
25. The government is proposing to amend regulation 7 so that the conditions which an employer must satisfy in order for its scheme to use the “alternative route” into the PPF – by applying to the PPF Board – are described by excluding the types of sponsoring employers which can have an insolvency event, as listed in the relevant legislation. The government considers that this approach should be more effective at achieving the policy aim of ensuring that eligible schemes have a route of access into the PPF, where the necessary conditions and procedures are complied with.
26. In this context a particular issue arises about the coverage of schemes whose sponsoring employer has its “centre of main interests”, for the purposes of EU legislation, within the EU, but outside the UK.
27. The courts have a wide discretion to order the winding up of “unregistered companies” under Part 5 of the Insolvency Act 1986, including companies incorporated outside the UK. However, this is subject to EU law, specifically Council Regulation No 1346/2000 on insolvency proceedings (the Insolvency Regulation), which has the effect that a company which has its “centre of main interests” in a member state other than the UK can only be the subject of a winding up order under the Insolvency Act if the company has an “establishment” in the UK. In the case of the Olympic Airlines UK pension scheme the Supreme Court held in April 2015 that the UK courts had no jurisdiction to make a winding up order in relation to the Greek sponsoring company, because at the relevant time the company’s activities in the UK had wound down to such an extent that it was no longer regarded as having an establishment. This showed that it was possible for circumstances to arise in which a company which would ordinarily be able to have an insolvency event for PPF purposes could not have one.

28. For this reason the government is proposing to provide that, where these circumstances arise in relation to a scheme's sponsoring employer so that an insolvency event can not occur, the scheme will be able to use the "alternative route" into the PPF.

Scheme notices

29. Under the "alternative route" discussed above, following an application or notification for the Board of the PPF to assume responsibility for a scheme, the Board has to issue a scheme failure notice for the scheme to be able to enter the PPF. The Board issues a scheme failure notice if it is able to confirm that a scheme rescue is not possible.
30. Regulation 10 of the PPF Entry Rules Regulations sets out the requirements which have to be met for such a notice to be issued in relation to different types of employers. At present it appears that there is a potential mismatch between the types of employers covered by regulation 10 and those included within regulation 7. The government is therefore proposing that regulation 10 is amended by draft regulation 5, to ensure that it aligns fully with regulation 7 (as amended by the changes discussed above).
31. Regulation 9 is the equivalent of regulation 10 for schemes with a sponsoring employer which can have an insolvency event, and sets out the circumstances in which an insolvency practitioner must issue a scheme failure notice or a notice confirming that a scheme rescue has occurred.
32. There appears to be a similar mismatch between the types of employers covered by regulation 9 and those which can have an insolvency event (as set out in section 121 of the Pensions Act 2004, and regulation 5), in that regulation 9 only refers to companies, individuals and partnerships. The Government is therefore amending regulation 9 to clarify its application to all employers which can have an insolvency event.
33. Where insolvency proceedings in relation to an employer are stayed or come to an end in prescribed circumstances, and the insolvency practitioner has not been able to confirm that the scheme has failed or has been rescued, the insolvency practitioner must issue a notice to that effect. For this purpose, regulation 6 of the Entry Rules Regulations sets out the relevant circumstances in which insolvency proceedings are stayed or come to an end in relation to employers which are companies, individuals, partnerships and building societies. However, regulation 6 does not provide any circumstances in relation to employers such as friendly societies, industrial and provident

societies, credit unions, limited liability partnerships, persons authorised under Part 4A of the Financial Services and Markets Act 2000 and Society of Lloyd's and Lloyd's members. It is not clear why employers such as these are not covered.

34. The government therefore considers that regulation 6 may also need amending.
35. Before such an amendment can be made, the government requires information about whether the insolvency events in relation to friendly societies, industrial and provident societies, credit unions etc. can be stayed, and, if so, how this is achieved. Once this information is available, and if the insolvency events these types of employers are subject to can be stayed, the government intends to amend regulation 6.

Impact on business

36. There will be no impact on business. This is a technical change to ensure that the original policy intention is clear.

Questions

19. Do you agree that the proposed amendments to regulation 7 achieve the aim of ensuring that all eligible schemes have a mechanism by which to enter the PPF? Are respondents aware of any other practical scenarios which might not be covered by the proposed amendments, in relation to employers based in the UK or elsewhere within or outside the EU, in which the sponsoring employer of a PPF eligible scheme might not be able to have an insolvency event due to limitations on the jurisdiction of the courts to make a winding up order?
20. Is it possible for the insolvency events of friendly societies, industrial and provident societies, credit unions, limited liability partnerships, persons authorised under Part 4A of the Financial Services and Markets Act 2000 or the Society of Lloyd's and Lloyd's members to be stayed or come to an end? Should we cover these types of employers within regulation 6 of the PPF Entry Rules Regulations?

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

1. To support the pension flexibilities, new requirements were introduced in April 2015 to ensure that pension scheme trustees or managers signpost members to Pension Wise and also give other key information to help members with their guidance conversation. For contract-based schemes these requirements are part of Financial Conduct Authority (FCA) Conduct of Business (COB) rules, whereas occupational pension schemes must follow the Disclosure requirements set out in the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734).
2. Several stakeholders have raised concerns that some pension scheme members seeking to access their flexible benefits will not fully understand the consequences of their decisions around decumulation without further warnings to explain the implications of these decisions. To strengthen member protection the FCA introduced new COB rules from April 2015. These rules apply only to contract-based schemes, requiring them to give personalised risk warnings to clients³ accessing their pension. The Pensions Regulator has produced good practice guidance which encourages trust-based schemes to provide generic risk warnings. This approach is outlined in the section “Retirement options and generic risk warnings” in the Pensions Regulator’s essential guide “Communicating with members about pension flexibilities”, which has been in place since April 2015. This sets out good practice for occupational schemes, including giving examples of generic risk warnings, but does not constitute a statutory requirement.
3. The government believes that members of occupational schemes should have the same protection as members in personal pension schemes and is intending to make amendments to the regulations to oblige schemes to ensure members receive this protection.
4. In order to maintain that level of protection the government has to consider the features of occupational schemes and the most meaningful information to give to members. Given that the FCA is currently consulting on the efficiency of risk warnings, and that most members transfer out of trust-based schemes as they

³ FCA use the term “client” as these individuals may be existing members of that scheme or alternatively potential new members shopping around.

usually do not offer many decumulation options, the government has decided that generic risk warnings, covering a number of scenarios, are the most appropriate way of protecting members at this time.

Retirement risk warnings: New Regulation 19A

5. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 set out the types of information trustees and managers must give to scheme members and other specified persons, and when and how that information should be given. This includes information on accessing their benefits at retirement for members of occupational pension schemes with flexible benefits:
 - approaching retirement - regulation 18A, 18B and 19;
 - benefit is or about to become payable – regulation 20.
6. The government is intending to add a new regulation (regulation 19A) which will place an obligation on trustees to provide members with additional information in writing at a point after receipt of the retirement “wake up” pack when they have considered their options and may have decided what to do but before they actually take their benefits in a particular form within their own scheme or transfer benefits to another scheme to take their benefits. This information should illustrate how poor decisions made at this point could adversely affect income in retirement.
7. Each risk warning should include those attributes, characteristics, external factors or other variables that increase the risk associated with how the member could access their pension savings. This approach should fit with the examples already provided by The Pensions Regulator (TPR) in their essential guide. However, the government does not wish to be prescriptive around the wording trustees use to communicate this.
8. The government does not intend to link the risk warnings to any particular trigger point in the process, though our expectation is that these warnings will be given to members who are either requesting a transfer or applying to access flexible benefits. The government expects that the risk warnings will be provided alongside current communications, meaning that schemes will not face an extra regulatory burden. Similarly, the government does not intend to place a duty on trustees to resend risk warnings if the member has received such a warning within the last 12 months.

9. The government is proposing that risk warnings should be included within the existing process. However, respondents' views as to whether the proposed approach will work in practice would be welcomed. The government does intend to mandate that schemes have to send out the risk warnings at the earliest time practicable. The current draft of the regulations sets a 7 day maximum timescale but respondents' views on this timescale would also be welcomed.
10. The government wants to ensure that members engage with these risk warnings. Therefore, the government intends to place a further regulatory requirement on schemes that a statement should be sent to members, alongside the risk warnings, informing them in a clear and prominent manner that they should have received either advice or guidance and read the risk warnings. However, the government does not intend to limit member options by forcing individuals to acknowledge receipt, not least because this would add to the burden of trustees in requiring them to keep records. The Government still believes that this statement should be mandated by legislation but, given the lack of recording, welcomes respondents' views on whether this should be placed in guidance instead.

Impact on business

11. The changes are estimated to impose a modest one-off transition cost in relation to scheme administrators and pension providers having to add wording to their current communications with members. As these new requirements will be included within existing communications, the government expects minimal ongoing and familiarisation costs. The Department estimates a maximum cost of £44,000 as a result of transition costs in year one. It does not expect any significant other costs to businesses.

Questions

21. Do respondents agree that the proposed amendments to the disclosure regulations would provide appropriate protection for members of occupational schemes, ensuring that members have an adequate understanding of the risks involved?
22. Do respondents agree that the approach we have taken is workable? Is there anything the government could do to clarify the timescale?
23. Do respondents agree that 7 days is an appropriate maximum timescale for trustees to send out risk warnings?
24. Do respondents think that putting the need to send out a statement to the member in legislation is necessary?

