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STATUTORY RULES OF NORTHERN IRELAND

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**2014 No. 204**

**PENSIONS**

**The Pensions (2012 Act)  
(Transitional, Consequential and Supplementary Provisions)  
Regulations (Northern Ireland) 2014**

*Made - - - - 3rd July 2014  
Coming into operation in accordance with  
regulation 1(1)*

The Department for Social Development makes the following Regulations in exercise of the powers conferred by sections 70(5), 93(1), (2)(b) and (3)(c), 97AF(1), (3)(b) and (4)(b), 97I, 97L(1) and (2)(b), 109, 149(1) and (2)(c), 177(2) to (4) and 178(1) of the Pension Schemes (Northern Ireland) Act 1993(1), Articles 10(3), 37(4)(a) to (c) and (e) and (8), 47(5)(a), 64(3)(b), 73(6), (7) and (8)(a), 75(5) and (10) and 166(2) and (3) of the Pensions (Northern Ireland) Order 1995(2), Articles 21(1)(b), 27(1) and 73(4) of the Welfare Reform and Pensions (Northern Ireland) Order 1999(3), and now vested in it(4), Articles 103, 110(1)(b) and (5), 119(4), 122(10)(a), 130(1), 145(3)(b), 162(1)(a) and (3), 171(11)(b), 172(1), 189, 211 and 287(2) and (3) of, and paragraphs 12(3A)(b), 17(3A)(b), 20(7) and 33 of Schedule 6 to, the Pensions (Northern Ireland) Order 2005(5) and sections 28(1) and (2), 29(1) and 31(1)(a), (b) and (d) of the Pensions Act (Northern Ireland) 2012(6).

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- (1) 1993 c. 49; section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I. 22)) and paragraph 5(1) of Schedule 5 to the [Child Support, Pensions and Social Security Act \(Northern Ireland\) 2000 \(c. 4 \(N.I.\)\)](#); section 97AF was inserted by Article 241 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)); sections 97I and 97L were inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)); section 109 was amended by section 48 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, paragraph 13 of Schedule 10 to the Pensions (Northern Ireland) Order 2005, paragraph 4 of Schedule 5 to the [Pensions Act \(Northern Ireland\) 2008 \(c. 1 \(N.I.\)\)](#) and paragraph 15 of the Schedule to S.R. 2005 No. 434; section 149(1) was amended by Part 1 of Schedule 5 to the Pensions (Northern Ireland) Order 1995; section 178(1) was amended by Parts 3 and 4 of Schedule 5 to that Order
- (2) S.I. 1995/3213 (N.I. 22); Article 37 was substituted by Article 227 of the Pensions (Northern Ireland) Order 2005; Article 73 was substituted by Article 247 of that Order; Article 75(5) was amended by Article 248(3) of that Order
- (3) S.I. 1999/3147 (N.I. 11); Article 21 was amended by paragraph 108 of Schedule 29 to the Civil Partnership Act 2004 (c. 33)
- (4) See Article 8(b) of S.R. 1999 No. 481
- (5) S.I. 2005/255 (N.I. 1); Part 3 is modified in its application to partially guaranteed schemes, hybrid schemes and multi-employer schemes by, respectively, S.R. 2005 Nos. 55 (as amended by S.R. 2010 No. 32 and S.R. 2013 No. 95), 84 (as amended by S.I. 2013/472) and 91 (as amended by S.R. 2005 Nos. 194 and 357, S.R. 2008 No. 132, S.R. 2010 No. 111 and S.R. 2012 Nos. 1 and 270); paragraph 12(3A) was inserted by paragraph 5(3) of Schedule 1 to the [Pensions \(No. 2\) Act \(Northern Ireland\) 2008 \(c. 13 \(N.I.\)\)](#); paragraph 17(3A) was inserted by paragraph 6(3) of Schedule 1 to that Act
- (6) 2012 c. 3 (N.I.)

## PART 1

### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014 and shall come into operation on the day appointed for the coming into operation of section 27 of the Act (definition of money purchase benefits).

(2) In these Regulations—

“the Act” means the Pensions Act (Northern Ireland) 2012;

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993;

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995;

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999;

“the 2005 Order” means the Pensions (Northern Ireland) Order 2005;

“the applicable rules” has the meaning given by section 90(2)(7) of the 1993 Act (right to cash equivalent);

“the appointed day” is the day appointed for the coming into operation of section 27 of the Act (definition of money purchase benefits);

“assessment period” is to be construed in accordance with Article 116(2) to (6) of the 2005 Order;

“the Board” means the Board of the Pension Protection Fund established under section 107 of the Pensions Act 2004(8);

“cash balance underpin benefits” are cash balance benefits to which, under an occupational pension scheme, a member has rights only if the amount of the cash balance underpin benefits exceeds a defined benefit minimum promised to the member;

“cash equivalent” means a cash equivalent or guaranteed cash equivalent mentioned in section 89A(1)(9) (salary related schemes: right to statement of entitlement) or 90(1) of the 1993 Act;

“defined benefit minimum”, except in Part 2 and regulation 8, means—

(a) in relation to money purchase underpin benefits or cash balance underpin benefits, benefits which are not money purchase benefits, but which accrue or may accrue under an occupational pension scheme in respect of the same period of a member’s pensionable service as the member’s rights to money purchase underpin benefits or cash balance underpin benefits, or

(b) in relation to top-up benefits, a specified minimum value or amount, where under an occupational pension scheme a member is promised that the member’s rights to money purchase benefits or cash balance benefits will be at least equal to that specified minimum value or amount;

“eligible scheme” has the meaning given by Article 110 of the 2005 Order;

“further assessment period” means the assessment period mentioned in Article 143(3) of the 2005 Order (closed schemes: further assessment periods);

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(7) Section 90 was amended by Article 150 of the Pensions (Northern Ireland) Order 1995, paragraph 24 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 9 of Schedule 10 to the Pensions (Northern Ireland) Order 2005

(8) 2004 c. 35

(9) Section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 23 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

“money purchase underpin benefits” are money purchase benefits to which, under an occupational pension scheme, a member has rights only if the amount of the money purchase benefits exceeds a defined benefit minimum promised to the member;

“multi-employer scheme”, except in Part 6, has the meaning given by Article 280(4)(10) of the 2005 Order (modification of Order in relation to certain categories of schemes);

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

“top-up benefit”, except in Part 2 and regulation 8, is a benefit—

- (a) the value or amount of which is greater than nil, and
- (b) to which, under an occupational pension scheme, a member has rights only where the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member;

“value or amount” includes in particular a rate of pension, whether specified under the scheme or determined by reference to external criteria, such as a statutory minimum requirement.

(3) Subject to paragraph (4), the Interpretation Act (Northern Ireland) 1954(11) shall apply to these Regulations as it applies to an Act of the Assembly.

(4) For the purposes of these Regulations and notwithstanding section 39(2) of the Interpretation Act (Northern Ireland) 1954, where a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall be included in the period.

### **Meaning of “cash balance benefit”**

2.—(1) For the purposes of these Regulations, a benefit is a “cash balance benefit” if conditions 1 and 2 are met.

(2) Condition 1 is that a sum of money (“the available sum”) is available under the scheme for the provision of the benefit to or in respect of the member.

(3) Condition 2 is that under the scheme—

- (a) there is a promise about the amount of the available sum, but
- (b) there is no promise about the rate or amount of any pension to be provided from the available sum.

(4) The promise mentioned in paragraph (3)(a) includes in particular a promise about the change in the value of, or the return from, payments made under the scheme by the member or by any other person in respect of the member.

(5) The promise mentioned in paragraph (3)(b) includes a promise that—

- (a) the amount of the available sum will be sufficient to provide a pension of a particular rate or amount, and
- (b) the rate or amount of a pension will represent a particular proportion of the available sum.

(6) But a benefit is not prevented from being a cash balance benefit merely because under the scheme there is a promise that—

- (a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member, or
- (b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available sum.

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(10) Article 280 was amended by section 29(2) of the Pensions Act (Northern Ireland) 2012

(11) 1954 c. 33 (N.I.)

## PART 2

### Money purchase underpin benefits and top-up benefits

#### Interpretation and application of this Part

- 3.—(1) This Part—
- (a) applies in relation to any period after 1st January 1997, and
  - (b) is subject to the contrary provision for transitional purposes made by these Regulations.
- (2) In this Part—
- (a) “defined benefit minimum” means—
    - (i) in relation to money purchase underpin benefits, benefits which are not money purchase benefits, but which accrue or may accrue under an occupational pension scheme in respect of the same period of a member’s pensionable service as the member’s rights to money purchase underpin benefits, or
    - (ii) in relation to top-up benefits, a specified minimum value or amount, where under the scheme a member is promised that the member’s rights to money purchase benefits will be at least equal to that specified minimum value or amount, and
  - (b) a “top-up benefit” is a benefit—
    - (i) the value or amount of which is greater than nil, and
    - (ii) to which, under an occupational pension scheme, a member has rights only where the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member.

#### Money purchase underpin benefits

4.—(1) If, at the relevant date, a member of an occupational pension scheme has rights under the scheme to money purchase underpin benefits, the existence of a contingent promise under the scheme to provide a defined benefit minimum to the member does not prevent the money purchase underpin benefits from being money purchase benefits for as long as the defined benefit minimum is of equal or lower value than the amount of the member’s rights to money purchase underpin benefits.

(2) In this regulation “the relevant date” means the date as at which the amount of the money purchase underpin benefits and the value of a defined benefit minimum promised under the scheme is being compared (for any purpose) in order to determine which is greater.

#### Top-up benefits

- 5.—(1) If, at the relevant date, a member of an occupational pension scheme has rights to—
- (a) money purchase benefits, the amount of which is less than a defined benefit minimum promised to the member under the scheme, and
  - (b) a top-up benefit,

the amount of the member’s rights to money purchase benefits by reference to which the top-up benefit is calculated and the value of the top-up benefit must be aggregated to form a single benefit, which is not a money purchase benefit.

(2) In this regulation “the relevant date” means the date as at which the amount of the member’s rights to money purchase benefits and the amount of the top-up benefit is being calculated (for any purpose).

## PART 3

### Protected rights

#### **Schemes which provided protected rights as cash balance benefits etc**

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

- (a) which was contracted-out in relation to an earner’s employment under section 5(3)(12) of the 1993 Act (requirements for certification of schemes: general) in relation to a period before the appointed day, and
- (b) which provided protected rights in the form of—
  - (i) cash balance benefits;
  - (ii) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), or
  - (iii) top-up benefits,

in relation to the earner’s pensionable service under the scheme.

(2) Where this regulation applies, Part 3 of the 1993 Act (certification of pension schemes and effects on members’ state scheme rights and duties) has effect (in relation to periods before, including or after 6th April 2012) as if—

- (a) references in Part 3 of that Act and regulations made under that Part to—
  - (i) “money purchase benefits” included cash balance benefits, a defined benefit minimum or top-up benefits (as the case may be);
  - (ii) “money purchase scheme” included a scheme which included cash balance benefits, top-up benefits or defined benefit minima (as the case may be), and
  - (iii) “money purchase contracted-out scheme” included a scheme which was contracted-out on a money purchase basis (whether or not the scheme included only money purchase benefits), and
- (b) in section 27(13) of that Act (investment and resources of schemes) the reference in subsection (2) to “income or capital gain” were a reference to “notional income or capital gain”.

(3) In this regulation “protected rights” has the meaning given by section 6(1)(14) of the 1993 Act (protected rights and money purchase benefits) as that section stood immediately before 6th April 2012, subject to the modifications specified in paragraph (2).

## PART 4

### Modification of schemes

#### **The subsisting rights provisions**

7.—(1) This regulation applies where—

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- (12) Section 5(3) was repealed by Part 6 of Schedule 6 to the Pensions Act (Northern Ireland) 2008 with effect from 6th April 2012
  - (13) Section 27 was amended by paragraph 29 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, paragraph 46 of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671) and Article 4(3) of S.R. 2012 No. 124, and is repealed from 6th April 2015 by Part 7 of Schedule 6 to the Pensions Act (Northern Ireland) 2008
  - (14) Section 6 was repealed by Part 3 of Schedule 10 to the Pensions (No. 2) Act (Northern Ireland) 2008 with effect from 6th April 2012

- (a) on or after 6th April 2006 but before the appointed day, a power under an occupational pension scheme to which Article 67(15) of the 1995 Order (the subsisting rights provisions) applies has been exercised so as to modify the scheme by replacing or converting a right or entitlement to any of the benefits specified in paragraph (2) with or to a right or entitlement to money purchase benefits (“the scheme modification”);
  - (b) if section 27 of the Act had been in operation at the time that the scheme modification took effect (and if this regulation did not apply), the modification would have been a protected modification, and
  - (c) the consent requirements (see Article 67B(3) of the 1995 Order) were not satisfied before the scheme modification took effect.
- (2) The benefits specified in this paragraph are—
- (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), and
  - (c) top-up benefits.
- (3) Where this regulation applies and the requirements specified by—
- (a) Article 67(2)(b) and (c) of the 1995 Order, and
  - (b) in the case of each affected member, the actuarial equivalence requirements (within the meaning of Article 67C of that Order),

are satisfied, Article 67A(3)(a) of that Order (the subsisting rights provisions: interpretation) applies as if the right or entitlement to a benefit specified in paragraph (2) of this regulation which was replaced by or converted to a right or entitlement to money purchase benefits were a right or entitlement to money purchase benefits.

### **Money purchase underpin benefits and top-up benefits**

**8.—**(1) This regulation applies in relation to any time on or after the appointed day when a member of an occupational pension scheme or a survivor of a member has under the scheme a right or entitlement to—

- (a) money purchase underpin benefits, or
  - (b) money purchase benefits, where, under the scheme, the member has a contingent right to a top-up benefit if the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member.
- (2) Where this regulation applies, Article 67A of the 1995 Order applies as if—
- (a) in paragraph (6)—
    - (i) in sub-paragraph (a)(i) the second “or” were omitted, and
    - (ii) after sub-paragraph (a)(i) there were inserted—
      - “(ia) any contingent right under the scheme rules to a defined benefit minimum (in relation to money purchase underpin benefits) or to a top-up benefit (to which, under the scheme, a member has rights only where the amount of the member’s rights to money purchase benefits falls short of a defined benefit minimum promised to the member), or”;
  - (b) after paragraph (6) there were inserted—
    - “(6A) In paragraph (6)—

- (a) “defined benefit minimum” and “top-up benefit” have the meanings given by regulation 3(2) of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014, and
  - (b) “money purchase underpin benefits” has the meaning given by regulation 1(2) of those Regulations.”;
  - (c) in paragraph (7) after “At any time when the pensionable service of a member of an occupational pension scheme is continuing,” there were inserted “subject to paragraph (7A)”;
  - (d) after paragraph (7) there were inserted—
    - “(7A) Where a contingent right specified in paragraph (6)(a)(ia) would be extinguished if a member had opted to terminate pensionable service under the scheme, the member’s subsisting right to that contingent benefit is to be determined as if the member had not opted to terminate that pensionable service.”.
- (3) In this regulation “defined benefit minimum” and “top-up benefit” have the meanings given by regulation 3(2).

## PART 5

### Winding Up

#### **Application of this Part in relation to multi-employer schemes**

9. Where, by virtue of regulation 12 of the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996<sup>(16)</sup> (winding up of sectionalised schemes etc), Article 73<sup>(17)</sup> of the 1995 Order (preferential liabilities on winding up) applied or applies to a scheme as if a section or part of the scheme were separate schemes (or would do or have done so, but for these Regulations), this Part also so applies.

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

10.—(1) This regulation applies where—

- (a) an occupational pension scheme began to wind up before 6th April 2005 (whether or not the scheme has completed winding up before the appointed day), and
- (b) if it were not for this regulation, the trustees or managers of the scheme would have been required to wind up the scheme in accordance with Article 73 of the 1995 Order.

(2) Where the conditions specified in paragraph (3) are met in relation to the scheme, Article 73 of the 1995 Order (as it stood on the date that the scheme began to wind up) has effect in relation to the scheme as if after paragraph (1) there were inserted—

“(1A) In paragraph (1) “salary-related occupational pension scheme” does not include a scheme which provides—

- (a) cash balance benefits;
- (b) money purchase benefits, or
- (c) pensions derived from money purchase or cash balance benefits,

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<sup>(16)</sup> [S.R. 1996 No. 621](#); regulation 12 was amended by paragraph 6 of the Schedule to [S.R. 2005 No. 171](#) and paragraph 3(2) of Schedule 3 to [S.R. 2005 No. 568](#)

<sup>(17)</sup> Article 73 was substituted with prospective effect by Article 247(1) of the Pensions (Northern Ireland) Order 2005 for Article 73 as originally enacted, but the original form of that Article continues to have effect in relation to schemes which commenced winding up before 6th April 2005. There are no relevant amendments to Article 73 as originally enacted

and no benefits other than those specified in sub-paragraphs (a) to (c) or death benefits.

