These notes refer to the Pensions Act 2011 (c.19)
which received Royal Assent on 3 November 2011

PENSIONS ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Occupational pension schemes

Pension Protection Fund

Section 22: Pension Protection Fund

124. *Section 22* gives effect to *Schedule 4*.

Schedule 4: Pension Protection Fund

125. *Paragraphs 1 to 13* make amendments to the PA 2004 permitting the Board of the PPF, where it is able to do so, to determine the funding position of an eligible pension scheme without obtaining a fresh actuarial valuation in accordance with the requirements of section 143(2) of the PA 2004, which is used by the PPF Board to decide whether it must accept responsibility for the scheme.

126. A scheme's protected liabilities are the cost of providing benefits equivalent to pension compensation, any non-pension liabilities of the scheme, and the estimated cost of winding up the scheme. The amendments provide the PPF Board with the power to decide whether it can use other information for the purpose of determining whether the assets of the scheme are less than the protected liabilities (for example, a valuation undertaken for the purposes of calculating a scheme's pension protection levy), or whether an actuarial valuation is needed to determine the funding position of the scheme.

127. *Paragraph 11* makes equivalent provision in relation to valuations for closed schemes under section 158. Where a scheme has been through an assessment period and has not initially transferred into the PPF, but where the scheme's assets have subsequently fallen below its protected liabilities, the PPF Board will also have the power to determine whether an actuarial valuation under section 158 is required or whether it can use other information it has in order to decide if the scheme should transfer into the PPF.

128. *Paragraph 13* amends Schedule 9 to the PA 2004 (which lists matters that are reviewable by the PPF Board) so that a determination made by the PPF Board, in cases where it has decided that an actuarial valuation is not required, is reviewable.

129. *Paragraphs 14 to 16* remove the requirement in section 151 of the PA 2004 that an application for reconsideration must include a "protected benefits quotation". A protected benefits quotation is a quote, from an insurance company, of the cost of purchasing annuities providing each scheme member with benefits equivalent to the lower of the compensation which they would receive if their scheme transferred to the PPF and their scheme benefits.

130. The amendments secure that the trustees or managers of an eligible scheme that has not initially transferred to the PPF because it was not sufficiently underfunded may apply

for reconsideration if the trustees or managers are unable, despite their best efforts, to obtain a protected benefits quotation. The amendments provide the PPF Board with a power to determine whether the value of the assets of the scheme at the reconsideration time is less than the amount of the protected liabilities at that time. If so, the scheme may transfer into the PPF, without the trustees or managers obtaining a protected benefits quotation. The PPF Board will be able to use any information it has available and any additional information it may request in order to determine the value of the assets and liabilities of the scheme at that time.

131. *Paragraph 15* amends section 152 of the PA 2004 to enable the PPF Board to issue a determination notice under that section in a form and containing such information as may be decided by the PPF Board.

132. *Paragraph 17* removes the requirement in section 172 of the PA 2004 that an assessment period for the PPF must last for a minimum of 12 months. An assessment period starts when the employer of a scheme that is eligible for the PPF has a qualifying insolvency event. An assessment period may also start when an employer in relation to a scheme is unlikely to continue as a going concern and the PPF Board receives either an application for transfer from the scheme's trustees or managers under section 129(1) of the PA 2004 or a notification from the Regulator under section 129(4) of the PA 2004. During an assessment period the PPF Board assesses whether or not it must assume responsibility for a scheme. The removal of the requirement in section 172 of the PA 2004 that an assessment period must last for a minimum of 12 months will enable the PPF Board to transfer some schemes into the PPF earlier.

133. *Paragraph 18* removes the requirements in section 316 of the PA 2004 that the statutory instruments listed below must not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament. As a result, those statutory instruments will be subject to the negative resolution procedure. The statutory instruments affected are:

- regulations on the PPF administration levy, which is collected on behalf of the Secretary of State to recoup any money paid by the Secretary of State out of money provided by Parliament to meet the administrative expenses of the PPF Board (section 117 of the PA 2004);
- orders to increase annually the levy ceiling that limits the amount that the PPF Board may estimate it will collect through the pension protection levy (section 178 of the PA 2004); and
- orders to increase annually the pension compensation cap that is applied to compensation paid to people who are below their scheme's normal pension age at the start of an assessment period (paragraph 27 of Schedule 7 to the PA 2004).

134. The levy ceiling and the pension compensation cap are increased annually in line with increases in the general level of earnings. The Secretary of State may also make orders to increase the levy ceiling above the annual increase in line with increases in the general level of earnings and orders to change the pension compensation cap other than because of an annual increase in the general level of earnings. The amendment does not change the requirement that such orders must not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

135. *Paragraph 19* replaces paragraph 21 of Schedule 7 to the PA 2004 so that the calculation of pension compensation paid to pension credit members includes revaluation, if revaluation would have been applied under the rules of the relevant scheme to the pension credit member's benefits. Under section 83 of the PSA 1993, occupational pension schemes are required to revalue benefits payable by virtue of pension credit rights only where the rights involve the pension credit member being credited by the scheme with notional pensionable service. New paragraph 21 of Schedule 7 deals with the case where the member is not credited with notional pensionable service (so that no

revaluation is required). New paragraph 21A deals with the case where the member is credited with notional pensionable service (so that revaluation is required).

136. Under new paragraph 21A, the revaluation would be based on:

- scheme rules for the period from the implementation of a member's pension credit to the day before the start of an assessment period for the PPF; and
- statutory rules for the period from the start of the assessment period to a member's normal benefit age (the equivalent, for pension credit members, to normal pension age).

137. As a consequence, *paragraph 20* repeals paragraphs 10 and 11 of Schedule 8 to the PA 2008.

138. *Paragraphs 21 to 28* replace an existing regulation-making power within paragraph 25A of Schedule 7 to the PA 2004 (as inserted by paragraph 13 of Schedule 8 to the PA 2008) so that people may postpone payment of their pension compensation past their normal pension age.

139. The paragraphs provide that, if a person does postpone payment of pension compensation:

- the pension compensation cap would apply as at the time the person first becomes entitled to pension compensation (their normal pension age);
- revaluation would apply up to a member's normal pension age;
- the PPF Board must provide an appropriate increase in pension compensation when it comes into payment, calculated on an actuarial basis to take account of the postponement of the start of payment; and
- commutation of a portion of the pension compensation to which a person is entitled is possible at the time that postponed compensation comes into payment.

140. *Paragraphs 29 to 36* make amendments parallel to those in paragraphs 21 to 28. These paragraphs omit an existing regulation-making power in paragraph 11 of Schedule 5 to the PA 2008, replacing it with a similar power to prescribe circumstances where a person who is entitled to pension compensation by virtue of pension compensation sharing may choose to receive compensation from a later date than normal benefit age. This power will permit postponement whether or not the person entitled to compensation is below or above normal benefit age at the time that they first become entitled to payment of compensation.

141. *Paragraph 37* amends paragraph 35 of Schedule 7 to the PA 2004. This paragraph requires recent changes to scheme rules which have the effect of increasing the amount of a scheme's protected liabilities to be disregarded in calculating the amount of compensation to which members of the scheme are entitled. Paragraph 35, in conjunction with paragraphs 3(5) and 5(4) of Schedule 7, also stipulate that discretionary increases to pensions that are either in payment or postponed in the three-year period before the start of an assessment period, which have the effect of increasing the protected liabilities, are disregarded.

142. The amendments clarify the operation of these provisions.