Disapplying the requirement to give information relating to financial advice to members of unfunded defined benefit public service schemes: Amendment to Schedule 2

12. Section 68 of the Pension Schemes Act 2015 amends the Pension Schemes Act 1993 to prevent members of unfunded public service defined benefit schemes from transferring their rights to benefit in order to obtain flexible benefits.
13. Under paragraphs 4B and 22B of Schedule 2 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734), trustees have to provide the member with a statement setting out that the member may have to take independent advice before transferring safeguarded benefits out of the scheme in order to access flexible benefits. The government therefore proposes to amend Schedule 2 to those Regulations in order to disapply this requirement in cases where the member is prevented from transferring out.

Question

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

Clarifying disclosure requirements

14. Regulations 18A and 18B set out the information to be sent out by schemes when they are contacted by the member prior to retirement. Some stakeholders have raised concerns that the difference between the two regulations is ambiguous and that – as they require different information to be communicated – clarification would be useful.
15. The broader policy intention is that regulation 18A applies where a member is being proactive and specifically asks their scheme for information on their retirement options as they are either considering what to do with their benefits from age 55 onwards or have already decided what to do but require further information before they proceed with their desired option.

16. Regulation 18B is intended as a more general requirement that where either the member or the scheme contacts the other on a retirement-related point, the scheme only has to provide the member with limited information to prompt them to use Pension Wise, the government's free and impartial guidance service. The government believes that this difference is reflected in the wording of the regulations but could potentially clarify the position in guidance.

Question

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

Chapter 5: Valuation of pensions with a Guaranteed Annuity Rate (GAR) and the Advice Safeguard: call for evidence

1. The new pension flexibilities give individuals aged 55 and over with flexible benefits (see Box 1 for definition) greater flexibility about how and when they access their pension savings. As a result, the new pension flexibilities have increased the attractiveness for individuals with non-flexible benefits of transferring or converting these benefits into a form which can be accessed flexibly.
2. Safeguarded benefits offer a degree of security and valuable guarantees that would be lost if the member decided to proceed with a transfer or conversion of their benefits into a flexible form (or, in the case of the limited category of benefits which are safeguarded but also flexible, if they accessed those benefits flexibly). To ensure that individuals with such benefits fully consider the implications of relinquishing those guarantees, the government introduced a new safeguard requiring individuals with safeguarded benefits assessed at above £30,000 to take appropriate independent financial advice before transferring or converting their safeguarded benefits to acquire flexible benefits, or (where relevant) directly accessing their safeguarded benefits using the new flexibilities.

Box 1: Definition of safeguarded and flexible benefits

UK pensions and tax legislation classify pension benefits differently. In particular, the term “money purchase benefits” has a much narrower meaning in pensions legislation than in tax legislation. The Taxation of Pensions Act 2014 allowed pension scheme members with certain kinds of benefits to access those benefits in new, more flexible ways. These flexibilities apply to benefits classified as money purchase benefits under the Finance Act 2004.

In order to deal with the dichotomy between tax and pensions legislation, the Pension Schemes Act 2015 introduced the concept of “flexible benefits” to identify the types of benefits to which the flexibilities apply. The term is intended to cover all benefits which are classed as money purchase under tax legislation. Flexible benefits therefore comprise, broadly speaking, all benefits where the individual

accumulates a “pot” under the scheme – in other words, cash balance benefits and money purchase benefits as defined in pensions legislation, as well as a small category of benefits where the individual accumulates a pension pot, but the scheme offers some form of guarantee about the rate of pension income which may be provided. The most usual example of this third category is where the scheme guarantees a minimum rate at which the member will have the right to convert their pot into an income at retirement – commonly known as a ‘guaranteed annuity rate’, or ‘GAR’.

The 2015 Act also introduced the concept of ‘safeguarded benefits’ to define the types of benefits to which the advice safeguard applies. This comprises all benefits which are not money purchase or cash balance benefits as defined in pensions legislation. In principle these are traditional defined benefits such as final salary or career average pensions, and other pension arrangements which contain a form of income guarantee (i.e. the third category of flexible benefits covered above).

Current valuation process for GARs

3. As mentioned above, safeguarded benefits fall into two main categories: traditional salary-related defined benefits, and other pension benefits which include some form of guarantee about the rate of income that may be provided, such as a GAR. The term ‘GAR’ will be used throughout this consultation document to refer to this category of benefits, and should be understood to encompass other benefits which are both safeguarded and flexible.
4. Following the introduction of the new pension flexibilities, scheme members with safeguarded benefits worth over £30,000 (valued in accordance with requirements set out in legislation) are required to take appropriate independent advice before:
 - a) using a transfer payment in respect of those safeguarded benefits to acquire flexible benefits under another scheme;
 - b) converting the benefits into a different flexible benefit within the scheme; or
 - c) in the case of safeguarded benefits which are flexible benefits (such as benefits with a GAR), taking payment of an Uncrystallised Funds Pension Lump Sum (UFPLS).
5. Legislation sets out how pension scheme trustees and managers must value the member’s safeguarded benefits in order to determine whether their value is above the £30,000 threshold, above which financial advice is required.

6. Regulation 5 of the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 provides that the value is to be calculated using the method set out in regulations 7 to 7C and 7E of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (the Transfer Values Regulations). This method is usually used to calculate the cash equivalent of salary-related benefits in occupational pension schemes, but for the purpose of the advice safeguard it applies both to those benefits and to GAR benefits, including GAR benefits under personal pension schemes. As GAR benefits effectively offer the option of a known rate of income commencing on a future date (subject to fluctuations in the amount in the member's pot prior to that date), it was considered that the method used to calculate the current cash value of the right to a future pension under a salary-related occupational scheme could be applied to calculate the value of GAR benefits.
7. However, following the introduction of the April 2015 reforms it has come to the government and the FCA's attention that some pension providers are encountering difficulties in calculating the value of pensions which offer a GAR in line with the Transfer Values Regulations. There is no agreed approach to valuing GAR benefits in a way which takes account of the value of the guarantee as well as the amount accumulated in the member's pot. This is partly because there is a considerable variety of DC safeguarded benefits, many of which offer a GAR option which may only be exercisable at particular points of time and for particular types of annuity.
8. The government understands that the majority of GAR policies are held in personal pension schemes, and tend to be legacy policies. We have been told by personal pension providers that the requirement to value the income promise element of GARs places a potentially significant practical and financial burden on them.
9. The government has also received representations from schemes and members that they are unsure as to whether the regulations require them to seek independent financial advice before transferring their pensions. This issue particularly affects members with GAR benefits who currently have less than £30,000 in their pension pot, but whose benefits have a potential value of more than £30,000 when the 'promise' value of the GAR is taken into account. Moreover, members may not understand why the value that is transferred (should the transfer proceed) will be less than the value used to determine whether advice is required. The government has also received reports of members encountering difficulties in finding independent financial advisers who are willing to advise on GARs.
10. Under primary legislation members have three months from the guarantee date, when the statement of entitlement of the cash equivalent of their

benefits is issued, to confirm whether they want to transfer their safeguarded pension benefits. During this period they must receive appropriate independent financial advice. Difficulties in finding a suitable adviser can, therefore, potentially prevent members from meeting the deadline for pension transfer.

11. In addition, the cost of obtaining advice from a suitable independent financial adviser can represent a significant proportion of the cash equivalent transfer value of smaller pension pots. Members with GAR benefits valued at just for the purpose of the advice requirement, but the value of whose cash transfer payment will probably be considerably lower, may be deterred by the requirement to take financial advice from exploring the pension flexibilities open to them.

Potential change to valuation process for GARs

12. The government is therefore seeking views on whether we should amend the Transitional Provisions and Appropriate Independent Advice Regulations 2015 to provide a different, simpler, valuation method for the purpose of determining whether the advice requirement threshold of £30,000 is met in relation to GAR benefits in personal pension schemes. One option would be to provide for the value of the benefits to be treated for this purpose as equal to the transfer payment that would be available if the member decided to transfer.
13. We are interested in hearing respondents' views on whether this proposed regulatory change would simplify the application of the advice safeguard and the transfer process for schemes and members in relation to GAR benefits, and, if so, whether the advantages of this change would outweigh the reduced level of protection which would apply in these cases.

Questions

1. Do respondents think that changing the GAR valuation process for the purposes of the £30,000 advice threshold would make it easier for providers to determine, and for consumers to understand, when independent financial advice is required?
2. If the valuation method is changed, do you think the new method should treat the value of GAR benefits, for the purposes of the advice requirement, as equal to the transfer payment that would be made in respect of those benefits, if the member were to proceed with a transfer to another scheme? If not, what other method might be suitable?
3. Do respondents think such a change to the application of the advice safeguard to GAR benefits would significantly reduce the level of protection provided by the requirement to members with GAR benefits?
4. Should such a change in the valuation method apply only to arrangements under personal pension schemes where there is no guarantee about the amount in the member's pot, but the member has the right to exercise a guaranteed annuity rate (or other guaranteed rate of conversion) at a future point? If not, what other types of flexible safeguarded benefits should the new valuation method apply to?
5. Are there any potential unintended consequences, for providers or members, in simplifying the GAR valuation process for the purposes of the £30,000 advice threshold?