(1B) In paragraph (1A) “cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014.”.

(3) The conditions specified in this paragraph are that, immediately before the scheme began winding up—

- (a) the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
- (b) the scheme included no benefits other than those specified in sub-paragraph (a), money purchase benefits or death benefits, and
- (c) the trustees or managers of the scheme treated the scheme as a money purchase scheme.

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

**11.**—(1) This regulation applies where an occupational pension scheme not treated by the trustees or managers of the scheme as a money purchase scheme began to wind up before 6th April 2005 (whether or not winding up has been completed by the appointed day).

(2) Where the conditions specified in paragraph (3) are met in relation to the scheme, regulation 13(18) of the Occupational Pension Schemes (Winding Up) Regulations (Northern Ireland) 1996 (hybrid schemes) has effect in relation to the scheme as if—

- (a) in paragraph (1)(b) after “relevant money purchase benefits” there were inserted “or relevant cash balance benefits”;
- (b) in paragraph (2) for ““relevant money purchase benefits” means money purchase benefits” there were substituted ““relevant money purchase benefits” and “relevant cash balance benefits” means (as the case may be) money purchase benefits or cash balance benefits”;
- (c) for paragraph (3) there were substituted—

“(3) In this regulation—

- (a) “cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014, and
- (b) “underpin benefits” means money purchase or cash balance benefits (as the case may be) which will only be provided in respect of a member if their value exceeds the value of other benefits in respect of the member under the scheme which are not money purchase or cash balance benefits.”.

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

- (a) the scheme included cash balance benefits, and
- (b) the trustees or managers of the scheme treated those benefits as if they were money purchase benefits.

(18) Regulation 13 applies in relation to schemes commencing wind-up before 6th April 2005. Regulation 13 was amended by regulation 4(4) of [S.R. 2002 No. 64](#) and paragraph 3(3) of Schedule 3 to [S.R. 2005 No. 568](#)



**Schemes treated as money purchase schemes: winding up commencing on or after 6th April 2005 but before the appointed day**

**12.**—(1) This regulation applies where an occupational pension scheme which was treated as a money purchase scheme began to wind up on or after 6th April 2005 but before the appointed day (whether or not winding up has been completed by the appointed day).

(2) Where the conditions specified in regulation 10(3) are met in relation to the scheme, Article 73 of the 1995 Order has effect in relation to the scheme as if for paragraph (2) there were substituted—

“(2) This Article applies to an occupational pension scheme other than a scheme which is—

- (a) a money purchase scheme;
- (b) a cash balance scheme;
- (c) a scheme which provides money purchase benefits and cash balance benefits and no other benefits except death benefits, or
- (d) a prescribed scheme or a scheme of a prescribed description.

(2A) In this Article—

“cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;

“cash balance scheme” means a scheme which provides—

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

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

- (a) money purchase benefits or pensions derived from money purchase benefits, or
- (b) death benefits.”.

**Non-money purchase schemes including benefits treated as money purchase benefits: winding up commencing on or after 6th April 2005 but before the appointed day**

**13.**—(1) This regulation applies where an occupational pension scheme not treated by the trustees or managers of the scheme as a money purchase scheme began to wind up on or after 6th April 2005 but before the appointed day (whether or not winding up has been completed by the appointed day).

(2) Where the condition specified in paragraph (3) is met immediately before the scheme began winding up, Article 73 of the 1995 Order applies in relation to the winding up of the scheme as if the benefits specified in paragraph (4) of this regulation which the trustees or managers of the scheme treated as money purchase benefits were money purchase benefits.

(3) The condition specified in this paragraph is that the scheme included benefits specified in paragraph (4) which the trustees or managers of the scheme treated as money purchase benefits.

(4) The benefits specified in this paragraph are—

- (a) cash balance benefits;

- (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
- (c) top-up benefits;
- (d) pensions derived from money purchase benefits; and
- (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

#### **Schemes winding up after an assessment period**

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

- (a) that assessment period comes to an end (whether before, on or after the appointed day) and the trustees or managers of the scheme are required to wind up or continue to wind up the scheme in accordance with Article 138(1) of the 2005 Order (requirement to wind up schemes with sufficient assets to meet protected liabilities), or
- (b) the Board ceases to be involved with the scheme in accordance with Article 133(1) of the 2005 Order (circumstances in which Board ceases to be involved with an eligible scheme) and the scheme is winding up.

(2) Subject to paragraph (4), where the condition specified in paragraph (3) is met the trustees or managers of the scheme may determine that the benefits specified in regulation 13(4) which the trustees or managers treated as money purchase benefits are to be treated as money purchase benefits for the purposes of winding up the scheme in accordance with Article 73 of the 1995 Order.

(3) The condition specified in this paragraph is that, immediately before the assessment period referred to in paragraph (1) began, the scheme included any of the benefits specified in regulation 13(4), which the trustees or managers of the scheme treated as money purchase benefits.

(4) Where the Board has previously made a determination under regulation 53(1) that benefits specified in regulation 43(3) should, or should not, be discharged as money purchase benefits, the trustees or managers of the scheme must wind up or continue to wind up the scheme in accordance with that determination.

(5) Where the trustees or managers of the scheme—

- (a) determine in accordance with paragraph (2) that benefits specified in regulation 13(4) which the trustees or managers of the scheme treated as money purchase benefits should be treated as money purchase benefits for the purposes of winding up the scheme, or
- (b) are required to wind up or continue to wind up the scheme in accordance with paragraph (4),

Article 73 of the 1995 Order applies in relation to the benefits treated as money purchase benefits as if those benefits were money purchase benefits.

#### **Closed schemes: further assessment periods**

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

- (a) an assessment period in relation to an occupational pension scheme began before the appointed day;
- (b) the scheme is authorised (whether before, on or after that day) to continue as a closed scheme under Article 137(5) of the 2005 Order (closed schemes);
- (c) there is a further assessment period in relation to the scheme, and

(d) that further assessment period ends because the conditions specified in Article 138(5)(19) of the 2005 Order are met.

(2) Where the conditions specified in paragraph (3) are met, the trustees or managers of the scheme must wind up or continue the winding up of the scheme as if the benefits specified in regulation 13(4) which the trustees or managers of the scheme treated as money purchase benefits were money purchase benefits.

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

(a) the scheme included any of the benefits specified in regulation 13(4), and

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

(i) in accordance with regulation 51(2), determined that benefits specified in regulation 51(4) treated as money purchase benefits should continue to be treated as money purchase benefits, or

(ii) in accordance with regulation 51(5)(b), treated benefits specified in regulation 13(4) as money purchase benefits in accordance with a determination or a direction made by the Board.

(4) Where the trustees or managers of the scheme are required to wind up or continue to wind up the scheme in accordance with paragraph (2), Article 73 of the 1995 Order applies in relation to the benefits treated as money purchase benefits as if those benefits were money purchase benefits.

**Discharge of pensions in payment derived from voluntary contributions treated as money purchase benefits: scheme commencing winding up on or after the appointed day**

16.—(1) Subject to paragraph (3), where the conditions specified in paragraph (2) are met in relation to a member's pension or part of a pension in payment, the trustees or managers of an occupational pension scheme may determine that the pension or part of a pension should be discharged as if it were money purchase benefits.

(2) The conditions are that—

(a) the scheme commences winding-up on or after the appointed day;

(b) the pension or part of a pension—

(i) is derived from voluntary contributions;

(ii) is, or is derived from (as the case may be), any of the benefits specified in regulation 13(4) which were before the appointed day treated by the trustees or managers of the scheme as money purchase benefits, and

(iii) comes into payment on or before 1st April 2015, and

(c) the trustees or managers of the scheme are satisfied that it is reasonable in the circumstances to treat the pension or part of a pension as money purchase benefits.

(3) Where an assessment period or further assessment period in relation to an eligible scheme has begun, the power of the trustees or managers of the scheme under paragraph (1) is subject to a direction by the Board under regulation 56(1) that the pension or part of the pension should, or should not, be discharged as money purchase benefits.

## PART 6

### Deficiencies in the assets

#### Interpretation

17.—(1) In this Part—

“approved withdrawal arrangement”, “flexible apportionment arrangement”, “multi-employer scheme”, “regulated apportionment arrangement”, “scheme apportionment arrangement” and “withdrawal arrangement” have the same meanings as in regulation 2(1)(20) of the Employer Debt Regulations;

“the effective date” is the date by reference to which the assets of a scheme are valued and the amount of the scheme liabilities is calculated;

“employer” has the same meaning as in Article 75(21) of the 1995 Order (deficiencies in the assets) and regulations 6(22) (multi-employer schemes: general) and 9(23) (frozen schemes and former employers) of the Employer Debt Regulations;

“the Employer Debt Regulations” means the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005(24);

“share of the difference”, in relation to an employer participating in a multi-employer scheme, has the meaning given by regulation 2(1)(25) of the Employer Debt Regulations and includes in particular an employer’s share under—

- (a) a scheme apportionment arrangement;
- (b) a withdrawal arrangement;
- (c) a flexible apportionment arrangement;
- (d) an approved withdrawal arrangement, and
- (e) a regulated apportionment arrangement.

#### Application to multi-employer schemes

18. Where, by virtue of regulation 8(26) (single employer sections, multi-employer sections, etc.), 14(27) (schemes covering United Kingdom and foreign employment) or 15(28) (schemes with partial government guarantee) of the Employer Debt Regulations, Article 75 of the 1995 Order (deficiencies in the assets) applied before the appointed day to a scheme in relation to which there is more than one employer as if a section or part of the scheme were a separate scheme (or would have so applied but for these Regulations)—

- (a) this Part also so applies, and
- (b) “employer” and “member” must be read accordingly.

(20) The definitions of “approved withdrawal arrangement”, “regulated apportionment arrangement” and “scheme apportionment arrangement” were inserted, and the definitions of “multi-employer scheme” and “withdrawal arrangement” were substituted, by regulation 4(2) of S.R. 2008 No. 132; the definition of “flexible apportionment arrangement” was inserted by regulation 4(a) (i) of S.R. 2012 No. 1

(21) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(22) Regulation 6 was amended by regulation 6 of S.R. 2008 No. 132, regulation 6 of S.R. 2010 No. 111; regulation 6 of S.R. 2012 No. 1 and paragraph 10(c) of the Schedule to S.R. 2012 No. 294

(23) Regulation 9 was substituted by regulation 10 of S.R. 2008 No. 132 and amended by regulation 11 of S.R. 2010 No. 111 and regulation 11 of S.R. 2012 No. 1

(24) S.R. 2005 No. 168

(25) The definition of “share of the difference” was inserted by regulation 4 of S.R. 2008 No. 132

(26) Regulation 8 was substituted by regulation 9 of S.R. 2008 No. 132

(27) Regulation 14 was amended by regulation 13 of S.R. 2010 No. 111

(28) Regulation 15 was amended by regulation 14 of S.R. 2010 No. 111

**Application of Article 75 of the 1995 Order to schemes treated as money purchase schemes: periods before the appointed day**

19.—(1) Where, on the appointed day, the conditions specified in paragraph (2) are met in relation to an occupational pension scheme, Article 75 of the 1995 Order (deficiencies in the assets) does not apply to the scheme in relation to any time before the appointed day.

- (2) The conditions specified in this paragraph are that, if this regulation did not apply—
- (a) a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with Article 75 of the 1995 Order in relation to a time before the appointed day;
  - (b) at that time—
    - (i) benefits under the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
    - (ii) the scheme did not include any benefits other than those specified in paragraph (i), death benefits or money purchase benefits;
    - (iii) the trustees or managers of the scheme treated the scheme as a money purchase scheme, and
    - (iv) for that reason, the trustees or managers treated the scheme as if Article 75 of the 1995 Order did not apply to it.

**Application of Article 75 of the 1995 Order to non-money purchase schemes including benefits treated as money purchase benefits: periods before the appointed day**

- 20.—(1) This regulation applies where before the appointed day—
- (a) an occupational pension scheme included benefits other than money purchase benefits;
  - (b) in accordance with Article 75 of the 1995 Order (deficiencies in the assets), a debt became due to the trustees or managers of the scheme from an employer in relation to the scheme, and
  - (c) at the time that the debt became due the scheme included any of the benefits specified in paragraph (2) and met the condition specified in paragraph (3).
- (2) The benefits specified in this paragraph are—
- (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
  - (c) top-up benefits;
  - (d) pensions derived from money purchase benefits, and
  - (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).
- (3) The condition specified in this paragraph is that assets and liabilities in respect of benefits specified in paragraph (2) were treated as if they related to money purchase benefits for the purposes of calculating the debt referred to in paragraph (1)(b).
- (4) Where this regulation applies, Article 75 of the 1995 Order applies in relation to the time that the debt referred to in paragraph (1)(b) of this regulation became due (or would have become due if this regulation did not apply) as if the assets and liabilities relating to the benefits specified in paragraph (2) of this regulation which were treated as money purchase benefits for the purposes of calculating the debt referred to in paragraph (1)(b) of this regulation related to money purchase benefits.

**Non-money purchase schemes which are multi-employer schemes: arrangements before the appointed day**

**21.**—(1) This regulation applies where at any time before the appointed day an occupational pension scheme which was a multi-employer scheme—

- (a) included any of the benefits specified in regulation 20(2), and
- (b) met the condition specified in paragraph (2).

(2) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the assets and the amount of the liabilities of the scheme for the purposes of Article 75 of the 1995 Order (deficiencies in the assets) was determined as if benefits specified in regulation 20(2) were money purchase benefits.

(3) Where this regulation applies, Article 75 of the 1995 Order applies at the time that that debt became due (or would have become due if this regulation did not apply), as if the assets and liabilities relating to the benefits specified in regulation 20(2) which were treated as money purchase benefits for the purposes of calculating an employer's share of the difference, related to money purchase benefits.

**Schemes or benefits treated as money purchase falling outside regulations 19 to 21**

**22.**—(1) Subject to paragraph (11), this regulation applies where—

- (a) at any time before the appointed day, an occupational pension scheme included benefits which were not money purchase benefits;
- (b) if this regulation did not apply, a debt would be due to the trustees or managers of the scheme from an employer in relation to the scheme in accordance with Article 75 of the 1995 Order (deficiencies in the assets), in relation to a time before the appointed day;
- (c) regulations 19 to 21 do not apply in relation to the scheme, and
- (d) one or more of the conditions specified in paragraphs (2) to (4) are met in relation to the scheme.

(2) The condition specified in this paragraph is that the trustees or managers of the scheme—

- (a) treated the scheme as if it were a money purchase scheme, and
- (b) did not, in accordance with Article 75 of the 1995 Order, treat a difference between the value of the assets and the amount of the liabilities of the scheme as a debt due from an employer in relation to the scheme.

(3) The condition specified in this paragraph is that the trustees or managers of the scheme—

- (a) treated benefits which were not money purchase benefits, death benefits or benefits specified in regulation 20(2) as money purchase benefits, and
- (b) excluded assets and liabilities representing the value or amount of rights to any of those benefits from a calculation of the amount of the scheme liabilities and the value of the scheme assets for the purposes of Article 75 of the 1995 Order.

(4) The condition specified in this paragraph is that an employer's share of the difference (if any) between the value of the scheme assets and the amount of the scheme liabilities, for the purposes of Article 75 of the 1995 Order, was determined as if benefits which were not money purchase benefits, death benefits or benefits specified in regulation 20(2) were money purchase benefits.