Consumer protection and risk warnings

14. It is important that, if any change is made to the GAR valuation process, members remain fully aware of the value of the benefits they may be surrendering. In particular, members with GAR benefits with a cash equivalent transfer value of less than £30,000, and who might therefore not be legally required to take advice going forward, must nevertheless be made aware of the potentially valuable guarantees that they would be giving up.
15. The government is therefore seeking stakeholders' views on steps that government and/or industry should take to ensure that members who may be exempt from the advice requirement in the future understand the benefits they would be surrendering before making an irreversible decision.
16. The government recognises that there are various different types of GAR arrangements, and potentially other types of arrangements (other than

traditional defined benefit arrangements) where there is a form of guarantee in relation to the rate of pension income that may be provided. We are therefore seeking views on whether this variety can be reflected in a series of risk warnings tailored for different GAR schemes, and on whether any such risk warnings should be prescribed by legislation, or could instead be part of a voluntary approach led by regulators and trade bodies working together.

Questions

6. What steps do respondents think Government and/or industry should take to ensure that members who would no longer be legally required to take advice if the valuation process is changed are still made aware of the potentially valuable guarantees they would be giving up?
7. Do respondents think that providers who offer pension benefits with a GAR should be required to use a statutory risk warning to make their members aware of the implications of giving up the guarantees attached to their pension fund, or could these risk warnings be delivered via a voluntary approach on the part of providers and trade bodies?

Key principles against which options will be assessed

17. When responding to this call for evidence it would be helpful to gather respondents' views on the extent that the potential changes outlined in this document, or others which you suggest, deliver the following:
 - make it easier for providers to value pensions with a GAR, and for members to understand the valuation process;
 - make it easier for members to access appropriate independent advice, and to take a decision based on that advice;
 - maintain consumer protections.

Annex A: summary of questions

Chapter 1: Pension Sharing on Divorce Regulations

1. Do you agree that these various technical amendments ensure that pension sharing legalisation reflects changes which have already been made regarding ordinary scheme benefits?
2. Do you agree that the advice requirement should apply to pension credit members if they wish to transfer safeguarded pension credit rights valued above £30,000?
3. Are respondents aware of specific problems where an attachment order exists and the member has chosen to take “flexible benefits” (money purchase benefits or cash balance benefits) in a flexible manner? Can you give actual examples and numbers?
4. Do respondents think that notifying the former spouse at an earlier stage in the process is the solution? Do respondents think that this approach is sufficient or do they consider that further action might be more appropriate? If so, could respondents please give details of any action that they would like the Government to consider.
5. What do respondents think would be the practical difficulties of requiring the former spouse to confirm that they had received the notification?
6. Do respondents think that problems will only arise where the member has flexible benefits? Or do respondents think that the former spouses of all members should be notified when the member applies to take benefits, regardless of the type of pension benefits involved?
7. Does your scheme allow members to convert safeguarded benefits to flexible benefits?
8. Do respondents agree that only pension rights which rise to a preserved pension should be shareable rights and the value of a cash transfer sum should be excluded?
9. Do respondents agree that all Pension Death Benefits in payment and mentioned in Part 2 of Schedule 28 of the Finance Act 2004 should be excluded from shareable rights?
10. Do respondents agree that the proposed amendments to the regulations clarify that a reduction for underfunding should only be applied once, and only in cases where a pension credit is being implemented outside the scheme?
11. Do these changes make it clearer to trustees/managers what information the legislation requires?

12. Is this the information that schemes should be providing? Do respondents have any other comments about valuations provided for the purposes of financial settlements connected with divorce proceedings?
13. Are underfunded schemes providing divorcing couples/the courts with reduced or unreduced valuations, or both? If schemes are only providing one are they being asked for the other?

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

14. Do the proposed amendments to the winding up regulations achieve the intended outcome?
15. The proposed amendment to the winding up regulations require a scheme to obtain member consent before discharging cash balance benefits by lump sum. Will this create any difficulties for schemes?
16. Are you aware of any unintended consequences which might result from the removal of the employment condition in Regulation 2(1B)(c) of the Assignment etc. regulations?
17. Would it be useful if we inserted a cross-reference to Section 48 into the relevant regulations?

Chapter 3: Pension Protection Fund

18. Will these proposed amendments to the PPF Regulations implement the changes described above?
19. Do you agree that the proposed amendments to regulation 7 achieve the aim of ensuring that all eligible schemes have a mechanism by which to enter the PPF? Are respondents aware of any other practical scenarios which might not be covered by the proposed amendments, in relation to employers based in the UK or elsewhere within or outside the EU, in which the sponsoring employer of a PPF eligible scheme might not be able to have an insolvency event due to limitations on the jurisdiction of the courts to make a winding up order?
20. Is it possible for the insolvency events of friendly societies, industrial and provident societies, credit unions, limited liability partnerships, persons authorised under Part 4A of the Financial Services and Markets Act 2000 or the Society of Lloyd's and Lloyd's members to be stayed or come to an end? Should we cover these types of employers within regulation 6 of the PPF Entry Rules Regulations?

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

21. Do respondents agree that the proposed amendments to the disclosure regulations would provide appropriate protection for members of occupational schemes, ensuring that members have an adequate understanding of the risks involved?
22. Do respondents agree that the approach we have taken is workable? Is there anything we could do to clarify the timescale?
23. Do respondents agree that 7 days is an appropriate maximum timescale for trustees to send out risk warnings?
24. Do respondents think that putting the need to send out a statement to the member in legislation is necessary?
25. Do respondents agree that paragraphs 4B and 22B of Schedule 2 should be disapplied with regard to members of unfunded defined benefit public service schemes?
26. Do respondents agree that the current requirements are clear, or should they be clarified in guidance?

Chapter 5: Valuation of Pensions offering a Guaranteed Annuity Rates (GAR) and the advice safeguard: call for evidence

1. Do you think that changing the GAR valuation process for the purposes of the £30,000 advice threshold would make it easier for providers to determine, and for consumers to understand, when independent financial advice is required?
2. If the valuation method is changed, do you think the new method should treat the value of GAR benefits, for the purposes of the advice requirement, as equal to the transfer payment that would be made in respect of those benefits, if the member were to proceed with a transfer to another scheme? If not, what other method might be suitable?
3. Do you think such a change to the application of the advice safeguard to GAR benefits would significantly reduce the level of protection provided by the requirement to members with GAR benefits?
4. Should such a change in the valuation method apply only to arrangements under personal pension schemes where there is no guarantee about the amount in the member's pot, but the member has the right to exercise a guaranteed annuity rate (or other guaranteed rate of conversion) at a future point? If not, what other types of flexible safeguarded benefits should the new valuation method apply to?

5. Are there any potential unintended consequences, for providers or members, in simplifying the GAR valuation process for the purposes of the £30,000 advice threshold?
6. What steps do you think Government and/or industry should take to ensure that members who would no longer be legally required to take advice if the valuation process is changed are still made aware of the potentially valuable guarantees they would be giving up?
7. Do you think that providers who offer pension benefits with a GAR should be required to use a statutory risk warning to make their members aware of the implications of giving up the guarantees attached to their pension fund, or could these risk warnings be delivered via a voluntary approach on the part of providers and trade bodies?

Annex B:

Draft regulations: Pension sharing and attachment on divorce etc. (amendment) regulations

2016 No. [xxxx]

PENSIONS

**The Pension Sharing and Attachment on Divorce etc.
(Amendment) Regulations 2016**

Made - - - - [***]
Laid before Parliament [***]
Coming into force - - 6th April 2016

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 101C(2), 101D(2)(b), 101H(3), 101I, 101L, 113(1) and (2), 181(1)(a) and 182(2) of the Pension Schemes Act 1993(b), sections 23(1)(a), (b)(i), (c) and (d) and (3), 26(1)(c), 27(2), 30(1), 41(1) and (2) and 83(4), paragraphs 1(2)(b), 3(3)(c) and 4(2)(c) of Schedule 5 to the Welfare Reform and Pensions Act 1999(d) and sections 48(2), (3)(a) and (4), 83 and 86 of the Pension Schemes Act 2015(e).

Before making these Regulations, in accordance with sections 185(1) of the Pension Schemes Act 1993 and 83(11) of the Welfare Reform and Pensions Act 1999, the Secretary of State consulted such persons as he considered appropriate.

Citation, commencement and interpretation

- 1.—(1) These Regulations may be cited as the Pension Sharing and Attachment on Divorce etc. (Amendment) Regulations 2016.
(2) These Regulations come into force on 6th April 2016.

Amendments to the Pension Sharing (Pension Credit Benefit) Regulations 2000

- 2.—(1) The Pension Sharing (Pension Credit Benefit) Regulations 2000(f) are amended as follows.
(2) In regulation 1(2) (citation, commencement and interpretation)(g)—
(a) in the appropriate alphabetical places, insert—
““the 2015 Act” means the Pension Schemes Act 2015(a)”;

(a) Section 181(1) is cited for the meaning it gives to “prescribed” and “regulations”.
(b) 1993 c.48. Part IVA (sections 101A to 101Q) inserted by Welfare Reform and Pensions Act 1999 c. 30 (“the 1999 Act”), section 37. Section 101F(6A)(c) was amended by the Pension Schemes Act 2015 c.8 (“the 2015 Act”), section 67 and Schedule 4, paragraph 15(5).
(c) Section 26(1) is cited for the meaning it gives to “prescribed” and “regulations”.
(d) 1999 c.30. Section 23(1)(a)(ia) was inserted by the Civil Partnership Act 2004, section 261(1) and Sch 27, paragraph 157(2).
(e) 2015 c.8.
(f) S.I. 2000/1054.
(g) There are amendments to regulation 1(2) that are not relevant to these Regulations.

““categories of benefits” refers to the categories listed in paragraphs (a) to (c) of section 101F(6B) of the 1993 Act;” and

- (b) omit—
 - (i) the definition of “active member”;
 - (ii) sub-paragraph (b) of the definition of “pension credit benefit”;
 - (iii) the definition of “principal appointed day”;
 - (iv) the definition of “salary related contracted-out scheme”; and
 - (v) the definition of “statement of entitlement”.
- (3) Omit regulation 2 (salary related schemes).
- (4) In regulation 3(a) (pension credit benefit in lump sum form)(b), after “(a), (b),” insert “(ba),”.
- (5) At the end of regulation 6 (alternatives to pension credit benefit) insert—

“(3) Where section 48 of the 2015 Act applies, the alternatives to pension credit benefit described in regulations 7 to 9 may only be provided where the trustees or managers of the scheme have complied with the requirements of that section.”.
- (6) In regulation 21(1) (requirements of other pension arrangements)(c), for “pension credit benefit” substitute “pension credit rights”.
- (7) In regulation 23 (statements of entitlement)(d)—
 - (a) for the title (“Statements of entitlement”) substitute “Written statement of the amount of the cash equivalent of the member’s pension credit rights”;
 - (b) in paragraph (1)—
 - (i) for “salary related schemes: statements of entitlement” substitute “benefits other than money purchase”;
 - (ii) for “statement of entitlement” substitute “written statement of the amount of the cash equivalent of the member’s pension credit rights”;
 - (c) after paragraph (1) insert—

“(1A) Where an eligible member has transferrable rights in relation to two categories of benefits other than money purchase benefits, the trustees or managers must provide the member with a written statement setting out a separate cash equivalent in relation to each of the categories of benefits, unless the member’s application relates to only one of the categories of benefits.”; and
 - (d) in paragraphs (3) and (4), in each place where the words appear, for “statement of entitlement” substitute “written statement”.
- (8) In regulation 24(2)(d) (manner of calculation and verification of cash equivalents)(e), (in inserted paragraph (8)(f), for “paragraphs 7 and 9” substitute “paragraph 7”.
- (9) In regulation 26 (extension of time limits for payment of cash equivalents)—
 - (a) after the words “section 101J(1)(a)”, in both places where they appear, insert “or (b)”; and
 - (b) in paragraph (a)(vi)—
 - (i) for “statement of entitlement” substitute “written statement”; and
 - (ii) omit “27 or”.
- (10) In regulation 28 (increases and reductions of cash equivalents once the statement of entitlement has been sent to the member)(a)—

(a) 2015 c. 8.
(b) Regulation 3 was substituted by S.I. 2009/2930.
(c) Regulation 21(1) was amended by S.I.s 2006/744 and 2009/59 .
(d) Regulation 23 was amended by S.I. 2008/1050.
(e) Regulation 24 was substituted by S.I. 2008/1050.

- (a) in the title, for “statement of entitlement” substitute “written statement”;
- (b) in paragraph (1)—
 - (i) for “statement of entitlement” substitute “written statement”; and
 - (ii) for “of a salary related scheme by the trustees or managers of that scheme” substitute “by the trustees or managers of a scheme”;
- (c) in paragraph (3), for “the winding up provisions (as defined in regulation 27(13))” substitute “sections 73 and 73A of the 1995 Act”.

(11) In regulation 29(1) and (2) (increases of cash equivalent on late payment), in both places where it occurs, omit “27”.

(12) In regulation 30(1) (personal pension schemes: increases and reductions of cash equivalents), for “pension credit benefit” substitute “pension credit rights”.

Amendments to the Pensions on Divorce etc (Provision of Information) Regulations 2000

3.—(1) The Pensions on Divorce etc (Provision of Information) Regulations 2000(**b**) are amended as follows.

(2) In regulation 1(2) (interpretation)(**c**)—

- (a) in the appropriate alphabetical place, insert—
 - ““category of benefits” refers to a category of benefits mentioned in paragraph (a), (b) or (c) of section 101F(6B) of the 1993 Act;”;
 - ““pensioner member” has the meaning given by section 124(1) of the 1995 Act;”;
- (b) in the definitions of “the party with pension rights” and “the other party” for “Matrimonial Causes Act 1997” substitute “Matrimonial Causes Act 1973”.

(3) For paragraph (4) of regulation 2 (basic information about pensions and divorce or dissolution of a civil partnership)(**d**) substitute—

“(4) The information in this paragraph is any other information relevant to any power with respect to the matters specified in section 23(1)(a) of the 1999 Act and which is not specified in Schedules 2 to 6 or 7 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, in a case where those Regulations apply.”

(4) In regulation 3 (information about pensions and divorce and dissolution of a civil partnership: valuation of pension benefits)(**e**)—

- (a) in paragraph (1)—
 - (i) for sub-paragraphs (a) and (b) substitute—
 - “(a) paragraphs (3) and (4), if the person with pension rights is an active, deferred or pensioner member of an occupational pension scheme”;
 - (ii) for sub-paragraph (d) substitute—
 - “(d) the rights of the person with the pension rights are contained in an insurance policy or annuity contract other than a retirement annuity contract.”;
- (b) for paragraphs (3) and (4) substitute—
 - “(3) Where the person with pension rights is an active, deferred or pensioner member of an occupational pension schemes, the value of rights in relation to a category of benefits must be calculated in accordance with regulations 7 to 7C and 7E(1) to (3) of the Transfer Values Regulations, on the assumption—

(a) Regulation 28 was amended by S.I.2005/706.
 (b) S.I. 2000/1048.
 (c) There are amendments to regulation 1(2) that are not relevant to these Regulations.
 (d) Regulation 2 was amended by S.I.2005/2877.
 (e) Regulation 3 was amended by S.I.s 2005/2877 and 2008/1050.

- (a) in the case of benefits other than money purchase benefits, that the member has made a valid application for a statement of entitlement under section 93A of the 1993 Act on the date that the request for the valuation was received; or
 - (b) in the case of money purchase benefits, that the member has made a valid application under section 95 of the 1993 Act to take the cash equivalent of those benefits on the date that the request for the valuation was received.
- (4) Where the person with pension rights is continuing to accrue rights to benefit in the category to be valued, paragraph (3) applies as if the person had ceased to accrue rights in that category on the date that the request for the valuation was received.”;
- (c) in paragraph (5), for “section 94(1)(b)” substitute “section 94”;
 - (d) in paragraph (6), for “Chapter IV of Part IV of the 1993 Act by section 93(1)(b) of that Act (scope of Chapter IV)” substitute “Chapter 1 of Part 4ZA of the 1993 Act by section 93(5)(b) of that Act (scope of Chapter 1)”;
 - (e) omit paragraph (7); and
 - (f) for paragraphs (8) to (10) substitute—
 - “(8) When calculating and verifying a cash equivalent in accordance with regulations 7 to 7C and 7E(1) to (3), references in those regulations to “trustees” must be read as “person responsible for the pension arrangement.”.
- (5) In regulation 4 (provision of information in response to a notification that a pension sharing order or provision may be made)(a)—
- (a) in paragraph (2)—
 - (i) at the end of sub-paragraph (b)(i), omit “and”;
 - (ii) at the end of sub-paragraph (b)(ii), insert—
 - “and
 - (iii) whether the member’s rights to benefit are to be or are likely to be reduced in accordance with sections 73 or 73A of the 1995;”;
 - (b) at the end of paragraph (2)(c), insert “if the member were to transfer the cash equivalent of those rights out of the scheme;”;
- (6) After regulation 10 (provision of information after receipt of an earmarking order)(b), insert—

“Provision of information in relation to flexible benefits subject to an earmarking order

10A.—(1) This regulation applies where any of the circumstances specified in paragraph (2) apply and an order under—

- (a) section 23 of the Matrimonial Causes Act 1973 including provision made by virtue of section 25B or 25C of that Act;
- (b) section 17(1)(a)(i) of the Matrimonial and Family Proceedings Act 1984 making provision equivalent to an order made under the provisions referred to in sub-paragraph (a);
- (c) Schedule 5 to the Civil Partnership Act 2004 including provision under paragraph 25 or 26 of that Schedule;
- (d) Schedule 7 to the 2004 Act making provision equivalent to an order made under the provisions referred to in sub-paragraph (c);
- (e) section 12A(2) or (3) of the Family Law (Scotland) Act 1985; or

(a) Regulation 4 was amended by S.I.s 2000/2691 and 2008/1050.
 (b) Regulation 10 was amended by S.I. 2005/2877.

(f) Article 25 of the Matrimonial Causes Act (Northern Ireland) Order 1978 including provision made by virtue of Article 27B or 27C of that Order, has been made and remains in force in relation to a right or entitlement to flexible benefits under a pension arrangement.

(2) The circumstances specified in this paragraph are that the person responsible for the pension arrangement receives a request or notification from the party with pension rights in relation to the flexible benefits subject to the order, requiring the person responsible for the pension arrangement to—

- (a) purchase an annuity contract or insurance policy with sums held for the purposes of the flexible benefits;
- (b) pay a lump sum permitted by the lump sum rule (see section 166 of the Finance Act 2004) in relation to flexible benefits; or
- (c) designate sums or assets held in relation to the flexible benefits as available for the payment of drawdown pension (see section 165 of the Finance Act 2004).

(3) The person responsible for the pension arrangement shall issue to the other party, within 10 days beginning with the day that the person receives the request or notification mentioned in paragraph (2), a notice specifying—

- (a) the action (within the meaning of sub-paragraph (a), (b) or (c) of paragraph (2)) that the party with pension rights has requested the person responsible for the pension arrangement to take;
- (b) whether that action relates to part, or to the entirety, of the flexible benefits subject to an order referred to in paragraph (1);
- (c) the date on which the person responsible for the pension arrangement expects the action requested by the party with pension rights to be carried out;
- (d) the likely effect of that action in relation to future payments to be made under the attachment order; and
- (e) that the other party may wish to take legal advice in relation to the proposed action.”.