(5) Subject to paragraph (6), the trustees or managers of a scheme to which this regulation applies must, as soon as reasonably possible after the appointed day—

- (a) secure a valuation of the scheme assets and scheme liabilities calculated in accordance with regulation 5(29) of the Employer Debt Regulations (calculation of the amount of scheme liabilities and value of scheme assets);
  - (b) where the value of the scheme assets at the effective date of that valuation is less than the amount of the scheme liabilities, treat the difference as a debt due from an employer in relation to the scheme, and
  - (c) designate a time for the purposes of a debt to be imposed in accordance with Article 75 of the 1995 Order.
- (6) Paragraph (5) does not apply to a scheme which is not in winding up if either of the conditions specified in paragraph (7) or (8) is met.
- (7) The condition specified in this paragraph is that an actuarial valuation has been prepared in accordance with Article 203 of the 2005 Order (actuarial valuations and reports) in the period of 3 years ending immediately before the appointed day and either—
- (a) it appears to the trustees or managers of the scheme that the statutory funding objective was met on the effective date of that actuarial valuation, or
  - (b) the statutory funding objective was not met on the effective date of the valuation but on the appointed day a recovery plan is in force in relation to the scheme.
- (8) The condition specified in this paragraph is that the trustees or managers of the scheme obtain an actuarial valuation in accordance with Article 203 of the 2005 Order and either—
- (a) it appears to the trustees or managers that the statutory funding objective is met on the effective date of that valuation, or
  - (b) the statutory funding objective is not met at that time but the trustees or managers ensure, within 6 months beginning with the effective date of the valuation, that a recovery plan in relation to the scheme is in force.
- (9) The actuarial valuation mentioned in paragraph (8) must have an effective date within the period of 12 months beginning with the appointed day, and the trustees and managers of the scheme must ensure that they receive that valuation within 15 months beginning with the effective date.
- (10) Where—
- (a) the trustees or managers of the scheme comply with the requirements of paragraph (5), or
  - (b) either of the conditions specified in paragraph (7) or (8) is met,
- no provision of section 27 of the Act or of these Regulations requires the trustees or managers of the scheme to calculate a debt which was due or would have become due from an employer in relation to the scheme in relation to a time before the appointed day.
- (11) This regulation does not apply where regulation 23 applies to the scheme.
- (12) Where the trustees or managers of a scheme do not comply with the requirements of paragraph (5), Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance.
- (13) In this regulation—
- “recovery plan” is a recovery plan prepared in accordance with Article 205 of the 2005 Order;
  - “statutory funding objective” is the requirement mentioned in Article 201 of the 2005 Order.

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(29) Regulation 5 was substituted by regulation 5 of [S.R. 2008 No. 132](#) and amended by regulation 5 of [S.R. 2010 No. 111](#), regulation 5 of [S.R. 2012 No. 1](#) and paragraph 10(b) of the Schedule to [S.R. 2012 No. 294](#)

**Schemes or benefits treated as money purchase falling outside regulations 19 to 21: insolvent employer**

23.—(1) This regulation applies where—

- (a) the circumstances specified in regulation 22(1) apply in relation to an occupational pension scheme, and
- (b) an event which is or would be (if this regulation did not apply)—
  - (i) a relevant event within Article 75(6A)(a) or (b) of the 1995 Order (deficiencies in the assets) (in relation to periods on or after 6th April 2005), or
  - (ii) a relevant insolvency event within Article 75(4) of that Order (as originally enacted) (in relation to periods before that date),

has occurred in relation to the employer in relation to the scheme, or in a case where the scheme is a multi-employer scheme, all the employers in relation to the scheme.

(2) Where this regulation applies, Article 75 of the 1995 Order applies as if the assets and liabilities of the scheme relating to the non-money purchase benefits treated as money purchase benefits related to money purchase benefits, or (as the case may be), as if the scheme were a money purchase scheme.

**PART 7****Revaluation, indexation and preservation of benefits****Revaluation of cash balance benefits etc: pensionable service before the appointed day**

24.—(1) Where—

- (a) a member of an occupational pension scheme has, under the applicable rules, accrued rights to—
  - (i) cash balance benefits in respect of which the available sum is not calculated by reference to final salary;
  - (ii) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), or
  - (iii) top-up benefits;
- (b) the accrued rights to benefits specified in sub-paragraph (a) are attributable to periods of pensionable service before the appointed day, and
- (c) the trustees or managers of the scheme have before that day treated those benefits as if they were money purchase benefits,

if the trustees or managers of the scheme think it appropriate, those benefits or (as the case may be) the available sum in respect of which those benefits are calculated shall be revalued by the money purchase method.

(2) Where—

- (a) the conditions specified in paragraph (1)(a) and (c) are satisfied, and
- (b) the accrued rights to benefits specified in paragraph (1)(a) which were treated as money purchase benefits are attributable to periods of pensionable service falling partly before and partly on or after the appointed day,

if the trustees or managers of the scheme think it appropriate, so much of those benefits or of the available sum in respect of which those benefits are calculated as is attributable to periods of pensionable service before that day shall be revalued by the money purchase method.



(3) In this regulation—

“final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;

“money purchase method” has the meaning given by Schedule 2 to the 1993 Act, except that it also includes the application to the benefits of a guaranteed notional interest rate or investment yield, in accordance with the rules of the scheme, to the benefits or to the available sum in respect of which the benefits are calculated;

“pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated.

(4) Where the trustees or managers of the scheme determine that benefits should be revalued in accordance with this regulation, section 80(30) of the 1993 Act (basis of revaluation) applies in relation to those benefits revalued in accordance with this regulation as if they were money purchase benefits.

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

**25.**—(1) Article 51(31) of the 1995 Order (annual increase in rate of pension) does not apply to a pension or part of a pension payable under an occupational pension scheme which meets the conditions specified in paragraph (2).

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

(a) the pension or part of a pension—

(i) is derived from any of the benefits specified in paragraph (3) which were attributable to a member’s pensionable service on or after 6th April 1997, and

(ii) first came into payment on or after 6th April 2005 but before the appointed day;

(b) the trustees or managers of the scheme before the appointed day treated those benefits as if they were money purchase benefits, and

(c) the pension or part of a pension is not, under the scheme, required to be increased each year or is to be increased at a rate below that required by Article 51 of the 1995 Order.

(3) The benefits specified in this paragraph are—

(a) cash balance benefits;

(b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits), and

(c) top-up benefits.

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

**26.**—(1) The Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991(32) are amended in accordance with paragraphs (2) to (4).

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

(30) Section 80 was amended by Part 3 of Schedule 5 to the Pensions (Northern Ireland) Order 1995, Article 258 of the Pensions (Northern Ireland) Order 2005, section 20(1) to (3) of the Pensions Act (Northern Ireland) 2012 and paragraph 13 of the Schedule to [S.R. 2005 No. 434](#)

(31) Article 51 was amended by paragraph 40 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, section 47 of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000, Article 255 of the Pensions (Northern Ireland) Order 2005, sections 20 and 21 of the Pensions Act (Northern Ireland) 2012 and Article 11 of [S.I.2006/745](#)

(32) [S.R.1991 No. 37](#); relevant amending Regulations are [S.R. 1994 No. 300](#) and [S.R. 1996 No. 620](#)

- “(a) the money purchase benefits, when they become payable, in accordance with the terms of an insurance policy or annuity contract in which the amount allocated to provide the benefits is invested; or
- (b) a pension under the scheme derived from the money purchase benefits, on the basis of actuarial advice.”.
- (3) Omit regulation 14(33) (computation of benefit – money purchase schemes).
- (4) For regulation 14A(34) (circumstances in which uniform accrual does not apply – money purchase benefits) substitute—

**“Benefits to which section 70(6) does not apply – money purchase benefits**

**14A.** Section 70(6) of the Act (computation of short service benefit) does not apply to money purchase benefits.”.

**Amendment of the Occupational Pension Schemes (Revaluation) Regulations**

**27.** In regulation 3 of the Occupational Pension Schemes (Revaluation) Regulations (Northern Ireland) 1991(35) (hybrid benefits) for paragraph (2) substitute—

“(2) In this regulation, “hybrid benefit” means a benefit the rate or amount of which is calculated by reference to the greatest, or smallest, of two or more benefits.”.

**PART 8**

**Transfers**

**Interpretation**

**28.** In this Part “the Transfer Values Regulations” means the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(36).

**Cash equivalent of cash balance benefits etc treated as money purchase benefits: transitional arrangements**

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

- (a) a member of an occupational pension scheme has, under the applicable rules, accrued rights to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits, and
- (b) the pensionable service of the member has terminated before the appointed day.
- (2) Where the conditions specified in paragraph (3) are met—
- (a) the cash equivalent of the member’s benefits specified in paragraph (1)(a) which were treated as money purchase benefits is to be calculated as if those benefits were money purchase benefits;
- (b) the member acquires a right to the cash equivalent of those benefits as if section 90(1)(a)(37) of the 1993 Act (right to cash equivalent) applied;

(33) Regulation 14 was amended by paragraph 26 of Schedule 2 to [S.R. 1994 No. 300](#) and regulation 2 of [S.R. 1996 No. 620](#)

(34) Regulation 14A was inserted by regulation 2 of [S.R. 1996 No. 620](#)

(35) [S.R. 1991 No. 38](#); regulation 3 was amended by paragraph 27 of Schedule 2 to [S.R. 1994 No. 300](#)

(36) [S.R. 1996 No. 619](#); relevant amending provisions are [S.R. 2008 Nos. 370 and 388](#) and [S.R. 2012 No. 124](#)

(37) Section 90(1) was amended by Article 150(1) and (2) of the Pensions (Northern Ireland) Order 1995

- (c) a member who acquires a right to a cash equivalent of those benefits in accordance with sub-paragraph (b) may require the trustees or managers of the scheme to use the cash equivalent in any of the ways specified in section 91(2)(38) of the 1993 Act (ways of taking right to cash equivalent);
  - (d) an application to use the cash equivalent in accordance with sub-paragraph (c) must be made to the trustees or managers of the scheme in writing and is subject to the provisions of sections 92(39) to 95 of the 1993 Act, and
  - (e) a member may withdraw an application made in accordance with sub-paragraph (d) by giving the trustees or managers of the scheme notice in writing, in accordance with the provisions of section 96(40) of the 1993 Act (withdrawal of application).
- (3) The conditions specified in this paragraph are that before the appointed day—
- (a) the trustees or managers of the scheme treated benefits specified in paragraph (1)(a) accrued by a member as if they were money purchase benefits;
  - (b) the member has made an application to the trustees or managers of the scheme for a written statement of entitlement of the amount of the cash equivalent of those benefits (whether or not the application also relates to other benefits) in accordance with section 89A(1)(41) of the 1993 Act (salary related schemes: right to statement of entitlement), and
  - (c) the member has been treated as acquiring a right to the cash equivalent of those benefits in accordance with section 90(1)(a) of the 1993 Act (including in a case where section 90(1)(a) of that Act is modified by regulation 19(2)(b) of the Transfer Values Regulations) (hybrid schemes).
- (4) Where—
- (a) the conditions specified in paragraph (3) are met, and
  - (b) the trustees or managers of the scheme have (at any time) used the cash equivalent of those benefits treated as money purchase benefits in any of the ways specified in section 91(2) of the 1993 Act,

they are discharged from the obligation to provide the benefits to which that cash equivalent value relates, as if section 95(1) of that Act (trustees' duties after exercise of option) applied.

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

- 30.—(1) Where the conditions specified in paragraph (2) are met—
- (a) section 89A(1) of the 1993 Act does not, in relation to any period before the appointed day, require the trustees or managers of an occupational pension scheme to provide a statement of entitlement in respect of cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits which were treated as money purchase benefits;

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(38) Section 91(2) was amended by Article 133 of [S.I. 2001/3649](#)

(39) Section 92 was amended by paragraph 53 of Schedule 3 to the Pensions (Northern Ireland) Order 1995, paragraph 25 of Schedule 9 and Part 1 of Schedule 10 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, Part 6 of Schedule 6 to the Pensions Act (Northern Ireland) 2008, paragraph 14 of the Schedule to [S.R. 2005 No. 434](#) and Article 4 of [S.R. 2012 No. 124](#). Section 93 was amended by paragraph 6 of Schedule 4 to the Pensions (Northern Ireland) Order 1995 and paragraphs 5 and 7 of Schedule 5 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000. Section 94 was amended by paragraph 7 of Schedule 4 to the Pensions (Northern Ireland) Order 1995, paragraph 26 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 and paragraph 5 of Schedule 5 and Part 3 of Schedule 9 to the Child Support, Pensions and Social Security Act (Northern Ireland) 2000. Section 95 was amended by paragraph 8 of Schedule 4 to the Pensions (Northern Ireland) Order 1995, paragraph 10 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005 and Article 4 of [S.R. 2012 No. 124](#)

(40) Section 96 was amended by paragraph 27 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

(41) Section 89A was inserted by Article 149 of the Pensions (Northern Ireland) Order 1995 and amended by paragraph 23 of Schedule 9 to the Welfare Reform and Pensions (Northern Ireland) Order 1999

- (b) section 89A(4) of the 1993 Act does not apply in relation to a failure to provide a statement of entitlement occurring before the appointed day, and
  - (c) regulation 6(3) of the Transfer Values Regulations (guaranteed statements of entitlement) does not prevent the member making a further application under section 89A(1) of the 1993 Act for a statement of entitlement within a period of 12 months beginning on the date of an application by the member where the condition specified in paragraph (2)(a) of this regulation applies.
- (2) The conditions specified in this paragraph are that before the appointed day—
- (a) the trustees or managers of an occupational pension scheme have not, on the application of a member of the scheme made in accordance with section 89A(1) of the 1993 Act, provided the member with a statement of entitlement of the amount of the cash equivalent of cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits which have accrued to or in respect of the member under the applicable rules, and
  - (b) the trustees or managers of the scheme did not provide a statement of entitlement because, at the time that they received the application, those benefits were treated by the trustees or managers as money purchase benefits.

### **Amendment of the Transfer Values Regulations**

- 31.**—(1) The Transfer Values Regulations are amended in accordance with paragraphs (2) to (7).
- (2) In regulation 1(2) (interpretation)—
- (a) after the definition of “base rate” insert—
    - ““cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;”;
  - (b) after the definition of “effective date”(42) insert—
    - ““final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member’s pensionable service in relation to that scheme ends;”;
  - (c) after the definition of “member”(43) insert—
    - ““pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated;”.
- (3) In regulation 7(44) (manner of calculation and verification of cash equivalents – general provisions)—
- (a) in paragraph (1)(a)(i) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”;
  - (b) in paragraph (1)(a)(ii) after “money purchase benefits” insert “and cash balance benefits in respect of which the available sum is not calculated by reference to final salary”;
  - (c) for paragraph (5) substitute—

(42) The definition of “effective date” was substituted by regulation 2(d) of [S.R. 2008 No. 370](#)

(43) The definition of “member” was substituted by regulation 2(f) of [S.R. 2008 No. 370](#)

(44) Regulations 7 to 7E were substituted for regulations 7 and 8 by regulation 4 of [S.R. 2008 No. 370](#)

“(5) Where a portion of the cash equivalent relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash equivalent is to be calculated—

- (a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 7A and 7B(45); and
- (b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 7C(46).”.

(4) In regulation 7A (manner of calculation of initial cash equivalents for salary related benefits)—

- (a) in the heading at the end insert “other than cash balance benefits not calculated by reference to final salary”;
- (b) in paragraph (1) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.

(5) In regulation 7B (initial cash equivalents for salary related benefits: assumptions and guidance)—

- (a) in the heading after “salary related benefits” insert “other than cash balance benefits not calculated by reference to final salary”;
- (b) in paragraph (1) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.

(6) In regulation 7C (manner of calculation of initial cash equivalents for money purchase benefits)—

- (a) in the heading at the end insert “and cash balance benefits not calculated by reference to final salary”;
- (b) in paragraph (1) after “For” insert “cash balance benefits in respect of which the available sum is not calculated by reference to final salary and”;
- (c) for paragraph (4) substitute—

“(4) The realisable value must include—

- (a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules; or
- (b) for cash balance benefits—
  - (i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;
  - (ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;
  - (iii) any options the member has which would increase the value of the member’s benefits under the scheme (adjusted to reflect the proportion of members that the trustees determine are likely to exercise those options); and
  - (iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded.”.

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(45) Regulation 7B was amended by regulation 3(2) of S.R. 2008 No. 388

(46) Regulation 7C was amended by regulation 3(3) of S.R. 2008 No. 388

- (7) In regulation 7D (reductions to initial cash equivalents)—
- (a) in paragraph (1) for “An initial” substitute “For salary-related benefits an initial,”;
  - (b) for paragraphs (2) and (3) substitute—
    - “(2) For the purposes of paragraph (1), the trustees may—
      - (a) request an insufficiency report from the actuary in accordance with Schedule 1B(47) (insufficiency reports); or
      - (b) treat the actuary’s last relevant GN11 report as an insufficiency report.
    - (3) For money purchase benefits, an initial cash equivalent may, or as the case may be, must be reduced in accordance with paragraphs 7 to 11, 14 and 15 of Schedule 1A(48) (reductions in initial cash equivalents).”.