Amendments to the Pension Sharing (Valuation) Regulations 2000

4.—(1) The Pension Sharing (Valuation) Regulations 2000(a) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), omit the definition of “initial cash equivalent”(b).

(3) In regulation 2(1) (rights under a pensions arrangement which are not shareable)(c)—

(a) for paragraph (iv) of sub-paragraph (b) substitute—

“(iv) dependants’, ‘nominees’ or successors’ income withdrawal within the meaning of (as the case may be) paragraph 21 (dependant’s income withdrawal), 27D (nominees’ income withdrawal) or 27J (successor’s income withdrawal) of Schedule 28 to the Finance Act 2004.”;

(b) in the full-out words at the end of sub-paragraph (b)—

- (i) after “surviving civil partner”, insert “, nominee, successor”; and
- (ii) omit “and”;

(c) after sub-paragraph (b) insert—

“(ba) rights relating to sums and assets held for the purposes of—

(a) S.I. 2000/1052.

(b) The definition of “initial cash equivalent” was inserted by S.I. 2008/1050.

(c) Regulation 2(b)(iv) was substituted by S.I. 2006/744, article 16(1) and (3)(a). There are other amendments to regulation 2 that are not relevant to these Regulations.

- (i) a dependant’s drawdown or flexi-access drawdown fund within the meaning of, as the case may be, paragraph 22 (dependant’s drawdown pension fund) or 22A (dependant’s flexi-access drawdown fund) of Schedule 28 to the Finance Act 2004;
 - (ii) a nominee’s or successor’s flexi-access drawdown fund within the meaning of, as the case may be, paragraph 27E (nominee’s flexi-access drawdown fund) or 27K (successor’s flexi-access drawdown fund) of Schedule 28 to the Finance Act 2004;”;
- (d) after sub-paragraph (c), insert—
- “and
- (d) any right to a cash transfer sum or contribution refund arising under section 101AB of the 1993 Act (right to cash transfer sum and contribution refund).”.
- (4) For regulation 4, (manner of calculation and verification of cash equivalents: occupational pension schemes)(a) substitute—

“Manner of calculation and verification of cash equivalents: occupational pension schemes

4.—(1) Subject to this regulation, where the person with pension rights is an active, deferred or pensioner member of an occupational pension schemes, the value of rights in relation to a category of benefits must be calculated in accordance with regulations 7 to 7C and 7E(1) to (3) of the Transfer Values Regulations, as if—

- (a) in the case of benefits other than money purchase benefits, that the member has made a valid application for a statement of entitlement under section 93A of the 1993 Act (right to statement of entitlement: benefits other than money purchase); or
- (b) in the case of money purchase benefits, that the member has made a valid application under section 95 of the 1993 Act (ways of taking right to cash equivalent) to use the cash equivalent of those benefits.

(2) Where the person with pension rights is continuing to accrue rights to benefit in the category to be valued, paragraph (1) applies as if the person had ceased to accrue rights in that category on the valuation day.

(3) Where the person with pension rights is entitled to present payment of a pension, but the pension is not yet in payment, the cash equivalent must be calculated and verified on the assumption that the pension comes into payment on the transfer day.

(4) When calculating and verifying the cash equivalent, the Transfer Values Regulations are to be read as if—

- (a) in regulation 7A(2) (manner of calculation of initial cash equivalents for salary related benefits) “valuation day” were substituted for “guarantee date”;
- (b) in regulation 7C(2) (manner of calculation of initial cash equivalents for money purchase benefits) “on the valuation day” were substituted for “at the date of calculation”.

(5) In this regulation—

“active member”, “deferred member” and “pensioner member” has the meaning given to each of those expressions by section 124(1) of the 1995 Act (interpretation of Part 1);

“category of benefit” refers to a category of benefit mentioned in paragraph (a), (b) or (c) of section 93(6) of the 1993 Act (scope of Chapter 1).”.

(5) In regulation 5 (manner of calculation and verification of cash equivalents: other relevant arrangements)(a)—

(a) Regulation 4 was substituted by S.I. 2008/1050.

- (a) in paragraph (1), for “7 to 7E” substitute “7 to 7C and 7E(1) to (3), as if the person with the pension rights had made a valid application under section 95 of the 1993 Act to use the cash equivalent of the rights to benefit”; and
- (b) omit paragraph (2)(b) and (c).

Amendments to the Pensions on Divorce etc (Charging) Regulations 2000

5.—(1) The Pensions on Divorce etc (Charging) Regulations 2000(b) are amended as follows.

(2) In regulation 2(4)(a)(general requirements as to charges)(c)—

- (a) in paragraph (i), for “(salary related schemes: right to statement of entitlement, and right to cash equivalent)” substitute “(right to statement of entitlement: benefits other than money purchase and right to cash equivalent); and

(b) for paragraph (iii) substitute—

“(iii) regulation 17 (statements of benefits: money purchase benefits) or any of the provisions of Part 6 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (statements of benefits; lifestyle and accessing benefits)(d); or”.

(3) In regulation 3(2) (charges recoverable in respect of the provision of basic information)—

(a) for sub-paragraph (d) substitute—

“(d) any costs incurred by the trustees or managers of an occupational or personal pension scheme in connection with the provision of information under regulations 6, 7, or 8 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (basic scheme information and material alterations), which the trustees or managers shall provide to the member free of charge under those Regulations;”;

(b) for paragraph (iii) of sub-paragraph (e) substitute—

“(iii) regulation 17 or any of the provisions of Part 6 of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013; or”.

(4) For sub-paragraph (f) of regulation 9(2) substitute—

“(f) deduction from the amount of a transfer value which is calculated in accordance with regulation 24 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (manner of calculation and verification of cash equivalents)(e).”.

Amendments to the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015

6.—(1) The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015(f) are amended as follows.

(2) In regulation 1(3) (interpretation)—

(a) in the definition of “cash equivalent”—

(i) omit “of the 1993 Act”; and

(ii) at the end insert “or, as the case may be, a cash equivalent mentioned in sections 101F and 101H (power to give transfer notice; benefits other than money purchase) of the 1993 Act”;

(b) after the definition of “cash equivalent”, insert—

(a) Regulation 5 was substituted by S.I. 2008/1050.
 (b) S.I. 2000/1049.
 (c) There are amendments to regulation 2 that are not relevant to these Regulations.
 (d) S.I. 2013/2734. Part 6 was amended by S.I. 2015/482.
 (e) Regulation 24 was substituted by S.I. 2008/1050.
 (f) S.I. 2015/742.

- ““eligible member” has the meaning given by section 101P(1) of the 1993 Act (interpretation of Chapter 2);”;
- (c) in the definition of “valuation date”, at the end of sub-paragraph (a) omit “or”; and after “the guarantee date” insert—
- “(aa) where an eligible member is, under section 101F of the 1993 Act, exercising the right to take an amount equal to the cash equivalent of the eligible member’s pension credit rights, the date determined in accordance with section 101H(2) of that Act (benefits other than money purchase); or”
- (d) after the definition of “writing”, insert—
- “written statement of the amount of the cash equivalent” means the written statement of the amount of the cash equivalent of an eligible member’s pension credit rights mentioned in section 101H(1) of the 1993 Act.”.
- (3) In regulation 2(a), at the end of sub-paragraph (i), omit “or” and insert—
- “(ia) an eligible member, before 6th April 2015 and in accordance with section 101F of the 1993 Act, required the trustees or managers to use an amount equal to the cash equivalent of the member’s pension credit rights for an authorised purpose;
- (ib) an eligible member made an application for a written statement of the amount of the cash equivalent before 6th April 2015; or”.
- (4) In regulation 6 (information to be provided to the member or survivor), at the end of paragraph (b)(i), omit “or” and insert—
- “(ia) in the case of a pension credit member, the day on which a written statement of the amount of the cash equivalent is provided; or”.
- (5) In regulation 8 (information to be provided on initial enquiry)—
- (a) in paragraph (2)—
- (i) at the end of sub-paragraph (b), insert “or a written statement of the amount of the cash equivalent”;
- (ii) in sub-paragraph (c), after “statement of entitlement” insert “or a written statement of the amount of the cash equivalent”;
- (iii) at the end of sub-paragraph (c), omit “or” and insert—
- “(ca) by notice in writing, in accordance with section 101F(1) of the 1993 Act, requires the trustees or managers of the scheme to use an amount equal to the cash equivalent of the member’s pension credit rights for an authorised purpose; or”;
- (b) in paragraph (4), for sub-paragraph (a) substitute—
- “(a) if the circumstances in paragraph (2)(c) or (ca) apply, where the information has already been provided to the member because the circumstances in, as the case may be, paragraph (2)(b) or (c) previously applied;”.
- (6) In regulation 9 (determination of whether exception applies and check that advice received)—
- (a) in paragraph (2)(a) and (b), in both places where the words occur, after “statement of entitlement” insert “or a written statement of the amount of the cash equivalent”; and
- (b) at the end of paragraph (2)(a), omit “or” and insert—
- “(aa) have received a notice in writing, in accordance with section 101F of the 1993 Act requiring an amount equal to the cash equivalent of an eligible member’s pension credit rights to be used for an authorised purpose; or”;
- (c) in paragraph (4)(a), after “statement of entitlement” insert “or a written statement of the amount of the cash equivalent”.
- (7) For regulation 10(1) substitute—
- “(1) Where the cash equivalent has been increased or reduced in accordance with—

- (a) regulation 9(5) of the Transfer Values Regulations (increases or reductions of cash equivalents) after the statement of entitlement has been provided; or
- (b) regulation 28 of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (increases and reductions of cash equivalents once the written statement has been sent to the eligible member),

the trustees or managers must provide further information to the member in accordance with this regulation, on the day on which written confirmation that the cash equivalent has been increased or reduced (as the case may be) is provided to the member.”.

Amendments to the Divorce etc (Pensions) Regulations 2000

- 7.—(1) The Divorce etc (Pensions) Regulations 2000(a) are amended as follows.
- (2) In regulation 3(2) (valuation)—
- (a) in sub-paragraph (c), for “section 93A or 94(1)(a) or (aa)” substitute “93A and 94(1)”; and
 - (b) in sub-paragraph (d), for “section 94(1)(b)” substitute “section 94(1) or (2)”.

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

- 8.—(1) The Divorce etc (Pensions) (Scotland) Regulations 2000(b) are amended as follows.
- (2) In regulation 1(3), in the appropriate alphabetical place insert—
- (a) in the appropriate alphabetical places, insert—
 - ““category of benefits” refers to a category of benefits mentioned in paragraph (a), (b) or (c) of section 101F(6B) of the 1993 Act(c);”;
 - ““pensioner member” has the meaning given by section 124(1) of the 1995 Act;”.
- (3) In regulation 3 (valuation)(d)—
- (a) in paragraph (2)—
 - (i) for sub-paragraphs (a) and (b) substitute—
 - “(a) paragraphs (3) and (4), if the party with pension rights is an active, deferred or pensioner member of an occupational pension scheme”;
 - (ii) for sub-paragraph (d) substitute—
 - “(d) the rights of the party with pension rights are contained in an insurance policy or annuity contract other than a retirement annuity contract.”;
 - (b) for paragraphs (3) and (4) substitute—
 - “(3) Where the party with pension rights is an active, deferred or pensioner member of an occupational pension schemes, the value of a category of benefit must be calculated in accordance with regulations 7 to 7C and 7E(1) to (3) of the Transfer Values Regulations, on the assumption—
 - (a) in the case of benefits other than money purchase benefits, that the party with pension rights has made a valid application for a statement of entitlement under section 93A of the 1993 Act on the date that the request for the valuation was received; or
 - (b) in the case of money purchase benefits, that the party with pension rights has made a valid application under section 95 of the 1993 Act to take the cash equivalent of those benefits on the date that the request for the valuation was received;

(a) S.I. 2000/1123.

(b) S.S.I 2000/112.

(c) Section 101F(6B) was inserted by the Pension Schemes Act 2015, section 67 and Schedule 4, paragraphs 3 and 15(1) and (5).

(d) Regulation 3 was amended by S.S.I. 2008/293.

(4) Where the party with pension rights is continuing to accrue rights to benefit in the category to be valued, paragraph (3) applies as if the party had ceased to accrue rights in that category on the date that the request for the valuation was received.”

- (c) in paragraph (5), for “section 94(1)(b)” substitute “section 94”.
- (d) in paragraph (6), for “Chapter IV of Part IV of the 1993 Act by section 93(1)(b) (Scope of Chapter IV)” substitute “Chapter 1 of Part 4ZA of the 1993 Act by section 93(5)(b) (Scope of Chapter 1)”
- (e) omit paragraph (7);
- (f) for paragraphs (8) to (10) substitute—

“(8) When calculating and verifying a cash equivalent in accordance with regulations 7 to 7C and 7E(1) to (3), references in those regulations to “trustees” must be read as “person responsible for the pension arrangement.”.

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

Date Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend secondary legislation concerning pension sharing and attachment on divorce etc. These amendments are consequential to the flexibilities in taking pension benefits introduced by the Taxation of Pensions Act 2014 (c.30) (“the 2014 Act”) and the Pension Schemes Act 2015 (c.8) (“the 2015 Act”). The Regulations also make technical amendments which concern valuation of rights under an occupational pension scheme and exclusion of some rights from the scope of a pension sharing order.

Regulation 2 makes amendments to the Pension Sharing (Pension Credit Benefit) Regulations 2000 (S.I. 2000/1054) which are consequential to section 48 of the 2015 Act and to amendments to Part IVA of the Pension Schemes Act 1993 (c. 48) (“the 1993 Act”) made by the 2015 Act.

Regulation 3 makes amendments to the Pensions on Divorce etc (Provision of Information) Regulations 2000 (S.I. 2000/1048) consequential to the amendments to Parts 4ZA and IVA of the 1993 Act and also amends references to other statutory instruments to reflect amendments to those instruments. This regulation also imposes new notification requirements when a person with pension rights proposes to take their benefits in a form which could affect the operation of a pension attachment order.

Regulation 4 makes amendments to the Pension Sharing (Valuation) Regulations 2000 (S.I.2000/1052), which are consequential both to the 2014 Act and to the amendments to Part IVA of the 1993 Act. This regulation also makes technical corrections to the provisions governing valuation of pension rights for the purposes of pension sharing and excludes the right of an early leaver to a return of contributions or a cash transfer sum from the rights which can be included under a pension sharing order.

Regulation 5 makes consequential amendments to the Pensions on Divorce (Charging) Regulations 2000 (S.I. 2000/1049).

Regulation 6 amends the Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) Regulations 2015 (S.I.2015/742) so that these regulations apply appropriately in relation to the transfer or conversion of pension credit rights which are safeguarded benefits for the purposes of section 48 of the 2015 Act.

Regulation 7 makes minor amendments to the Divorce etc (Pensions) Regulations 2000 (S.I. 2000/1123) consequential to changes to Part 4ZA of the 1993 Act.

Regulation 8 makes amendments to the Divorce etc (Pensions) (Scotland) Regulations 2000 (S.I. 2000/112) consequential to amendments to Part IVA of the 1993 Act made by the 2015 Act.

Annex C:

**Draft regulations: PPF, winding up and inalienability
(amendment) regulations**

2016 No.

PENSIONS

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

<i>Made</i> - - - -	<i>March 2016</i>
<i>Laid before Parliament</i>	<i>March 2016</i>
<i>Coming into force</i> - -	<i>6th April 2016</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 74(2) and (3)(e), 91(5)(c)(iii), 124(1) and 174(2) and (3) of the Pensions Act 1995(a), sections 122(5)(a) and (b), 129(1)(b) and (1A)(b), 130(5)(a) and (b), 135(4)(za), 138(9B), 170(2), 315(2), (4) and (5) and 318(1) of, and paragraphs 24(1), (2) and (6), 25(1) and 33 of Schedule 7 to, the Pensions Act 2004(b), and section 83 of the Pension Schemes Act 2015(c).

In accordance with section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004 the Secretary of State for Work and Pensions has consulted such persons as he considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2016 and come into force on 6th April 2016.

Amendment to the Occupational Pension Schemes (Winding Up) Regulations 1996

2.—(1) The Occupational Pension Schemes (Winding Up) Regulations 1996(d) are amended as follows.

(2) In regulation 6(2)(b) (arrangements for discharge of liabilities under s. 74), before paragraph (i) insert—

-
- (a) 1995 c.26. Section 74(2) was amended by section 270(2)(b) of the Pensions Act 2004 (c.35), and section 74(3)(e) was inserted by section 270(2)(c) of that Act. Section 91(5) was amended by paragraph 57(4)(a) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c.30); there are other amendments to section 91(5) but none is relevant. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (b) 2004 c.35. Section 129 was modified by S.I. 2005/441 for certain cases to read as if subsection (1A)(b) is inserted. S.I. 2005/441 was amended by S.I. 2005/2113. Sections 135(4)(za) and 138(9B) were inserted by sections 58(3) and 59(10), respectively, of the Pension Schemes Act 2015 (c.8). Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”. Paragraphs 24(1) and 25(1) of Schedule 7 were amended by paragraphs 25 and 19(3)(a), respectively, of Schedule 4 to the Pensions Act 2011 (c.19).
- (c) 2015 c.8.
- (d) S.I. 1996/3126; relevant amending instruments are S.I.s 2005/706 and 2009/2930.

“(zi) in the way mentioned in regulation 8(6)(b)(i)(aa) in a case where the proposed lump sum is an uncrystallised funds pension lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004,”.

- (3) In regulation 8(6) (requirements to be satisfied by transferee schemes, annuities etc.)(a)—
- (a) in sub-paragraph (a), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”; and
 - (b) in sub-paragraph (b)(i)(aa), after “trivial commutation lump sum” insert “, an uncrystallised funds pension lump sum”.

Amendment to the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997

3. In regulation 2(1B)(b) of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (commutation of a pension under an occupational pension scheme)(b), for “from the employment of the employer in relation to the scheme,” substitute “for the purposes of subsection (5)(c)(i) of that section, and”.

Amendment to the Pension Protection Fund (Compensation) Regulations 2005

4.—(1) The Pension Protection Fund (Compensation) Regulations 2005(c) are amended as follows.

(2) In regulation 1(2) (citation commencement and interpretation)(d), for the definition of “PPF trivial commutation lump sum” substitute—

““PPF trivial commutation lump sum” has the meaning given in regulation 20(2) (circumstances in which the portion of compensation to be commuted may exceed 25 per cent);”.

(3) In regulation 2(2)(b) (circumstances where a person shall be entitled to early payment of compensation)(e)—

- (a) omit paragraphs (i) and (ii); and
- (b) at the end insert “the person has attained normal minimum pension age as defined in section 279 of the 2004 Act.”.