## PART 9

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

**32.** In this Part “the Early Leavers Regulations” means the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations (Northern Ireland) 2006(49).

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

**33.**—(1) Where the conditions specified in paragraph (2) are met, a cash transfer sum to which the member has acquired a right under section 97AB(50) of the 1993 Act (right to cash transfer sum and contribution refund) is to be calculated as if it related to money purchase benefits.

- (2) The conditions specified in this paragraph are that—
- (a) before the appointed day the member has acquired a right to a cash transfer sum or to a contribution refund in accordance with section 97AB of the 1993 Act;
  - (b) at any time, the trustees or managers of the scheme have, in accordance with section 97AC of the 1993 Act (notification of right to cash transfer sum or contribution refund), given to the member a statement in writing specifying the amount of the cash transfer sum to which the member has acquired a right under section 97AB of that Act;
  - (c) the statement specifying the amount of the cash transfer sum relates to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits) or top-up benefits which the trustees or managers of the scheme treated as money purchase benefits (whether or not the statement also relates to other benefits);
  - (d) the cash transfer sum relating to those benefits specified in the statement has been calculated as if the benefits were money purchase benefits, and
  - (e) the trustees or managers of the scheme have been notified in accordance with section 97AD of the 1993 Act (exercise of right under section 97AB) that the member wishes to take a cash transfer sum in accordance with section 97AB(1)(a).
- (3) Where—
- (a) the conditions specified in paragraph (2) are met;

(47) Schedule 1B was inserted by Schedule 1 to S.R. 2008 No. 388

(48) Schedule 1A was inserted by regulation 8 of S.R. 2008 No. 388 and paragraph 9 was omitted by Article 14(3) of S.R. 2012 No. 124 with effect from 6th April 2012

(49) S.R. 2006 No. 49; relevant amending Regulations are S.R. 2008 Nos. 370 and 388

(50) Sections 97AA to 97AI were inserted by Article 241 of the Pensions (Northern Ireland) Order 2005

- (b) the cash transfer sum to which the member acquires a right has been calculated in the manner specified in paragraph (2)(d), and
- (c) the trustees or managers of the scheme have (at any time) done what is needed to carry out the requirement specified in the member's notice under section 97AD(2)(b) of the 1993 Act,

the trustees or managers of the scheme are discharged from any obligation in respect of any rights (including contingent rights) of, or in respect of, the member to the benefits to which the cash transfer sum relates, or to make any other payment by way of refund of contributions made by or in respect of the member (other than any pension credit or amount attributable (directly or indirectly) to a pension credit).

### **Amendment of the Early Leavers Regulations**

**34.**—(1) The Early Leavers Regulations are amended in accordance with paragraphs (2) to (7).

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

(a) after the definition of “actuary” insert—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;”;

(b) after the definition of “discount rates” insert—

““final salary”, in relation to a member to or in respect of whom benefits under a pension scheme are payable, means the member's pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the member's pensionable service in relation to that scheme ends;”;

(c) after the definition of “insufficiency report liabilities” insert—

““pensionable earnings”, in relation to a member of a pension scheme, means earnings by reference to which benefits under the scheme are calculated;”.

(3) In regulation 2(51) (manner of calculation and verification of cash transfer sums – general provisions)—

(a) in paragraph (1)(a)(i) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”;

(b) in paragraph (1)(a)(ii) after “money purchase benefits” insert “and cash balance benefits in respect of which the available sum is not calculated by reference to final salary”;

(c) for paragraph (5) substitute—

“(5) Where a portion of the cash transfer sum relates to a benefit specified in paragraph (1)(a)(i) and a portion relates to a benefit specified in paragraph (1)(a)(ii), the initial cash transfer sum is to be calculated—

(a) for the portion falling within paragraph (1)(a)(i), in accordance with regulations 2A and 2B, and

(b) for the portion falling within paragraph (1)(a)(ii), in accordance with regulation 2C.”.

(4) In regulation 2A (manner of calculation of initial cash transfer sums for salary related benefits)



- (a) in the heading at the end insert “other than cash balance benefits not calculated by reference to final salary”;
  - (b) in paragraph (1) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.
- (5) In regulation 2B**(52)** (initial cash transfer sum for salary related benefits: assumptions and guidance)—
- (a) in the heading after “salary related benefits” insert “other than cash balance benefits not calculated by reference to final salary”;
  - (b) in paragraph (1) after “salary related benefits” insert “other than cash balance benefits in respect of which the available sum is not calculated by reference to final salary”.
- (6) In regulation 2C**(53)** (manner of calculation of initial cash transfer sums for money purchase benefits)—
- (a) in the heading at the end insert “and cash balance benefits not calculated by reference to final salary”;
  - (b) in paragraph (1) for “For” substitute “For cash balance benefits in respect of which the available sum is not calculated by reference to final salary and”;
  - (c) for paragraph (4) substitute—
    - “(4) The realisable value must include—
      - (a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules, or
      - (b) for cash balance benefits—
        - (i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;
        - (ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;
        - (iii) any options the member has which would increase the value of the member’s benefits under the scheme (adjusted to reflect the proportion of members that the trustees determine are likely to exercise those options), and
        - (iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded.”.
- (7) In regulation 4**(54)** (reduction of cash transfer sums and contribution refunds)—
- (a) in paragraph (1) for “if the insufficiency conditions are met.” substitute—
    - “if—
      - (a) the insufficiency conditions are met, and
      - (b) the cash transfer sum relates to salary-related benefits.”;
  - (b) in paragraph (3) after “initial cash transfer sum” insert “which does not relate to money purchase benefits”;

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**(52)** Regulation 2B was amended by regulation 4 of [S.R. 2008 No. 388](#)

**(53)** Regulation 2C was amended by regulation 4 of [S.R. 2008 No. 388](#)

**(54)** Regulation 4 was substituted by paragraph 8 of Schedule 2 to [S.R. 2008 No. 370](#)



- (c) in paragraph (7) after “the initial cash transfer sum or contribution refund” insert “, where it does not relate to money purchase benefits,”.

## PART 10

### Payment of surplus funds to employer

#### Interpretation

**35.**—(1) In this Part—

“employer” has the meaning given by Article 121(1) of the 1995 Order (interpretation of Part 2);

“the Payments to Employer Regulations” means the Occupational Pension Schemes (Payments to Employer) Regulations (Northern Ireland) 2006<sup>(55)</sup>.

(2) Where—

- (a) a trust scheme in relation to which there is more than one employer is divided into two or more sections, and
- (b) the provisions of the scheme meet the conditions specified in regulation 18(1)(b) of the Payments to Employer Regulations (schemes with more than one employer),

this Part applies as if each section of the scheme were a separate scheme.

#### Failure to comply with the requirements of Article 37 or 76 of the 1995 Order: periods before the appointed day

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

- (a) Article 37<sup>(56)</sup> of the 1995 Order (payment of surplus to employer), nor
- (b) Article 76<sup>(57)</sup> of that Order (excess assets on winding up),

(as the case may be) applies in respect of a payment from scheme funds made to the employer in relation to the scheme.

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

- (a) the trustees of a trust scheme have exercised a power under the scheme rules to make a payment to the employer out of funds held for the purposes of the scheme and that payment was made to the employer before the appointed day;
- (b) at the time that the payment was made to the employer the scheme included—
  - (i) cash balance benefits, or
  - (ii) pensions derived from money purchase or cash balance benefits;
- (c) no benefits other than those specified in sub-paragraph (b), money purchase benefits and death benefits secured by insurance policies or annuity contracts, and
- (d) the trustees of the scheme treated the scheme as if it were a money purchase scheme and for that reason did not comply with the requirements—
  - (i) for schemes not in winding-up, of Article 37 of the 1995 Order, or

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<sup>(55)</sup> S.R. 2006 No. 161

<sup>(56)</sup> Article 37 was substituted by Article 227 of the Pensions (Northern Ireland) Order 2005 and amended by section 105 of the Pensions (No.2) Act (Northern Ireland) 2008

<sup>(57)</sup> Article 76 was amended by paragraph 56 of Schedule 10 to the Pensions (Northern Ireland) Order 2005 and Article 11 of S.I. 2006/745

- (ii) for schemes in winding up, of Article 76 of that Order, before exercising the power to make a payment to the employer.

### **Non-money-purchase schemes providing cash balance benefits etc**

- 37.**—(1) Where the circumstances specified in paragraph (2) apply—
- (a) the trustees of a trust scheme may not use an actuarial valuation made on the basis specified in paragraph (2)(c) for the purposes of fulfilling the conditions specified in Article 37(3)(a) of the 1995 Order or regulation 4(1) or (2) of the Payments to Employer Regulations (schemes that are subject to Part 4 of the 2005 Order – determination of assets and liabilities), and
  - (b) a valuation certificate prepared in relation to an actuarial valuation made on the basis specified in paragraph (2)(c) is not valid in relation to any period after the appointed day.
- (2) The circumstances specified in this paragraph are that—
- (a) the scheme is subject to Part 4 of the 2005 Order (scheme funding);
  - (b) the scheme provides any of the benefits specified in paragraph (3), and
  - (c) the trustees of the scheme propose to use an actuarial valuation made on the basis that benefits specified in paragraph (3) were money purchase benefits for the purpose of meeting the condition specified in Article 37(3)(a) of the 1995 Order.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
  - (c) top-up benefits;
  - (d) pensions derived from money purchase benefits, and
  - (e) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c).

### **Amendment of the Payments to Employer Regulations**

**38.** In regulation 2 of the Payments to Employer Regulations (interpretation) for the definition of “money purchase benefits” substitute—

““money purchase benefits” has the meaning given by section 176(1)(58) of the Pension Schemes Act (general interpretation);”.

## **PART 11**

### **Scheme Administration**

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

- 39.**—(1) This regulation applies where during any period before the appointed day—
- (a) benefits under an occupational pension scheme included benefits which are not money purchase benefits;

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(58) The definition of “money purchase benefits” was amended by section 27 of the Pensions Act (Northern Ireland) 2012 and paragraph 19 of the Schedule to [S.R. 2005 No. 474](#)

- (b) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme, and
  - (c) for that reason, the trustees or managers of the scheme treated the scheme as if it were exempted by regulation 3(2)(a) (professional advisers' requirements: exceptions) of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997<sup>(59)</sup> ("the Scheme Administration Regulations") from the requirement to appoint an actuary in relation to the scheme in accordance with Article 47(1)(b) of the 1995 Order (professional advisers).
- (2) Where this regulation applies—
- (a) regulation 3(2)(a) of the Scheme Administration Regulations applies in relation to any period before the date specified in sub-paragraph (b) during which there was no actuary appointed in relation to the scheme as if the scheme were a money purchase scheme, and
  - (b) subject to paragraph (3), the trustees or managers of the scheme must, on or before 6th October 2014, appoint an actuary in accordance with Article 47(1)(b) of the 1995 Order.
- (3) The requirement in paragraph (2)(b) to appoint an actuary in accordance with Article 47(1)(b) of the 1995 Order does not apply where, in relation to any period, the scheme is exempted from that requirement by regulation 3 of the Scheme Administration Regulations.

### **Scheme accounts**

- 40.**—(1) This regulation applies where, before the appointed day—
- (a) benefits under an occupational pension scheme included benefits which are not money purchase benefits, and
  - (b) the trustees or managers of the scheme treated those benefits as if they were money purchase benefits.
- (2) Where this regulation applies, no provision of Part 4 of the Act or of these Regulations affects the validity of scheme accounts prepared in relation to any period before the appointed day.

## **PART 12**

### **The Pension Protection Fund**

#### **Interpretation**

- 41.**—(1) In this Part—
- “administration levy” is a levy imposed in accordance with Article 103(1) of the 2005 Order;
  - “admissible rules” has the meaning given by paragraph 35(2)<sup>(60)</sup> of Schedule 6 to the 2005 Order (scheme rules, admissible rules etc);
  - “assessment date” has the meaning given by Article 126(1) of the 2005 Order (Articles 124 and 125: interpretation);
  - “employer” has the meaning given by Article 2(2) of the 2005 Order (general interpretation), including the extensions to that meaning made by—
- (a) regulation 1(3)<sup>(61)</sup> of the Entry Rules Regulations (citation, commencement and interpretation), and

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<sup>(59)</sup> S.R. 1997 No. 94; regulation 3(2) was amended by regulations 3 and 4 of S.R. 2005 No. 421

<sup>(60)</sup> Paragraph 35(2) was amended by paragraph 17 of Schedule 6 to the Pensions (No.2) Act (Northern Ireland) 2008

<sup>(61)</sup> Regulation 1(3) was substituted by regulation 4 of S.R. 2005 No. 357

(b) in relation to a non-segregated scheme or a multi-employer section of a segregated scheme, regulation 1(4)(62) of those Regulations;

“the Entry Rules Regulations” means the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005(63);

“fraud compensation levy” has the same meaning as in Article 171(1) of the 2005 Order;

“the Fraud Compensation Levy Regulations” means the Occupational Pension Schemes (Fraud Compensation Levy) Regulations (Northern Ireland) 2006(64);

“initial levy” has the same meaning as in Article 157(1) of the 2005 Order;

“non-segregated scheme” has the meaning given by regulation 1(3) of the Entry Rules Regulations;

“the PPF Miscellaneous Regulations” means the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (Northern Ireland) 2006(65);

“pension protection levy” has the meaning given by Article 158(1) of the 2005 Order;

“the relevant Pension Protection Fund provisions” means—

- (a) Part 3 of the 2005 Order (the Board of the Pension Protection Fund) (except Article 156(6) of that Order (relationship with fraud compensation regime)) and any instrument made under that Part;
- (b) Schedule 4 (the Board of the Pension Protection Fund) and Schedule 6 (pension compensation provisions) to the 2005 Order and any instrument made under those provisions, and
- (c) Chapter 1 of Part 3 (pension compensation on divorce etc.) of, and Schedule 4 (pension compensation payable on discharge of pension compensation credit) to, the Pensions (No. 2) Act (Northern Ireland) 2008(66) and any instrument made under those provisions;
- (d) any provision corresponding to the provisions mentioned in paragraph (a), (b) or (c) in force in Great Britain;

“relevant time” means the date in relation to which the value of the assets and liabilities of the eligible scheme is calculated;

“segregated scheme” has the same meaning as in regulation 1(2) of the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations (Northern Ireland) 2005(67);

“the Valuation Regulations” means the Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005(68).

(2) Where, by virtue of any provision of regulations made under Article 280(1) of the 2005 Order, the relevant Pension Protection Fund provisions apply or applied to a scheme as if a section or segregated part of an occupational pension scheme were a separate scheme—

- (a) this Part also so applies, and
- (b) “admissible rules”, “employer”, “scheme rules”, “trustees or managers of the scheme” and “member” must be read accordingly.

(62) Regulation 1(4) was substituted by regulation 4 of S.R. 2005 No. 357 and amended by regulation 3 of S.R. 2012 No. 1

(63) S.R. 2005 No. 126; relevant amending Regulations are S.R. 2005 Nos. 194 and 264, S.R. 2006 No. 155, S.R. 2007 No. 193, S.R. 2008 No. 132, S.R. 2010 Nos. 32 and 111 and S.R. 2012 No. 1

(64) S.R. 2006 No. 85

(65) S.R. 2006 No. 155; relevant amending Regulations are S.R. 2010 No. 80

(66) 2008 c. 13 (N.I.)