(4) In regulation 19 (commutation of periodic compensation)(f)—

- (a) in paragraph (1), for “paragraphs (2) and (3)” substitute “paragraph (2)”; and
- (b) omit paragraph (3).

(5) After regulation 25 (cash balance schemes: modification of paragraphs 3, 5, 8, 10, 11, 14, 15, 19, 22 and 37 of Schedule 7 to the Act)(g), insert—

“Cash balance schemes: modification of Schedule 7 to the Act

25A. In its application to a cash balance scheme, Schedule 7 to the Act applies as if—

- (a) in paragraph 37(1), before the definition of “deferred member” there were inserted—

(a) Regulation 8(6) was inserted by S.I. 2005/706 and amended by S.I. 2009/2930.
(b) S.I. 1997/785. Paragraph (1B) of regulation 2 was inserted by S.I. 2006/744 and amended by S.I. 2015/493.
(c) S.I. 2005/670; relevant amending instruments are S.I.s 2006/580, 2007/782, 2010/560, 2013/627 and 2014/1711.
(d) The definition of “PPF trivial commutation lump sum” was inserted by S.I. 2006/580; there are other amendments to regulation 1(2) but none is relevant.
(e) Regulation 2(2)(b) was substituted by S.I. 2010/560.
(f) Regulation 19(1) was amended by S.I. 2006/580. Regulation 19(3) was inserted by S.I. 2006/580 and amended by S.I.s 2013/627 and 2007/782.
(g) Regulation 25 was amended by S.I.s 2010/560 and 2014/1711.

““cash balance benefit” has the meaning given by regulation 2 of the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014;” and

(b) in paragraph 37, after sub-paragraph (4) there were inserted—

“(4A) In this Schedule references to a lump sum to which a person is entitled, or which he or she has been paid, by reason of commuting part of a pension under the scheme include any lump sum to which a person is entitled, or which he or she has been paid, by reason of opting to receive a lump sum instead of a pension, or part of a pension, in respect of cash balance benefits under the scheme.”.

Amendment to the Pension Protection Fund (Entry Rules) Regulations 2005

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

(2) In regulation 1(3) (citation, commencement and interpretation), in the appropriate places insert—

““centre of main interests” has the same meaning as in Article 3(1) of the Insolvency Regulation;

“establishment” has the meaning given in Article 2 of the Insolvency Regulation;

“the Insolvency Regulation” means Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;”.

(3) In regulation 5A (European insolvency event)(b)—

(a) omit paragraph (4); and

(b) for paragraph (5), substitute—

“(5) In this regulation “insolvency proceedings” and “liquidator” each has the meaning given by Article 2 of the Insolvency Regulation.”.

(4) For regulation 7 (applications and notifications to the Board)(c), substitute—

“Applications and notifications to the Board

7.—(1) Except in a case to which regulation 7A applies, the prescribed requirement for the purposes of section 129(1)(b) and (4)(b) of the Act (applications and notifications for the purposes of section 128) is that one or more of paragraphs (2), (4) and (5) applies to the employer.

(2) This paragraph applies to an employer which is not—

(a) an individual;

(b) a company as defined in section 1(1) of the Companies Act 2006;

(c) a company which may be wound up under Part 5 of the Insolvency Act 1986 (unregistered companies);

(d) a partnership; or

(e) a relevant body as defined in regulation 5(2).

(3) For the purposes of paragraph (2)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 5 of the Insolvency Act 1986.

(4) This paragraph applies to an employer which is an EEA insurer or EEA credit institution.

(a) S.I. 2005/590; relevant amending instruments are S.I.s 2005/993, 2005/2153, 2009/451 and 2014/1664.

(b) Regulation 5A was inserted by S.I. 2014/1664.

(c) Regulation 7 was amended by S.I.s 2005/2153 and 2009/451.

- (5) This paragraph applies to an employer if—
- (a) the employer’s centre of main interests is situated within the territory of a member State other than the United Kingdom;
 - (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation; and
 - (c) the employer does not have an establishment in the United Kingdom.
- (6) In this regulation references to a member State do not include Denmark.”
- (5) In regulation 7A (applications and notifications to the Board – multi-employer schemes)(a), for paragraph (2) substitute—
- “(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirement for the purposes of section 129(1A)(b) and 4(a)(ii) of the Act (applications and notifications for the purposes of section 128) is that one or more of paragraphs (3), (5) and (6) applies to the employer.
- (3) This paragraph applies to an employer which is not—
- (a) an individual;
 - (b) a company as defined in section 1(1) of the Companies Act 2006;
 - (c) a company which may be wound up under Part 5 of the Insolvency Act 1986 (unregistered companies);
 - (d) a partnership; or
 - (e) a relevant body as defined in regulation 5(2).
- (4) For the purposes of paragraph (3)(c), an employer which is a company incorporated outside the United Kingdom is to be regarded as a company which may be wound up under Part 5 of the Insolvency Act 1986.
- (5) This paragraph applies to an employer which is an EEA insurer or an EEA credit institution.
- (6) This paragraph applies to an employer if—
- (a) the employer’s centre of main interests is situated within the territory of a member State other than the United Kingdom;
 - (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation; and
 - (c) the employer does not have an establishment in the United Kingdom.
- (7) In this regulation references to a member State do not include Denmark.”
- (6) In regulation 9 (confirmation of scheme status by insolvency practitioner)(b)—
- (a) in paragraph (1)—
 - (i) in the opening words of sub-paragraph (a), for “a company” substitute “not an individual or a partnership”; and
 - (ii) in the opening words of paragraph (i) of sub-paragraph (a), for “the company” substitute “the employer”; and
 - (b) in the opening words of paragraph (2)(a), for “a company” substitute “not an individual or a partnership”.
- (7) In regulation 10(3) (confirmation of scheme status by Board)(c)—
- (a) in sub-paragraph (a), for the words “the employer is a company, an EEA credit institution or an EEA insurer” substitute “the employer is not an individual or a partnership”; and

(a) Regulation 7A was inserted by S.I. 2005/2153 and amended by S.I. 2009/451.
 (b) Regulation 9 was amended by S.I. 2005/993.
 (c) Regulation 10 was amended by S.I. 2009/451.

- (b) in sub-paragraph (c), omit the words “but is not an EEA credit institution or an EEA insurer”.
- (8) In regulation 16 (restrictions on winding up, discharge of liabilities etc)(a)—
- (a) before sub-paragraph (a) of paragraph (1) insert—
 - “(za) a right or entitlement to benefits that are not money purchase benefits may be converted into, or replaced with, a right or entitlement to money purchase benefits under an eligible scheme are where, before the beginning of the assessment period in relation to the scheme, a person has—
 - (i) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015) that are not money purchase benefits;
 - (ii) notified the trustees or managers of the scheme that the person wishes to exercise an option under the scheme rules to convert those benefits (or a portion of them) into, or replace them (or the relevant portion) with, money purchase benefits for the purpose of designating sums or assets as available for the payment of drawdown pension, dependants’ drawdown pension, nominees’ drawdown pension or successors’ drawdown pension (as defined by paragraphs 4, 18, 27B and 27G of Schedule 28 to the Finance Act 2004, respectively); and
 - (iii) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject;”;
 - (b) in paragraph (1)(a)—
 - (i) in paragraph (i), for “(salary related schemes: right to a statement of entitlement);” substitute “(right to statement of entitlement: benefits other than money purchase); and”; and
 - (ii) omit paragraph (ii); and
 - (c) in paragraph (2)—
 - (i) in the opening words, for “A transfer” substitute “A conversion or replacement of benefits under an eligible scheme under paragraph (1)(za), a transfer”; and
 - (ii) in sub-paragraph (b), after “reduce the” insert “value or”, and after “amount of” insert “the benefits (or the relevant portion of them) to be converted or replaced,”.
- (9) After regulation 17 (payment of scheme benefits)(b), insert—

“Exception to section 138(2A)

17A.—(1) Subject to paragraph (3), during an assessment period in relation to an eligible scheme benefits in the form of a lump sum may be paid to a member under the scheme rules in the circumstances specified in paragraph (2).

(2) The circumstances specified for the purpose of paragraph (1) are that, before the beginning of the assessment period in relation to the scheme, the member has—

- (a) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015) that are not money purchase benefits;
- (b) notified the trustees or managers of the scheme that the member wishes to exercise an option under the scheme rules to be paid an uncrystallised funds pension lump sum (as defined by paragraph 4A of Schedule 29 to the Finance Act 2004) in respect of those benefits (or a portion of them); and

(a) Regulation 16 was amended by S.I. 2005/993.
 (b) Regulation 17 was amended by S.I. 2009/451.

- (c) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject.
- (3) A lump sum shall not be paid by virtue of this regulation unless the trustees or managers of the scheme—
 - (a) are satisfied that to do so is consistent with the objective of ensuring that the scheme's protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum; and
 - (b) reduce the amount of the lump sum to the extent necessary to ensure that it does not exceed the actuarial equivalent of the compensation that would be payable to the member in respect of the benefits in respect of which the lump sum is paid (or the relevant portion of them) in accordance with the pension compensation provisions, if the Board were to assume responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Act.
- (4) For the purpose of paragraph (3)(b) the actuarial equivalent of the compensation that would be payable is to be calculated from tables designated by the Board for the purpose of paragraph 24(4) (commutation of periodic compensation) of Schedule 7 to the Act.”.

Amendment to the Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006

6.—(1) The Pension Protection Fund (General and Miscellaneous Amendments) Regulations 2006(a) are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation), omit the definition of “trivial commutation lump sum”.