(67) S.R. 2005 No. 91; regulation 1(2) was amended by regulation 3 of S.R. 2005 No. 357

(68) S.R. 2005 No. 131; relevant amending Regulations are S.R. 2006 No. 155, 2007 No. 193, S.R. 2012 No. 270 and S.R. 2013 No. 95

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

**42.**—(1) Subject to paragraph (3), where the Board considers that the conditions specified in paragraph (2) are met in relation to an occupational pension scheme—

- (a) an occupational pension scheme which would otherwise be an eligible scheme is not an eligible scheme in relation to any period falling before 1st April 2015;
  - (b) the scheme becomes an eligible scheme on 1st April 2015, and
  - (c) the relevant Pension Protection Fund provisions apply in relation to the scheme with effect from that date.
- (2) The conditions specified in this paragraph are that immediately before the appointed day—
- (a) the scheme included benefits which are not money purchase benefits, and
  - (b) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme and, for that reason, was not an eligible scheme.
- (3) Paragraph (1)(b) and (c) does not apply where—
- (a) the scheme falls within the description of schemes which are not eligible schemes specified in regulation 2(69) of the Entry Rules Regulations (schemes which are not eligible schemes);
  - (b) an insolvency event has occurred in relation to the employer in relation to the scheme before 1st April 2015, or
  - (c) the trustees or managers of the scheme have during the period beginning with the appointed day and ending immediately before 1st April 2015, entered into a legally enforceable agreement the effect of which is to reduce the amount of any debt due to the scheme under Article 75(70) of the 1995 Order (deficiencies in the assets) which may be recovered by, or on behalf of, the trustees or managers of the scheme.
- (4) Paragraph (3)(b) applies in relation to a multi-employer scheme that is a non-segregated scheme as if the reference to “the employer in relation to the scheme” were a reference to the employer who is the only remaining employer in relation to that scheme.
- (5) Paragraph (3)(c) does not apply where the conditions specified in regulation 2(3)(a) or (b) of the Entry Rules Regulations would be met if the scheme had been an eligible scheme in the period beginning with the appointed day and ending immediately before 1st April 2015.
- (6) In this regulation “insolvency event” has the meaning given by Article 105(71) of the 2005 Order (insolvency event, insolvency date and insolvency practitioner).

### **Validity of valuations etc, determinations, transfer notices and discharge of benefits before the appointed day**

**43.**—(1) Where the conditions specified in paragraph (2) are met, no provision of Part 4 of the Act or of these Regulations affects the validity, in relation to any period before the appointed day, of—

- (a) a valuation obtained by the Board in accordance with Article 127(2)(b)(72) (Board’s obligation to obtain valuation of assets and protected liabilities), Article 136(9)(73) or (10A) (duty to assume responsibility following reconsideration) or Article 142(3)(b)(74) (duty to assume responsibility for closed schemes) of the 2005 Order;

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(69) Regulation 2 was amended by regulation 3 of S.R. 2005 No. 194 and regulation 2 of S.R. 2005 No. 364, regulation 22 of S.R. 2006 No. 155, regulation 2 of S.R. 2007 No. 193, regulation 18 of S.R. 2008 No. 132, regulation 3 of S.R. 2010 No. 32 and regulation 3 of S.R. 2010 No. 111 and regulation 3 of S.R. 2012 No. 1

(70) Article 75 was amended by Article 248 of the Pensions (Northern Ireland) Order 2005

(71) Article 105 was amended by Article 2 of S.R. 2006 No. 529 and paragraph 252 of Schedule 1 to S.I. 2009/1941

(72) Article 127(2) was substituted by paragraph 5 of Schedule 4 to the Pensions Act (Northern Ireland) 2012

(73) Article 136(10A) was inserted by paragraph 15 of Schedule 4 to the Pensions Act (Northern Ireland) 2012

(74) Article 142(3) was substituted by paragraph 11 of Schedule 4 to the Pensions Act (Northern Ireland) 2012

- (b) a determination made by the Board under Article 127(2)(a), Article 136(3) or Article 142(3)(a) of the 2005 Order;
  - (c) a protected benefits quotation accompanying an application made in accordance with Article 135(1) of the 2005 Order (application for reconsideration);
  - (d) the Board's approval of a valuation made with respect to a scheme in accordance with Article 128(2)(a)(75) of the 2005 Order (approval of valuation);
  - (e) a valuation provided by the trustees or managers of an occupational pension scheme to the Board in accordance with Article 140 of the 2005 Order (valuations of closed schemes) or regulations made under that Article;
  - (f) audited scheme accounts prepared or provided for any of the purposes of Part 3 of the 2005 Order or of regulations made under that Part;
  - (g) a direction given by the Board under Article 118 of the 2005 Order (directions);
  - (h) a transfer notice (within the meaning of Article 144(2) of the 2005 Order (transfer notice)) given (at any time) by the Board to the trustees or managers of the scheme, or
  - (i) the discharge of benefits specified in paragraph (3) which were treated by the trustees or managers of the scheme as if they were money purchase benefits.
- (2) The conditions specified in this paragraph are that—
- (a) an assessment period or further assessment period in relation to the scheme began before the appointed day, and
  - (b) the Board is satisfied that immediately before the beginning of that assessment period or further assessment period—
    - (i) the scheme included any of the benefits specified in paragraph (3), and
    - (ii) the trustees or managers of the scheme treated benefits specified in paragraph (3) as if they were money purchase benefits.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
  - (c) top-up benefits, and
  - (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.

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

44.—(1) Where the conditions specified in regulation 42(2) are met in relation to an occupational pension scheme, the trustees or managers of the scheme must obtain and provide an actuarial valuation of the scheme (“the first valuation”) for the purposes of Article 162 of the 2005 Order (valuations to determine scheme underfunding) to the Board, or to the Regulator on the Board's behalf, on or before 31st March 2015.

(2) The relevant time of the first valuation must be within the period beginning with the appointed day and ending with 31st March 2015.

(3) For the purposes of that valuation, the assets and the protected liabilities of the scheme must be calculated as if the scheme were an eligible scheme, in accordance with regulations 5 (valuation of assets), 6 (valuation of protected liabilities) and 7 (alternative valuation of assets)

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(75) Article 128(2) was amended by paragraph 7 of Schedule 4 to the Pensions Act (Northern Ireland) 2012

and protected liabilities in specific cases) of the Pension Protection Fund (Valuation) Regulations (Northern Ireland) 2005<sup>(76)</sup>.

(4) The relevant time of any subsequent actuarial valuation for the purposes of Article 162 of the 2005 Order must be no more than 3 years after the relevant time of the first valuation provided to the Board or to the Regulator on the Board's behalf.

(5) The trustees or managers of the scheme must provide any subsequent valuation for the purposes of Article 162 of the 2005 Order to the Board, or to the Regulator on the Board's behalf, within a period of 15 months beginning immediately after the relevant time of the valuation.

(6) In this regulation "protected liabilities" means the cost of securing benefits for and in respect of members of the scheme which correspond to the compensation which would be payable, in relation to the scheme, in accordance with the pension compensation provisions (see Article 146 of the 2005 Order) if the scheme were an eligible scheme for which the Board were to assume responsibility.

### **Provision of information: schemes and benefits treated as money purchase**

**45.**—(1) This regulation applies—

- (a) in the case of a scheme which is an eligible scheme on the appointed day, where the trustees or managers of the scheme have, before the appointed day, excluded liabilities relating to benefits which are not money purchase benefits from a valuation under Article 162 of the 2005 Order because those liabilities were treated as if they related to money purchase benefits, or
- (b) where the trustees or managers of a scheme which includes liabilities relating to benefits which are not money purchase benefits have not, before the appointed day, carried out valuations under Article 162 of the 2005 Order because they treated the scheme as if it were a money purchase scheme.

(2) Where this regulation applies, the trustees or managers of the scheme must, on or before 31st March 2015, inform the Regulator that the scheme includes benefits which are not money purchase benefits but have been treated as money purchase benefits.

(3) Where—

- (a) paragraph (1)(a) applies, and
- (b) the scheme is an eligible scheme on the appointed day,

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

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

- (a) accounts in relation to the scheme;
- (b) actuarial reports in relation to the scheme, and
- (c) actuarial valuations in relation to the scheme.

(5) The Board or the Regulator on the Board's behalf may revoke or vary any direction given under paragraph (3).

(6) Where a direction under paragraph (3) given to the trustees or managers of a scheme is not complied with, Article 10<sup>(77)</sup> of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

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<sup>(76)</sup> S.R. 2005 No. 131; regulation 5 was amended by regulation 23 of S.R. 2006 No. 155, regulation 6 was amended by regulation 3 of S.R. 2007 No. 193, regulation 5 of S.R. 2012 No. 270 and regulation 5 of S.R. 2013 No. 95, regulation 7 was amended by regulation 5 of S.R. 2012 No. 270 and regulation 5 of S.R. 2013 No. 95

<sup>(77)</sup> Article 10 was amended by paragraph 9 of Schedule 2 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)) and by Schedule 12 to the Pensions (Northern Ireland) Order 2005

### **Eligible schemes including benefits treated as money purchase benefits: initial levy and pension protection levy**

**46.**—(1) For the purposes of the initial levy and the pension protection levy, where the conditions specified in paragraph (2) are met, and subject to paragraph (4), no provision of Part 4 of the Act or of these Regulations—

- (a) affects the validity of an actuarial valuation, the relevant time of which is before the appointed day, and which is provided to the Board, or the Regulator on the Board's behalf (whether before, on or after the appointed day), in accordance with Article 162 of the 2005 Order;
- (b) requires the trustees or managers of an eligible scheme to obtain or provide a further or revised actuarial valuation in respect of a financial year before 1st April 2015;
- (c) affects the validity of any calculation or determination by the Board in relation to the amount of a pension protection levy or initial levy imposed on a scheme in respect of a financial year before 1st April 2015;
- (d) permits the Board, or the Regulator on the Board's behalf, to increase the amount of a pension protection levy payment which has been notified to the trustees or managers of a scheme in respect of a financial year before 1st April 2015;
- (e) prevents recovery by the Board, or by the Regulator on the Board's behalf, of a debt due in respect of a pension protection levy or initial levy which—
  - (i) has arisen in accordance with Article 164(6) (calculation, collection and recovery of levies) or 164A(3)(78)(pension protection levy: interest for late payment) of the 2005 Order, and
  - (ii) relates to an amount payable in respect of a financial year before 1st April 2015.

(2) The conditions specified in this paragraph are that the Board is satisfied that at the relevant time of the valuation provided to the Board, or to the Regulator on the Board's behalf, in accordance with Article 162 of the 2005 Order—

- (a) the scheme included any of the benefits specified in paragraph (3);
  - (b) the trustees or managers of the scheme treated benefits specified in paragraph (3) as if they were money purchase benefits, and
  - (c) the amount of a pension protection levy or initial levy due in respect of the scheme has been calculated on the basis that benefits specified in paragraph (3) which were treated by the trustees or managers of the scheme as if they were money purchase benefits were money purchase benefits.
- (3) The benefits specified in this paragraph are—
- (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
  - (c) top-up benefits, and
  - (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.

(4) Paragraph (1) is subject to the power of the Board, or the Regulator on the Board's behalf, to direct the trustees or managers of an eligible scheme to obtain and provide an out-of-cycle valuation under regulation 48(1).



**Schemes which become eligible schemes: administration levy and pension protection levies: periods after the appointed day**

47.—(1) The trustees or managers of an occupational pension scheme which becomes an eligible scheme on 1st April 2015 in accordance with regulation 42(1)(b) are liable to pay the administration levy and the pension protection levy in respect of the scheme with effect from that date.

(2) The trustees or managers of the scheme must pay the amount of the administration levy and the pension protection levy notified by the Board, or by the Regulator on the Board's behalf, within the period of 28 days beginning with the date on which the Board or the Regulator gives notification of the amounts to the trustees or managers.

(3) In the case of the late payment of the pension protection levy under this regulation, interest is to be charged in accordance with regulation 19A(79) of the PPF Miscellaneous Regulations (interest for late payment of the pension protection levy), unless the Board has granted a waiver under those Regulations.

**Eligible schemes including benefits which become non-money purchase: power to direct out-of-cycle valuations**

48.—(1) Where the conditions specified in regulation 46(2) apply to an occupational pension scheme, the Board, or the Regulator on the Board's behalf, may direct the trustees or managers of the scheme to obtain and provide to the Board an out-of-cycle valuation in relation to the scheme for any financial year beginning on 1st April 2015, 2016 or 2017.

(2) Where the Board, or the Regulator on the Board's behalf, exercises the power to direct the trustees or managers of an occupational pension scheme to obtain and provide an out-of-cycle valuation, the Board may, having regard to that valuation, calculate or recalculate a pension protection levy payment in relation to that scheme in respect of any financial year beginning on any date specified in paragraph (1).

(3) The trustees or managers of the scheme must pay the amount of the pension protection levy notified by the Board, or by the Regulator on the Board's behalf, within the period of 28 days beginning with the date on which the Board or the Regulator gives notification of the amount of the levy to the trustees or managers.

(4) In the case of the late payment of the pension protection levy notified to the trustees or managers by the Board, or by the Regulator, under paragraph (3), interest is to be charged in accordance with regulation 19A of the PPF Miscellaneous Regulations, unless the Board has granted a waiver under those Regulations.

(5) Where the amount of the pension protection levy notified by the Board or the Regulator to the trustees or managers of the scheme is less than an amount previously notified to, and paid by, the trustees or managers in respect of the same financial year, the Board must repay the difference between the two amounts to the trustees or managers.

(6) Where the Board, or the Regulator on the Board's behalf, directs the trustees or managers of the scheme to obtain and provide an out-of-cycle valuation, the relevant time of any subsequent actuarial valuation for the purposes of Article 162 of the 2005 Order must be within the period of 3 years beginning immediately after the relevant time of the out-of-cycle valuation.

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

(8) Where a direction under paragraph (1) given to the trustees or managers of a scheme is not complied with, Article 10 of the 1995 Order (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance with the direction.

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(79) Regulation 19A was inserted by regulation 5 of [S.R. 2010 No. 80](#)

(9) In this regulation an “out-of-cycle valuation” means a valuation which has a relevant time which is—

- (a) after the appointed day, and
- (b) within the period of 3 years beginning immediately after the relevant time of the last actuarial valuation for the purposes of Article 162 of the 2005 Order (whether the relevant time of that valuation was before, on or after the appointed day).

#### **Waiver of fraud compensation levy: periods before the appointed day**

**49.**—(1) Where the conditions specified in paragraph (2) are met, a waiver by the Board of payment of an amount due in relation to any fraud compensation levy imposed under Article 171 of the 2005 Order (fraud compensation levy), in accordance with regulation 7 of the Fraud Compensation Levy Regulations (waiver), applies as if the scheme had been a money purchase scheme at the time of the waiver.

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

- (a) the fraud compensation levy payment was due in respect of a period before the appointed day;
- (b) the trustees or managers of the scheme confirmed in writing to the Board that the conditions specified in regulation 7(1) of the Fraud Compensation Levy Regulations were met during that period, and
- (c) the Board is satisfied that during that period—
  - (i) the scheme included cash balance benefits or pensions derived from money purchase or cash balance benefits;
  - (ii) the scheme included no benefits other than benefits falling within paragraph (i), money purchase benefits or death benefits, and
- (d) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme.

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

**50.** Where—

- (a) before the appointed day, the conditions specified in regulation 29(3) are met in relation to a member of an occupational pension scheme, and
- (b) an assessment period begins in relation to the scheme,

the Board may secure the discharge of the cash equivalent of the member’s accrued rights to benefits specified in regulation 29(1)(a) which were treated by the trustees or managers of the scheme as money purchase benefits as if those benefits were money purchase benefits.

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

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

- (a) an assessment period in relation to an occupational pension scheme began before the appointed day, and
- (b) the scheme is authorised (whether before, on or after the appointed day) to continue as a closed scheme under Article 137(5) of the 2005 Order (closed schemes).

(2) Subject to paragraph (5), where the conditions specified in paragraph (3) are met, the trustees or managers of the scheme may determine that benefits specified in paragraph (4) which were treated

by the trustees or managers of the scheme as if they were money purchase benefits should continue to be treated as money purchase benefits.

- (3) The conditions specified in this paragraph are that—
  - (a) the scheme provides any of the benefits specified in paragraph (4), and
  - (b) the trustees or managers of the scheme, immediately before the assessment period began, treated those benefits as if they were money purchase benefits.
- (4) The benefits specified in this paragraph are—
  - (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
  - (c) top-up benefits, and
  - (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.
- (5) Where the Board has made a determination or a direction under any of the relevant Pension Protection Fund provisions or these Regulations that benefits specified in paragraph (4) should or should not be treated as money purchase benefits—
  - (a) paragraph (2) does not apply, and
  - (b) the trustees or managers of the scheme must treat those benefits in accordance with the direction or determination of the Board.

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

52.—(1) Where the Board or the trustees or managers of an occupational pension scheme have, before the appointed day, secured the discharge of liabilities in respect of any of the benefits specified in regulation 43(3) that discharge is to be regarded as having been made—

- (a) where the Board has secured the discharge of those liabilities, in accordance with Article 154(80) of the 2005 Order (discharge of liabilities in respect of money purchase benefits), or
- (b) where the trustees or managers of the scheme have secured the discharge of those liabilities, in accordance with regulation 2 of the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations (Northern Ireland) 2005(81) (discharge of liabilities in respect of money purchase benefits during the assessment period).

(2) Where paragraph (1)(a) or (b) applies, the relevant Pension Protection Fund provisions apply in relation to the liabilities discharged and the assets applied towards their discharge as if they were liabilities for, and assets applied towards, money purchase benefits.

**Discharge as money purchase liabilities: periods after the appointed day**

- 53.—(1) Where—
- (a) an assessment period or further assessment period in relation to an eligible scheme has begun before the appointed day, and
  - (b) the Board is satisfied that benefits which have accrued in accordance with the admissible rules of the scheme include any of the benefits specified in regulation 43(3);

the Board may determine, in the circumstances specified in paragraph (2), that benefits specified in regulation 43(3) treated by the trustees and managers of the scheme as if they were money purchase

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(80) Paragraph (3) was omitted by, and paragraph (4) amended by, Article 6 of [S.R. 2012 No. 124](#)

(81) [S.R. 2005 No. 84](#)

benefits are to be treated as money purchase benefits for the purposes of the relevant Pension Protection Fund provisions.

- (2) The circumstances specified in this paragraph are that the Board is satisfied—
- (a) that, immediately before that assessment period or further assessment period began, the trustees or managers of the scheme treated those benefits as money purchase benefits, and
  - (b) that it is reasonable in the circumstances to treat those benefits as money purchase benefits for the purposes of the relevant Pension Protection Fund provisions.

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

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

- (a) an assessment period in relation to an occupational pension scheme began before the appointed day;
- (b) the scheme is authorised (whether before, on or after the appointed day) to continue as a closed scheme under Article 137(5) of the 2005 Order (closed schemes);
- (c) there is a further assessment period in relation to the scheme; and
- (d) the Board assumes responsibility for the scheme in accordance with Article 142(1) of the 2005 Order (duty to assume responsibility for closed schemes).

(2) Where the conditions specified in paragraph (3) are met, the Board may determine that the liabilities in relation to benefits specified in regulation 51(4) which were treated as money purchase benefits are to be treated as money purchase benefits for the purposes of the relevant Pension Protection Fund provisions.

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

- (a) the scheme included any of the benefits specified in regulation 51(4), and
- (b) either—
  - (i) the trustees or managers of the scheme have determined in accordance with regulation 51(2) that benefits specified in regulation 51(4) should continue to be treated as money purchase benefits, or
  - (ii) the trustees or managers of the scheme have, in accordance with regulation 51(5)(b), treated those benefits as money purchase benefits in accordance with a determination or a direction made by the Board.

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

**55.**—(1) Where the Board is satisfied that—

- (a) the pensionable service of a member of an eligible scheme has terminated on the commencement of an assessment period;
- (b) as a result, on the appointed day the member has rights under the admissible rules to—
  - (i) a transfer payment calculated by reference to the value of the benefits which have accrued to the member under the scheme, or
  - (ii) a cash payment calculated by reference to the amount of contributions made by the member or on the member's behalf to the scheme;
- (c) Chapter 5(82) of Part 4 of the 1993 Act (early leavers: cash transfer sums and contribution refunds) does not apply to the member;

- (d) the member does not have relevant accrued rights to benefit under the scheme (within the meaning of section 97AA(4)(**83**) of the 1993 Act (scope of Chapter 5));
- (e) the rights specified in sub-paragraph (b) relate to any of the benefits specified in regulation 43(3) (whether or not they also relate to other benefits), and
- (f) immediately before an assessment period or further assessment period in relation to the eligible scheme began, the trustees or managers of the scheme treated benefits specified in regulation 43(3) as if they were money purchase benefits,

the Board may determine that those benefits are to be treated, for the purposes of the relevant Pension Protection Fund provisions, as money purchase benefits.

(2) In this regulation “transfer payment” means a payment to another occupational pension scheme or a personal pension scheme in respect of the member’s rights under the scheme.

### **Discharge of pensions in payment derived from voluntary contributions treated as money purchase benefits: periods after the appointed day**

**56.**—(1) Where the conditions specified in paragraph (2) are met in relation to a member’s pension in payment under an occupational pension scheme, the Board may give the trustees or managers of an eligible scheme a direction regarding the exercise of the trustees or managers’ power to determine that the member’s pension or part of a pension should be discharged as if it were money purchase benefits (see regulation 16).

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

- (a) the assessment date or further assessment date in relation to an eligible scheme is on or after the appointed day;
- (b) the pension or part of a pension is derived from voluntary contributions;
- (c) the pension or part of a pension is derived from any of the benefits specified in regulation 43(3) or from money purchase benefits;
- (d) the pension or part of a pension comes into payment on or before 1st April 2015;
- (e) pensions in payment which satisfied the conditions specified in sub-paragraphs (b) and (c) were, before the appointed day, treated by the trustees or managers of the scheme as money purchase benefits, and
- (f) the Board is satisfied that it is reasonable in the circumstances to treat the pension or part of a pension as money purchase benefits.

(3) Where the Board directs the trustees or managers of an eligible scheme, in accordance with paragraph (1), that a pension or part of a pension should be discharged as if it were money purchase benefits, the relevant Pension Protection Fund provisions apply as if the pension or part of a pension discharged were a money purchase benefit.

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

**57.**—(1) The Entry Rules Regulations are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1(2)(**84**) (interpretation)—

(a) after the definition of “the FSMA Act” insert—

““the appointed day” is the day appointed for the coming into operation of section 27 of the Pensions Act (Northern Ireland) 2012 (definition of money purchase benefits);”;

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**(83)** Section 97AA was inserted by Article 241 of the Pensions (Northern Ireland) Order 2005

**(84)** Regulation 1(2) was amended by regulation 4 of [S.R. 2005 No. 357](#). Regulation 2 of [S.R. 2005 No. 364](#), regulation 21 of [S.R. 2006 No. 155](#) and regulation 2 of [S.R. 2009 No. 78](#)

- (b) after the definition of “the assessment date”(85) insert—
- ““cash balance benefits” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;”.
- (3) After regulation 2(2)(86) (schemes which are not eligible schemes) insert—
- “(2A) Except as otherwise provided in paragraphs (3) and (4), an occupational pension scheme which becomes an eligible scheme in accordance with regulation 42(1)(b) of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014 (eligibility: schemes treated as money purchase schemes) is not an eligible scheme if—
- (a) the trustees or managers of the scheme during the period beginning with the appointed day and ending immediately before 1st April 2015 have entered into a legally enforceable agreement, and
- (b) the effect of that agreement (at any time) is to reduce the amount of any debt due to the scheme under Article 75 of the 1995 Order (deficiencies in the assets) which may be recovered by, or on behalf of, the trustees or managers of the scheme.”.
- (4) In regulation 2(3) and (4) for “paragraph (2)” substitute “paragraphs (2) and (2A)”.
- (5) In regulation 21(87) (refusal to assume responsibility – schemes which become eligible schemes)—
- (a) in paragraph (1)(a) omit “and”;
- (b) at the end of paragraph (1)(b) insert—
- “and
- (c) in the case of a scheme which becomes an eligible scheme on 1st April 2015 in accordance with regulation 42(1)(b) of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014—
- (i) where the date on which an assessment period began is less than 3 years after 1st April 2015, be the period beginning on 1st April 2015 and ending with the assessment date, or
- (ii) where the date on which an assessment period began is at least 3 years after 1st April 2015, be the period of 3 years preceding the date on which that assessment period began.”.

### **Modification of the Pension Protection Fund (Compensation) Regulations where there is no provision for a survivor’s pension**

- 58.** In a case where—
- (a) immediately before the assessment date—
- (i) under the admissible rules of an eligible scheme a member is entitled to present payment of a pension under an occupational pension scheme, and
- (ii) that pension does not include the provision of a survivor’s pension in the event of the member’s death;
- (b) the member is entitled, from the assessment date, to compensation under paragraph 3 or 5 of Schedule 6 to the 2005 Order, and

(85) The definition of “the assessment date” was inserted by regulation 4 of [S.R. 2005 No. 357](#)

(86) Regulation 2(2) was amended by regulation 2 of [S.R. 2005 No. 364](#)

(87) Regulation 21 was amended by regulation 3 of [S.I. 2010 No. 32](#)

(c) the member dies on or after the assessment date,  
regulation 3 of the Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005<sup>(88)</sup> (circumstances where a widow or widower is not entitled to payment of periodic compensation) has effect as if for paragraph (b) there were substituted—

- “(b) no provision to pay a survivor’s pension—
- (i) under the admissible rules of the scheme, or
  - (ii) because the member has chosen a pension under the scheme which does not include the provision of a survivor’s pension.”.

### **Amendment of the Pension Protection Fund (Compensation) Regulations**

**59.**—(1) The Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005 are amended in accordance with paragraphs (2) to (4).

(2) In Part 5 (revaluation) before regulation 13 (manner of determining the revaluation amount) insert—

#### **“Active members below normal pension age: cases where it is unclear whether pensionable service is attributable to periods on or after 6th April 2009**

**12A.**—(1) This regulation applies for the purposes of paragraph 12(3A)(b) of Schedule 6 to the Order in the case of active members who have not attained normal pension age at the assessment date.

(2) Where this regulation applies, in any case where it is unclear whether any particular pensionable service (either actual or notional) falls, or is to be treated for the purposes of the scheme as falling, on or after 6th April 2009, the Board may determine as best as it is able, having regard to the admissible rules and all the circumstances of the case, how much of the service or notional service concerned should be treated for the purposes of paragraph 12(3)(b) of Schedule 6 to the Order as having occurred on or after 6th April 2009.”.

(3) After regulation 13 insert—

#### **“Deferred members below normal pension age: cases where it is unclear whether pensionable service is attributable to periods on or after 6th April 2009**

**13ZA.**—(1) This regulation applies where it is unclear whether—

- (a) pensionable service is attributable to periods before, or on or after 6th April 2009, in the case of deferred members and pension credit members who have not attained normal pension age or normal benefit age at the assessment date;
- (b) any particular pensionable service (whether actual or notional) falls, or is to be treated as falling, for the purposes of the scheme, on or after 6th April 2009, or
- (c) pension credit rights are to be treated for the purposes of the scheme as derived from rights attributable to pensionable service of the transferor (whether actual or notional) falling or to be treated as falling on or after 6th April 2009.

(2) Where this regulation applies, the Board may determine as best as it is able, having regard to the admissible rules and all the circumstances of the case, how much of the service or notional service concerned should be treated for the purposes of paragraph 17(3)(b)<sup>(89)</sup> of Schedule 6 to the Order as having occurred on or after 6th April 2009.”.

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<sup>(88)</sup> S.R. 2005 No. 149; regulation 3 was amended by regulation 8 of S.R. 2005 No. 357

<sup>(89)</sup> Paragraph 17(3)(b) was substituted by paragraph 6(2) of Schedule 1 to the Pensions (No. 2) Act (Northern Ireland) 2008

(4) In regulation 23(90) (cash balance schemes: modification of paragraphs 5, 15 and 19 of Schedule 6)—

- (a) in the heading for “paragraphs 5, 15 and 19” substitute “paragraphs 3, 5, 8, 10, 11, 14, 15, 19, 22 and 37”;
- (b) in paragraph (1) omit the words from “, that is to say” to the end;
- (c) for paragraph (2) substitute—

“(2) In their application to cash balance benefits or to a pension derived from cash balance benefits, the provisions of Schedule 6 to the Order have effect with the following modifications—

- (a) paragraph 3 (pensions in payment at assessment date) has effect as if—
  - (i) in sub-paragraph (3) after “The annual rate of the periodic compensation is” there were inserted “subject to sub-paragraph (3A)”, and
  - (ii) after sub-paragraph (3) there were inserted—
    - “(3A) In a case where—
      - (a) the pension is derived from money purchase benefits or cash balance benefits;
      - (b) there is no requirement or discretion under the admissible rules to increase the pension, and
      - (c) the pension is not required to be increased in accordance with Article 51 of the 1995 Order,
 the annual rate of the periodic compensation is the protected pension rate.”;
    - (iii) in sub-paragraph (5) for “sub-paragraph (3)” there were substituted “sub-paragraphs (3) and (3A)”.
- (b) paragraph 5 (pension benefits postponed at assessment date) has effect as if—
  - (i) in sub-paragraph (3) after “The annual rate of the periodic compensation is” there were inserted “subject to sub-paragraphs (3A) and (3B)”;
  - (ii) after sub-paragraph (3) there were inserted—
    - “(3A) In a case where—
      - (a) the postponed pension is derived from money purchase benefits or cash balance benefits;
      - (b) there is no requirement or discretion under the admissible rules to increase the pension, and
      - (c) the pension is not required to be increased in accordance with Article 51 of the 1995 Order,
 the annual rate of the periodic compensation is to be determined in accordance with sub-paragraph (3B).
    - (3B) In a case falling within sub-paragraph (3A) the annual rate of the periodic compensation is—
      - (a) where the commencement of periodic compensation under this paragraph has not been postponed for any period by virtue of paragraph 25A, 100% of the protected pension rate, or



- (b) where the commencement of periodic compensation has been so postponed, 100% of the aggregate of the protected pension rate and the amount of the actuarial increase under paragraph 25A.”;
  - (iii) in sub-paragraph (4) for “In sub-paragraph (3)” there were substituted “In sub-paragraphs (3) and (3B)”;
  - (iv) after sub-paragraph (4) there were inserted—
    - “(4A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (4) what would have been the annual rate of the pension, the “protected pension rate” shall mean what the Board may, having regard to the admissible rules, determine would have been the annual rate of pension if the postponement of pension had ceased immediately before the assessment date.”;
  - (v) in sub-paragraph (5) after “(4)” there were inserted “or (4A)”;
- (c) paragraph 8 (active members over normal pension age at assessment date) has effect as if—
  - (i) for sub-paragraph (5) there were substituted—
    - “(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such initial annual rate of pension to which the member would have been entitled under the admissible rules when the pensionable service relating to the pension ended.
    - (5A) In any case where the Board is satisfied that it is not possible to identify the initial annual rate of pension on the basis referred to in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”;
  - (ii) sub-paragraphs (6) and (7) were omitted;
- (d) paragraph 10 has effect as if—
  - (i) for sub-paragraph (4) there were substituted—
    - “(4) Subject to sub-paragraph (4A), the accrued amount means an amount equal to such amount of scheme lump sum to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the scheme lump sum ended.
    - (4A) In any case where the Board is satisfied that it is not possible to identify the amount of the scheme lump sum on the basis referred to in sub-paragraph (4), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”;
  - (ii) sub-paragraphs (5), (6) and (7) were omitted;
- (e) paragraph 11 (active members who have not attained normal pension age at assessment date) has effect as if—
  - (i) for sub-paragraph (5) there were substituted—
    - “(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such initial annual rate of pension to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the pension ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the initial annual rate of pension on the basis referred to in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”;

- (ii) sub-paragraphs (6) and (7) were omitted;
- (f) paragraph 14 has effect as if—
  - (i) for sub-paragraph (5) there were substituted—
 

“(5) Subject to sub-paragraph (5A), the accrued amount means an amount equal to such scheme lump sum to which the member would have been entitled under the admissible rules had the member attained normal pension age when the pensionable service relating to the scheme lump sum ended.

(5A) In any case where the Board is satisfied that it is not possible to identify the amount of the scheme lump sum on the basis referred to in sub-paragraph (5), the Board may, having regard to the admissible rules, determine the accrued amount in accordance with actuarial factors published by the Board.”;
  - (ii) sub-paragraphs (6) and (7) were omitted;
- (g) paragraph 15 (deferred members who have not attained normal pension age at assessment date) has effect as if—
  - (i) at the beginning of sub-paragraph (5) there were inserted “Subject to sub-paragraph (5A)”;
  - (ii) after sub-paragraph (5) there were inserted—
 

“(5A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (5) what would have been the initial annual rate of the pension, the accrued amount shall mean an amount equal to such initial annual rate as the Board may, having regard to the admissible rules and in accordance with actuarial factors published by the Board, determine the deferred member would have been entitled to had normal pension age been the actual age attained by the deferred member when the pensionable service relating to the lump sum ended.”;
- (h) paragraph 19 has effect as if—
  - (i) at the beginning of sub-paragraph (5) there were inserted “Subject to sub-paragraph (5A)”;
  - (ii) after sub-paragraph (5) there were inserted—
 

“(5A) In any case where the Board is satisfied that it is not possible to determine on the basis referred to in sub-paragraph (5) what would have been the amount of the scheme lump sum, the accrued amount shall mean an amount equal to such scheme lump sum amount as the Board may, having regard to the admissible rules and in accordance with actuarial factors published by the Board, determine the deferred member would have been entitled to had normal pension age been the actual age attained by the deferred member when the pensionable service relating to the lump sum ended.”;
- (i) paragraph 22 (survivors who do not meet conditions for scheme benefits at assessment date) has effect as if—

- (i) at the beginning of sub-paragraph (3)(a) there were inserted “subject to sub-paragraph (3A)”;
- (ii) after sub-paragraph (3) there were inserted—
  - “(3A) In any case where the Board is satisfied that it is not possible to identify the initial rate of pension mentioned in sub-paragraph (3)(a), the Board may, having regard to the admissible rules, determine the initial rate of the compensation in accordance with actuarial factors published by the Board.”;
- (j) paragraph 37(1) has effect as if after “In this Schedule—” there were inserted—
  - ““cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;””;
- (d) after paragraph (2) insert—
  - “(3) In this regulation—
    - “cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;
    - “cash balance scheme” means a scheme which provides cash balance benefits, whether or not the scheme also provides other benefits.”.