(3) In regulation 7(1) (manner of discharge of liabilities in respect of money purchase benefits)(b)—

- (a) at the end of sub-paragraph (d), insert “or”; and
- (b) omit sub-paragraph (e).

(4) In regulation 8 (further provision for discharge of liabilities in respect of money purchase benefits)(c)—

(a) after paragraph (1) insert—

“(1A) Where, on the date that the Board assumed responsibility for the scheme, the money purchase beneficiary—

- (a) had attained normal minimum pension age, or was within six months of attaining that age; or
- (b) met the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act,

the notice sent by the Board under paragraph (1) shall also include the information listed in Part 1, and paragraph 12, of Schedule 10 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (information on the Pensions Guidance).”; and

(b) in paragraph (3), omit “regulation 9 in relation to trivial commutation and”.

(5) Omit regulation 9.

(6) In regulation 9A, for paragraph (2) substitute—

“(2) The first condition is that the member has attained normal minimum pension age or the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act is met.”.

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

(a) S.I. 2006/580; relevant amending instruments are S.I.s 2011/1246 and 2013/627.

(b) Regulation 7(1) was amended by S.I.s 2011/1246 and 2013/627.

(c) Regulation 8(3) was amended by S.I. 2013/627.

Date

Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential amendments to secondary legislation in relation to the Pension Protection Fund and the winding up of occupational pension schemes following changes introduced by the Taxation of Pensions Act 2014 (“the 2014 Act”) and the Pension Schemes Act 2015 (“the 2015 Act”). These Regulations also make a minor technical amendment to the conditions on which a pension under an occupational pension scheme can be commuted for a lump sum, and amend secondary legislation governing entry into the Pension Protection Fund where a pension scheme’s sponsoring employer cannot have a qualifying insolvency event.

Regulation 2 amends the Occupational Pension Schemes (Winding Up) Regulations 1996 (S.I. 1996/3126). The amendment is consequential on the changes made by the 2014 Act, which introduced new types of authorised payments by registered pension schemes. The amendment allows relevant non-money purchase benefits under an occupational pension scheme to be discharged using one of the new types of authorised payment (an uncrystallised funds pension lump sum) when the scheme is winding up, if the member consents. It also amends a cross reference to the Pension Schemes Act 1993 (c. 48) to reflect changes made by the 2015 Act.

Regulation 3 amends the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997 (S.I. 1997/785) to allow a pension under an occupational pension scheme to be commuted for a lump sum in accordance with tax legislation where the member is no longer employed by the scheme’s sponsoring employer but has not yet retired.

Regulation 4 amends the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670). Paragraph (4) relaxes restrictions on the age at which a person can opt to commute the whole of their entitlement to PPF periodic compensation for a lump sum, where the total combined value of their pension savings and periodic compensation is less than £30,000. This reflects recent changes to tax legislation. Regulation 4(3) provides that the earliest age at which a person can opt to receive compensation is “normal minimum pension age” as defined in tax legislation. This means that future changes to the minimum age under tax legislation will automatically apply. Regulation 4(5) clarifies the application to cash balance benefits of references in Schedule 7 to the Pensions Act 2004 (c.35) to commutation of a pension.

Regulation 5 amends the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/950). Paragraphs (4) and (5) amend the conditions which an employer must satisfy, if it cannot have a qualifying insolvency event, in order for its pension scheme to be able to transfer into the Pension Protection Fund. The employer must satisfy at least one of three conditions: that it is not any of a list of types of persons which are capable of having a qualifying insolvency event, that it is an EEA insurer or EEA credit institution or that specific circumstances have arisen in which European law prevents a qualifying insolvency event from occurring in relation to the employer. Paragraphs (6) and (7) make technical amendments to the circumstances in which certain notices must be issued by an insolvency practitioner or by the Board of the Pension Protection Fund in relation to the status of a scheme. Paragraphs (8) and (9) make amendments, consequential to changes introduced by the 2015 Act, in relation to the payment or conversion of certain non-money purchase benefits during a Pension Protection Fund assessment period.

Regulation 6 amends the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (S.I. 2006/580) to remove provisions about the payment of money purchase benefits by the Pension Protection Fund as a trivial commutation lump sum, to reflect changes made by the 2014 Act which prevent the payment of such lump sums in respect of money purchase benefits.

Regulation 6(4) requires the Pension Protection Fund to provide information to individuals with money purchase benefits about the availability of guidance from Pension Wise. Regulation 6(6) reduces the minimum age at which a person can be paid money purchase benefits by the Pension Protection Fund as a lump sum of up to £2000, to reflect changes made by the 2014 Act.

Annex D:

**Draft regulations: Disclosure of Information
(amendment) regulations**

2016 No.

PENSIONS

The Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2016

Made - - - - - ***

Laid before Parliament ***

Coming into force - - - - - *6th April 2016*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1) and (3), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a).

In relation to regulations 3 and 4, in accordance with section 185(1) of the Pension Schemes Act 1993(b), the Secretary of State has consulted with such persons as the Secretary of State considers appropriate.

Citation and commencement

1. These Regulations may be cited as the Occupational and Personal Pension Schemes (Disclosure of Information) (Amendment) Regulations 2016 and come into force on 6th April 2016.

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

2. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013(c) are amended as follows.

New regulation 19A

3. After regulation 19 (first information on accessing benefits), insert—

“Retirement risk warnings

(a) 1993 c. 48. Paragraph (ca) of section 113(1) was inserted by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). There are amendments to section 181(1) not relevant to these Regulations. Section 181(1) is cited for the meaning given to “prescribed” and “regulations”. Section 183(1) was amended by paragraph 79 of Schedule 5, paragraph 15(a) of Schedule 6 and Parts III and IV of Schedule 7 to the Pensions Act 1995 (c. 26) (“the 1995 Act”).
(b) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the 1995 Act.
(c) S.I. 2013/2734 amended by S.I. 2014/1711 and S.I. 2015/482.

19A.—(1) Subject to paragraph (5), retirement risk warnings must be given to a member in accordance with this regulation before any of the actions set out in paragraph (2) are concluded where—

- (a) the member has an opportunity to transfer flexible benefits;
- (b) the member has previously been given information in accordance with regulation 18A, 18B or 19; and
- (c) the trustees have become aware, by whatever means, that the member is considering, or has decided, to take any of the actions set out in paragraph (2).

(2) The actions referred to in paragraph 1(c) are—

- (a) the transfer of accrued rights to flexible benefits out of the scheme under the scheme rules;
- (b) the application of sums or assets held for the purpose of providing flexible benefits for purchasing an annuity;
- (c) the payment of a lump sum in respect of flexible benefits; or
- (d) the designation of sums or assets held for the purpose of providing flexible benefits as available for the payment of drawdown pension.

(3) When giving retirement risk warnings to members, trustees must also give members a statement that—

- (a) sets out the options available to the member under the scheme; and
- (b) asks members to—
 - (i) consider whether they have read the retirement risk warnings and note the importance of doing so; and
 - (ii) consider whether or not they have accessed pensions guidance or independent advice and note the importance of doing so.

(4) Retirement risk warnings under paragraph (1) must be given by the trustees as soon as reasonably practicable, and in any event within 7 days of the date that the trustees have become aware that the member is considering or has decided to take any of the actions referred to in paragraph (2).

(5) Retirement risk warnings need not be given within 12 months of a retirement risk warning having been given in accordance with this regulation to that member.

(6) In this regulation—

- (a) “drawdown pension” has the meaning given to it in the Finance Act 2004, Schedule 28, paragraph 4; and
- (b) “retirement risk warning” means a statement that—
 - (i) sets out the characteristic attributes and features of all the options in paragraph (2), whether or not those options are available to the member under the scheme; and
 - (ii) explains any other factors in respect of those options that have the potential to adversely affect the retirement income of any member or their widow, widower, surviving civil partner, nominee, successor or other dependant.”

Amendment of Schedule 2

4.—(1) In Schedule 2, paragraph 4B, at the beginning, replace “Where” with “Subject to paragraph 4C, where”.

(2) After paragraph 4B, insert—

“**4C.** Paragraph 4B does not apply to a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, unless it is a scheme in relation to which section 95(2A)(a)(i) of the 1993 Act has been disapplied, pursuant to section 95(2B) of that Act.”

(3) In Schedule 2, paragraph 22B, at the beginning, replace “Where” with “Subject to paragraph 22C, where”.

(4) After paragraph 22B, insert—

“**22C.** Paragraph 22B does not apply to a member of an occupational pension scheme that is an unfunded public service defined benefits scheme, unless it is a scheme in relation to which section 95(2A)(a)(i) of the 1993 Act has been disapplied, pursuant to section 95(2B) of that Act.”

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) (the 2013 Regulations).

Regulation 3 inserts a new regulation 19A into the 2013 Regulations.

New regulation 19A requires trustees to give a member retirement risk warnings when trustees become aware that a member, who has previously been given information in accordance with regulations 18A, 18B or 19 of the 2013 Regulations, is considering or has decided to transfer accrued rights to flexible benefits, purchase an annuity, receive a lump sum payment or designate sums for the payment of drawdown pension. There is also a requirement that trustees give a member a statement of the options that are available to them as well as a statement that highlights the importance of reading the retirement risk warnings and accessing pensions guidance or independent advice.

Regulation 4 amends Schedule 2 of the 2013 Regulations so that there is no requirement to provide information regarding flexible benefits under Part 1 of Schedule 2 where flexible benefits are not available to members of unfunded occupational pension schemes.

Department for Work and Pensions

November 2015

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