### **Amendment of the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations**

**60.** In the Schedule to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations (Northern Ireland) 2005(**91**) in the first column of paragraph 16C(**92**) (paragraphs 16C, 16D, 16E and 16F) of the table for “and 16F” substitute “, 16F, 16G, 16H and 16I”.

## **PART 13**

### **Scheme Funding**

#### **Interpretation of this Part**

**61.**—(1) In this Part—

“effective date”, in relation to an actuarial report or actuarial valuation, has the meaning given by Article 203(2)(b) or (d) of the 2005 Order (actuarial valuations and reports), as the case may be;

“the Scheme Funding Regulations” means the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005(**93**).

(2) Where, by virtue of regulation 2(2)(**94**) (interpretation) of and paragraph 1, 4, 5 or 7 of Schedule 2(**95**) to the Scheme Funding Regulations (modification of the Order and Regulations),

(91) S.R. 2005 No. 138; relevant amending Regulations are S.R. 2005 Nos. 357 and 381, S.R. 2006 No. 156, S.R. 2007 No. 157, S.R. 2010 No. 80, S.R. 2011 No. 113 and S.R. 2012 No. 270

(92) Paragraph 16C was inserted by regulation 33 of S.R. 2011 No. 113

(93) S.R. 2005 No. 568; relevant amending Regulations are S.R. 2006 No. 297, S.R. 2007 No. 457 and S.R. 2012 No. 294

(94) Regulation 2 was amended by regulation 10 of S.R. 2007 No. 457 and paragraph 11 of the Schedule to S.R. 2012 No. 294

(95) Paragraph 4 was amended by regulation 10 of S.R. 2007 No. 457

Part 4 of the 2005 Order (scheme funding) applied as if each section or part of a scheme were a separate scheme (or would have so applied but for this Part)—

- (a) this Part also so applies, and
  - (b) “employer” and “member” must be read accordingly.
- (3) Subject to paragraph (4), where—
- (a) the conditions specified in regulation 62(2) are met in relation to an occupational scheme, and
  - (b) the scheme has no active members,

references to “the employer” in Part 4 of the 2005 Order and in this Part have effect as if they were references to the person who was the employer immediately before the occurrence of the event after which the scheme ceased to have active members (“the freezing event”).

(4) A person ceases to be treated as an employer under paragraph (3) if, after the freezing event, that person ceases to be treated as a former employer by virtue of regulation 9 of the Occupational Pension Schemes (Employer Debt) Regulations (Northern Ireland) 2005<sup>(96)</sup> (frozen schemes and former employers).

#### **Application of Part 4 of the 2005 Order to schemes treated as money purchase: periods before the appointed day**

**62.**—(1) Part 4 of the 2005 Order does not apply to an occupational pension scheme in relation to any period before the appointed day during which it met both of the conditions specified in paragraph (2).

- (2) The conditions specified in this paragraph are that—
  - (a) the scheme included benefits which are not money purchase benefits, and
  - (b) the trustees or managers of the scheme treated the scheme as if it were a money purchase scheme.

#### **Application of Part 4 of the 2005 Order to schemes including benefits treated as money purchase benefits: periods before the appointed day**

**63.**—(1) Part 4 of the 2005 Order applies in relation to any period before the appointed day during which an occupational pension scheme met both of the conditions specified in paragraph (2), as if the benefits specified in paragraph (2)(b) treated by the trustees or managers of the scheme as money purchase benefits were money purchase benefits.

- (2) The conditions specified in this paragraph are that—
  - (a) Part 4 of the 2005 Order applied to the scheme, and
  - (b) benefits under the scheme included benefits which are not money purchase benefits, but which the trustees or managers of the scheme treated as if they were money purchase benefits.

#### **Actuarial valuations and reports for schemes treated as money purchase schemes: periods on and after the appointed day**

**64.** Where, immediately before the appointed day, the conditions specified in regulation 62(2) are met in relation to an occupational pension scheme, the scheme is to be treated for the purposes

<sup>(96)</sup> S.R. 2005 No. 168; regulation 9 was substituted by regulation 10 of S.R. 2008 No. 132 and amended by regulation 11 of S.R. 2010 No. 111 and regulation 11 of S.R. 2012 No. 1

of Article 203(3)(a) of the 2005 Order (actuarial valuations and reports) as having been established on the appointed day.

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

**65.**—(1) Where, immediately before the appointed day, the conditions specified in regulation 62(2) are met in relation to an occupational pension scheme, the Scheme Funding Regulations are modified as follows.

(2) Regulation 6(2) (statement of funding principles) has effect in relation to the first statement of funding principles under Article 202 of the 2005 Order to be prepared after the appointed day, as if after “the first actuarial valuation” there were inserted “after the day appointed for the coming into operation of section 27 of the Pensions Act (Northern Ireland) 2012 (“the section 27 commencement day”)”.

(3) Regulation 8(1)(a)(**97**) (recovery plan) applies in relation to the first recovery plan under Article 205(1) of the 2005 Order to be prepared after the appointed day, as if after “the first actuarial valuation” there were inserted “after the section 27 commencement day”.

(4) Regulation 9(1) (schedule of contributions) applies in relation to the first schedule of contributions under Article 206 of the 2005 Order to be prepared after the appointed day as if for “following the establishment of the scheme” there were substituted “after the section 27 commencement day”.

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

**66.** Where—

- (a) immediately before the appointed day, the conditions specified in regulation 62(2) are met in relation to an occupational pension scheme, and
- (b) the trustees or managers of the scheme would, if it were not for this regulation, be required to provide a summary funding statement to members and beneficiaries in accordance with regulation 15(1) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(**98**),

the trustees or managers of the scheme must provide the first summary funding statement to all members and beneficiaries of the scheme on, before or within a reasonable period after, the date by which they are required under Article 203(3)(a) of the 2005 Order (as modified by regulation 64 of these Regulations) to ensure that they receive the first actuarial valuation in relation to the scheme.

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

**67.** Where, immediately before the appointed day, the conditions specified in regulation 62(2) are met in relation to an occupational pension scheme, until the first schedule of contributions has been certified by the actuary in relation to the scheme in accordance with Article 206(5) of the 2005 Order—

- (a) the most recent schedule of payments prepared before the appointed day under Article 85(**99**) of the 1995 Order (schedules of payments to money purchase schemes) continues

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(97) Regulation 8 was amended by regulation 5 of [S.R. 2006 No. 297](#)

(98) [S.R. 2014 No. 79](#)

(99) Article 85 was amended by Schedule 11 to the Pensions (Northern Ireland) Order 2005

to have full effect with respect to the contributions payable towards the scheme by or on behalf of employers and active members of the scheme, and

- (b) Articles 85, 86(100) (schedules of payments to money purchase schemes: supplementary) and 87(101) (application of further provisions to money purchase schemes) of the 1995 Order and Part 4 of the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997(102) (money purchase schemes) continue to apply to the scheme.

**Application of Part 4 of the 2005 Order to schemes including benefits treated as money purchase: periods on or after the appointed day**

**68.**—(1) Where the conditions specified in regulation 63(2) are met in relation to an occupational pension scheme—

- (a) the effective date of the scheme’s first actuarial valuation under Article 203 of the 2005 Order on or after the appointed day must be not more than 3 years after the effective date of the scheme’s last actuarial valuation before the appointed day, and
- (b) the effective date of the scheme’s first actuarial report under Article 203 of the 2005 Order on or after the appointed day must be not more than one year after the effective date of the scheme’s last actuarial valuation or actuarial report before the appointed day, whichever is the most recent.

(2) Where the conditions specified in regulation 63(2) are met in relation to an occupational pension scheme, no provision of section 27 of the Act (definition of money purchase benefits) or of these Regulations affects the validity of—

- (a) a statement of funding principles prepared, or revised, as the case may be, under Article 202 of the 2005 Order before the appointed day;
- (b) the latest actuarial valuation obtained under Article 203 of the 2005 Order before the appointed day, which has been prepared and signed by the actuary in accordance with Article 203(2)(a) of that Order;
- (c) the latest actuarial report obtained under Article 203 of the 2005 Order before the appointed day, which has been prepared and signed by the actuary in accordance with Article 203(2)(c) of that Order;
- (d) a certification of the scheme’s technical provisions by the actuary in accordance with Article 204 of the 2005 Order;
- (e) a recovery plan prepared in accordance with Article 205 of the 2005 Order and in operation before the appointed day;
- (f) a schedule of contributions certified by the actuary in accordance with Article 206(5) of the 2005 Order and in operation before the appointed day.

(100) Article 86 was amended by Article 11 of the Welfare Reform and Pensions (Northern Ireland) Order 1999, paragraph 10 of Schedule 5 to Child Support, Pensions and Social Security Act (Northern Ireland) 2000, Article 246 of and Schedule 11 to Pensions (Northern Ireland) Order 2005

(101) Article 87 was amended by paragraph 60 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005

(102) S.R. 1997 No. 94; Part 4 was amended by regulation 11 of S.R. 1999 No. 486, regulations 3 and 4 of S.R. 2005 No. 421 and regulation 3 of S.R. 2006 No. 141

## PART 14

### Equality

#### **Modification of the Occupational Pension Schemes (Equal Treatment) Regulations**

**69.**—(1) Regulation 15 of the Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995(**103**) (exceptions to the equal treatment rule: use of actuarial factors which differ for men and women) (“the Equal Treatment Regulations”) is amended as follows—

(a) in paragraph (2)(c) before “money purchase benefits” insert “a pension which is derived from”;

(b) after paragraph (2)(c) insert—

“(ca) a pension which is derived from cash balance benefits within the meaning of regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;”.

(2) In relation to periods before the appointed day, regulation 15 of the Equal Treatment Regulations has effect as if the amendment made by paragraph (1)(a) of this regulation applied before the appointed day.

(3) Where the conditions specified in paragraph (4) are satisfied, regulation 15 of the Equal Treatment Regulations has effect as if the amendment made by paragraph (1)(b) of this regulation applied before the appointed day.

(4) The conditions specified in this paragraph are that before the appointed day the trustees or managers of an occupational pension scheme—

(a) treated cash balance benefits as if they were money purchase benefits, and

(b) applied different actuarial factors for men and for women in determining the rate of a pension derived from those benefits.

## PART 15

### Pension Sharing

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

**70.**—(1) Where, before the appointed day, for the purposes of pension sharing or attachment on divorce or dissolution of a civil partnership, a person responsible for a pension arrangement has provided a valuation of the benefits accrued under a pension arrangement, no provision of Part 4 of the Act or of these Regulations—

(a) affects the validity of that valuation, or

(b) requires the person responsible for the pension arrangement to obtain or provide a further or revised valuation of the benefits.

(2) Where the conditions specified in paragraph (3) are met, a person responsible for a pension arrangement who has provided a valuation of a member’s accrued benefits made on the basis that those benefits were money purchase benefits, may make a subsequent valuation of the member’s benefits on the same basis.

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

- (a) the earlier valuation was provided before the appointed day in accordance with regulations made under Article 21(1)(a)(**104**) of the 1999 Order (supply of pension information in connection with divorce etc.);
  - (b) the benefits valued in the earlier valuation included any of the benefits specified in paragraph (4), and
  - (c) a subsequent valuation of the same benefits is to be made for the purposes of Part 5 of the 1999 Order (pension sharing) or Part 4A of the 1993 Act(**105**) (requirements relating to pension credit benefit) in the same or connected proceedings.
- (4) The benefits specified in this paragraph are—
- (a) cash balance benefits;
  - (b) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits);
  - (c) top-up benefits, and
  - (d) pensions derived from any of the benefits specified in sub-paragraphs (a) to (c) or from money purchase benefits.
- (5) In this regulation “connected proceedings” means proceedings in relation to pension sharing or attachment on divorce or dissolution of a civil partnership involving the same parties and the same benefits as earlier proceedings.

## PART 16

### Cross-border Schemes

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

- 71.—(1) Where the conditions specified in paragraph (2) are met—
- (a) the trustees or managers of an occupational pension scheme which, before the appointed day, was receiving contributions from a European employer, are not required to make a further or revised application for authorisation or approval in relation to any period before the appointed day under—
    - (i) Article 264(1) of the 2005 Order (general authorisation to accept contributions from European employers); or
    - (ii) Article 265(1)(**106**) of that Order (approval in relation to a particular European employer);
  - (b) the Regulator’s authorisation of the scheme under Article 264(2)(a) of the 2005 Order or approval of the trustees or managers of the scheme under Article 265(2)(a) (as the case may be) is valid in respect of any period before the appointed day;
  - (c) that authorisation of the scheme or approval of the trustees or managers of the scheme (as the case may be) remains valid on or after the appointed day until the application required under paragraph (3) is granted or refused by the Regulator, and
  - (d) Article 263(5) of the 2005 Order (occupational pension scheme receiving contributions from European employer) does not apply in relation to a failure to apply for authorisation under Article 264(1) of that Order or approval under Article 265(1) of that Order in the

**(104)** Article 21(1) was amended by paragraph 108 of Schedule 29 to the Civil Partnership Act 2004 (c. 33)

**(105)** Part 4A was inserted by Article 34 of the Welfare Reform and Pensions (Northern Ireland) Order 1999

**(106)** Article 265 was amended by regulation 5 of S.R. 2007 No. 457



form prescribed for a scheme which is not a money purchase scheme during any period before the application required under paragraph (3) is granted or refused by the Regulator.

- (2) The conditions specified in this paragraph are that before the appointed day—
- (a) an occupational pension scheme included cash balance benefits or pensions derived from cash balance benefits or money purchase benefits;
  - (b) the scheme included no benefits other than those falling within sub-paragraph (a), money purchase benefits or death benefits;
  - (c) the trustees or managers of the scheme treated the scheme as a money purchase scheme;
  - (d) an application made by the trustees or managers of a scheme for authorisation under Article 264(1) of the 2005 Order or for approval under Article 265(1) of that Order was made in the form prescribed for a money purchase scheme in accordance with any of the following provisions of the Occupational Pension Schemes (Cross-border Activities) Regulations (Northern Ireland) 2005(**107**) (“the Cross-border Regulations”)—
    - (i) regulation 4(2)(a) (applications for general authorisation to accept contributions from European employers: established schemes which are not carrying on cross-border activity);
    - (ii) regulation 5(2)(a)(**108**) (applications for general authorisation to accept contributions from European employers: established schemes which are carrying on cross-border activity);
    - (iii) regulation 5(3)(b)(ii)(aa)(**109**);
    - (iv) regulation 5(4)(a)(**110**);
    - (v) regulation 6(2)(a) (applications for general authorisation to accept contributions from European employers: new schemes);
    - (vi) regulation 9(2)(a) (applications for approval in relation to particular European employer: established schemes which are not carrying on cross-border activity);
    - (vii) regulation 10(2)(a)(**111**) (applications for approval in relation to particular European employer: established schemes which are carrying on cross-border activity), and
  - (e) the Regulator has granted or approved that application in accordance with Article 264(2)(a) or 265(2)(a) of the 2005 Order.

(3) Where the trustees or managers of an occupational pension scheme which meets the conditions specified in paragraph (2) intend to accept contributions from European employers on or after the appointed day, they must make a further application for authorisation under Article 264(1) or approval under Article 265(1)—

- (a) within the period of one year beginning with the appointed day, and
- (b) in the form prescribed for a scheme which is not a money purchase scheme in accordance with paragraph (2)(b) of regulation 4, 5, 6, 9 or 10 (as the case may be) of the Cross-border Regulations.

(4) In this regulation “European employer” has the meaning given by regulation 3(1)(**112**) of the Cross-border Regulations (meaning of “European employer” and “host EEA state” in Part 7 of the Order).

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(**107**) S.R. 2005 No. 581; relevant amending Regulations are S.R. 2006 Nos. 65 and 160 and S.R. 2007 Nos. 185 and 457

(**108**) Paragraph (2) was amended by regulation 16 of S.R. 2007 No. 185

(**109**) Paragraph (3) was inserted by regulation 9 of S.R. 2006 No. 65 and was amended by regulation 2 of S.R. 2006 No. 160

(**110**) Paragraph (4) was inserted by regulation 16 of S.R. 2007 No. 185

(**111**) Paragraph (2) was amended by regulation 16 of S.R. 2007 No. 185

(**112**) Regulation 3(1) was substituted by regulation 16 of S.R. 2007 No. 185 and amended by S.R. 2007 No. 457

(5) Where, by virtue of regulation 2(3) of the Cross-border Regulations, a section of a segregated multi-employer scheme is required to be treated as a separate scheme for the purposes of those Regulations (or would have been so required, but for this regulation) this regulation applies in relation to that section of the scheme as if it were a separate scheme.

(6) In this regulation “segregated multi-employer scheme” has the meaning given by regulation 2(1)(113) of the Cross-border Regulations.

## PART 17

### Disclosure

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

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

(a) the trustees or managers of an occupational pension scheme are not, in relation to any period before the appointed day, required to supply information under the provisions specified in paragraph (2)(c), and

(b) neither—

(i) regulation 11(114) (civil penalties) of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997(115) (“the 1997 Disclosure Regulations”), nor

(ii) regulation 5 (civil penalties relating to occupational pension schemes) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014(116) (“the Disclosure Regulations”),

applies in relation to a failure to provide information required under the provisions specified in paragraph (2)(c) in relation to a period before the appointed day.

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

(a) members of an occupational pension scheme—

(i) had, under the scheme, accrued rights to cash balance benefits, a defined benefit minimum (in relation to money purchase underpin benefits) or top-up benefits, or

(ii) were entitled to a pension derived from cash balance benefits or money purchase benefits;

(b) the trustees or managers of the scheme treated benefits specified in sub-paragraph (a) as money purchase benefits or treated the scheme as a money purchase scheme, and

(c) the trustees or managers did not supply to members of the scheme information specified in the following provisions—

(i) in the 1997 Disclosure Regulations—

(aa) paragraph 4(117) of Schedule 2, in accordance with regulation 5(4) (information to be made available to individuals);

(bb) paragraph 16 of Schedule 2, in accordance with regulation 5(12)(a);

(113) The definition of “segregated multi-employer scheme” was amended by regulation 16 of [S.R. 2007 No. 185](#)

(114) Regulation 11 was substituted by regulation 17 of [S.R. 2005 No. 170](#) and amended by regulation 9 of [S.R. 2009 No. 115](#) before revocation by Schedule 10 to [S.R. 2014 No. 79](#)

(115) [S.R. 1997 No. 98](#); these Regulations were (prospectively) revoked by Schedule 10 to [S.R. 2014 No. 79](#)

(116) [S.R. 2014 No. 79](#)

(117) Paragraph 4 of Schedule 2 was amended by regulation 5 of [S.R. 2000 No. 335](#)

- (cc) paragraphs 17(**118**) to 22 of Schedule 2, in accordance with regulation 5(12ZA)(**119**) and subject to regulation 5(16)(**120**);
  - (dd) regulation 6(1)(b) to (d)(**121**) (availability and content of annual report);
  - (ee) regulation 7(1)(a) to (ca) and (e)(**122**) (availability of other documents);
- (ii) in the 1997 Disclosure Regulations—
- (aa) Part 3 of Schedule 3 (information on funding principles and actuarial valuations etc), in accordance with regulation 13 (other information to be given on request);
  - (bb) Schedule 4, in accordance with regulation 15(1) (summary funding statements);
  - (cc) Schedule 5, in accordance with regulation 16 (statements of benefits: non money purchase benefits);
  - (dd) paragraph 16 of Schedule 8 (information on expected benefits), in accordance with regulation 25(2)(b)(ii) (occupational pension schemes after winding up for individual members).

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

**73.**—(1) The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2 (interpretation) after the definition of “beneficiary” insert—

““cash balance benefit” has the meaning given by regulation 2 of the Pensions (2012 Act) (Transitional, Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014;”.

(3) After regulation 16 (statements of benefits: non money purchase benefits) insert—

#### **“Statements of benefits: cash balance benefits**

**16A.**—(1) The information mentioned in paragraph (2) (in addition to the information required under regulation 16) must be given to any member in accordance with this regulation where—

- (a) the member has rights to cash balance benefits;
- (b) the member requests that information, and
- (c) information has not been given to that member under this regulation in the 12 months before that request.

(2) The information is that listed in paragraphs 6A, 9 to 14, 16A and 17 of Schedule 6.

(3) The information must be given as soon as practicable but no more than 2 months after the date the request is made.”.

(4) In regulation 19(1) (first information on accessing benefits) after “money purchase benefits” insert “or cash balance benefits”.

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(118) Paragraphs 17 to 22 of Schedule 2 were inserted by paragraph 6 of Schedule 3 to [S.R. 2005 No. 568](#)

(119) Paragraph (12ZA) of regulation 5 was inserted by paragraph 6 of Schedule 3 to [S.R. 2005 No. 568](#) and amended by regulation 8 of [S.R. 2007 No. 185](#)

(120) Paragraph (16) of regulation 5 was inserted by regulation 8 of [S.R. 2007 No. 185](#)

(121) Paragraph (1) of regulation 6 was amended by paragraph 19 of the Schedule to [S.R. 1997 No. 160](#) and paragraph 6 of Schedule 3 to [2005 No. 568](#)

(122) Paragraph (1) of regulation 7 was amended by paragraph 6 of Schedule 3 to [S.R. 2005 No. 568](#) and regulation 3 of [2006 No. 297](#)

(5) In regulation 25 (occupational pension schemes after winding up for individual members) for paragraph (2)(a) substitute—

- “(a) where the member or beneficiary of the scheme—
- (i) has rights to benefits other than money purchase benefits, the information mentioned in Part 2 of Schedule 8, or
  - (ii) has rights to money purchase benefits, the information mentioned in paragraph 10 of Schedule 8, and”.

(6) In Schedule 2—

(a) after paragraph 16 insert—

“**16A.** Where the member has rights to cash balance benefits, a statement that the value of the pension will depend on several factors including the amount of contributions paid, any guaranteed interest or bonuses applied and the cost of converting the benefits into an annuity.”.

(b) after paragraph 28 insert—

“**28A.** Where the member has rights to cash balance benefits, a statement that the value of the pension will depend on several factors including the amount of contributions paid, any guaranteed interest or bonuses applied and the cost of converting the benefits into an annuity.”.

(7) In the heading to Schedule 6 (statements of benefits: money purchase benefits) after “money purchase benefits” insert “and cash balance benefits”.

(8) In Schedule 6—

(a) in paragraph 6 for “An” substitute “For money purchase benefits, an”;

(b) after paragraph 6 insert—

“**6A.** For cash balance benefits, an illustration of the amount of the pension calculated—

(a) in accordance with paragraph 7(1)(a)(ii) and (2);

(b) in accordance with the rules of the scheme, and

(c) where appropriate, in a manner consistent with the relevant guidance,

that is likely to be secured by the member at the member’s normal pension age in respect of the member’s rights to cash balance benefits that have arisen or may arise under the scheme.”, and

(c) after paragraph 16 insert—

“**16A.** A statement that the amount of any pension payable under the scheme to or in respect of the member will depend on considerations (including the cost of buying an annuity at the time the pension becomes payable) which may be different from any assumptions made.”.

Sealed with the Official Seal of the Department for Social Development on 3rd July 2014

(L.S.)

*Andrew M. Hamilton*  
A senior officer of the Department for Social  
Development

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Part 4 of the Pensions Act (Northern Ireland) 2012 (“the Act”), section 27 of which clarifies the definition of “money purchase benefits” in section 176 of the Pension Schemes (Northern Ireland) Act 1993 (“the 1993 Act”) and in section 78 of the Pensions (No. 2) Act (Northern Ireland) 2008. Section 27 has retrospective effect and these Regulations make transitional, consequential and supplementary provision to support its commencement.

Part 1 of these Regulations provides for citation, commencement and interpretation.

Part 2 is supplementary to Part 4 of the Act. Regulation 4 makes it clear that section 27 does not change the character of money purchase underpin benefits, where the value of those benefits equals or exceeds the value of other benefits under an occupational pension scheme which are not money purchase benefits, or equals or exceeds the amount of a minimum promise under the scheme. Regulation 5 similarly clarifies that where there is a contingent promise to pay a top-up benefit if a money purchase benefit is less than a specified minimum amount or value, the existence of that promise does not prevent the benefit from being a money purchase benefit, provided the money purchase benefit is equal to or greater than the specified minimum.

Part 3 makes transitional provision for schemes which were previously contracted-out of the additional state pension system and which provided protected rights in the form of cash balance benefits, underpin benefits or top-up benefits.

Part 4 provides transitional protection for trustees or managers of a scheme where a benefit subject to a guarantee has been converted into a money purchase benefit without first obtaining the consent of each affected member, as required under Article 67 of the Pensions (Northern Ireland) Order 1995 (“the 1995 Order”). Regulation 8 also restricts the manner in which detrimental changes to a contingent promise in relation to members’ money purchase benefits may be made.

Part 5 makes transitional arrangements for schemes which have begun to wind up before the day appointed for the coming into operation of section 27 of the Act (“the appointed day”) and which include benefits which may be affected by section 27 (“affected benefits”). Regulations 10 and 12 make arrangements for schemes treated as money purchase schemes and regulations 11 and 13 apply to schemes providing affected benefits as well as other defined benefits. Regulations 14 and 15 apply where a scheme has been involved with the Pension Protection Fund (“PPF”). Regulation 16 permits trustees or managers to discharge a pension which is derived from both affected benefits and voluntary contributions and which comes into payment before 1st April 2015, as if the pension were money purchase benefits.

Part 6 deals with the application of Article 75 of the 1995 Order to occupational pension schemes which may be affected by the coming into operation of section 27 of the Act. Regulation 19 disapplies Article 75 of the 1995 Order where an event which would have triggered a debt due from an employer in relation to a scheme (“a relevant event”) occurred before the appointed day, had the scheme not been treated as a money purchase scheme. Regulations 20 and 21 make similar provision for schemes with affected benefits which experienced a relevant event during that period. Regulations 22 and 23 set out transitional arrangements for schemes providing non-money purchase benefits which the trustees or managers of the scheme had treated as money purchase benefits, but which were not affected by the Supreme Court’s judgment in *Houldsworth and another v Bridge Trustees Ltd and another*, where a relevant event occurred before the appointed day.

Part 7 makes supplementary, consequential and transitional arrangements in relation to revaluation, indexation and preservation of benefits. Regulation 24 makes transitional arrangements where affected benefits have, before the appointed day, been revalued by the application of notional interest. Regulation 25 makes transitional arrangements for schemes which before the appointed day began to provide non-indexed pensions derived from affected benefits. Regulation 26 makes consequential amendments to the Occupational Pension Schemes (Preservation of Benefit) Regulations (Northern Ireland) 1991.

Part 8 provides transitional arrangements for calculating transfer values relating to cash balance benefits which were treated as money purchase benefits. Regulation 31 also makes supplementary amendments to the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996 to provide for calculation of transfer values in relation to cash balance benefit after the appointed day.

Part 9 makes transitional provision for members of schemes who have acquired a right to a cash transfer sum or contribution refund under Chapter 5 of Part 4 of the 1993 Act, where the member's benefits were treated as money purchase benefits before the appointed day. Regulation 34 also amends the Occupational Pension Schemes (Early Leavers: Cash Transfer Sums and Contribution Refunds) Regulations (Northern Ireland) 2006.

Part 10 makes transitional provision for cases where a scheme was treated as a money purchase scheme and a payment of surplus funds was made to the employer before the appointed day without first complying with the conditions specified in Article 37 or 76 of the 1995 Order.

Part 11 modifies the Occupational Pension Schemes (Scheme Administration) Regulations (Northern Ireland) 1997 for transitional purposes in cases where trustees or managers of a scheme have treated the scheme as if it were a money purchase scheme.

Part 12 provides transitional, consequential and supplementary arrangements for schemes involved with the Pension Protection Fund ("the PPF"). Regulation 42 provides for a scheme treated as a money purchase scheme to be ineligible for the PPF in relation to periods before 1st April 2015. Regulation 43 validates valuations etc made before the appointed day. Regulation 46 makes transitional provision in relation to levy calculations covering periods before the appointed day. Regulations 44, 45, 47 and 48 provide transitional arrangements for schemes which have been treated as money purchase schemes, or schemes with affected benefits, in relation to periods after the appointed day. Regulations 50 to 56 validate the treatment of affected benefits as money purchase benefits in relation to periods before the appointed day, and also permit those benefits to be discharged as money purchase benefits after the appointed day where specified conditions are met.

Regulation 57 amends the Pension Protection Fund (Entry Rules) Regulations (Northern Ireland) 2005 for transitional purposes to provide for schemes previously treated as money purchase schemes which become eligible schemes. Regulations 58 and 59 make consequential and supplementary amendments to the Pension Protection Fund (Compensation) Regulations (Northern Ireland) 2005, which in turn modify Schedule 6 to the Pensions (Northern Ireland) Order 2005 ("the 2005 Order"). Regulation 60 makes consequential and supplementary amendments to the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations (Northern Ireland) 2005.

Part 13 sets out transitional arrangements in relation to Part 4 of the 2005 Order. Regulation 62 deals with schemes which are not money purchase schemes but were treated as such before the appointed day. Regulation 63 makes provision for schemes providing non-money purchase benefits which were before the appointed day treated as money purchase benefits. Regulations 64 to 68 provide transitional arrangements, including modification of Part 4 of that Order and of the Occupational Pension Schemes (Scheme Funding) Regulations (Northern Ireland) 2005, for schemes treated as money purchase schemes before the appointed day.

Part 14 makes transitional modifications and consequential and supplementary amendments to the Occupational Pension Schemes (Equal Treatment) Regulations (Northern Ireland) 1995 in relation to affected benefits.

Part 15 provides transitional arrangements in relation to pension sharing activity before the appointed day.

Part 16 makes transitional provision for schemes operating across borders which have been treated as money purchase schemes before the appointed day, but will not be money purchase schemes on or after that day.

Part 17 covers disclosure of information in relation to benefits and schemes which were treated as money purchase before the appointed day. Regulation 72 disapplies specified provisions of the Occupational Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 1997 and the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations (Northern Ireland) 2014 (“the 1997 Disclosure Regulations”) in relation to periods before the appointed day, so as to ensure that trustees or managers of schemes are not required to provide information in relation to a scheme or benefits treated as money purchase. Regulation 73 makes consequential and supplementary amendments to the 1997 Disclosure Regulations.

The Pensions (2005 Order) (Commencement No. 15) Order (Northern Ireland) 2014 ([S.R. 2014 No. 183 \(C. 12\)](#)) provides for the coming into operation of Articles 122(10)(a) and 145(3)(b) of the 2005 Order, two of the enabling provisions under which these Regulations are made, on 25th June 2014.

As these Regulations, in so far as they are made under Part 2 of the 1995 Order, Part 5 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (“the 1999 Order”) and the 2005 Order, make in relation to Northern Ireland only provision corresponding to provision contained in regulations made by the Secretary of State for Work and Pensions in relation to Great Britain, the requirement for consultation does not apply by virtue of Article 117(2)(e) of the 1995 Order, Article 73(9) of the 1999 Order and Article 289(2)(e) of the 2005 Order.

An assessment of the impact of these Regulations is detailed in a Regulatory Impact Assessment, a copy of which has been laid in the Business Office and the Library of the Northern Ireland Assembly. Copies of the Assessment are available from the Department for Social Development, Social Security Policy and Legislation Division, Level 1, James House, 2-4 Cromac Avenue, Gasworks Business Park, Ormeau Road, Belfast BT7 2JA or from the website: <http://www.dsdni.gov.uk/index/ssa/ssani-publications/ssani-pensions-publications.htm>. A copy of the Assessment is also annexed to the Explanatory Memorandum which is available alongside this Statutory Rule on the website: <http://www.legislation.gov.uk/nisr>.