EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments in relation to the payment of pension lump sums by occupational pension schemes (Part 2), the Pension Protection Fund (Part 3), and the provision of information by occupational and personal pension schemes (Part 4). Some of these amendments are consequential on changes introduced by the Taxation of Pensions Act 2014 (c. 30) ("the 2014 Act") and the Pension Schemes Act 2015 (c. 8).

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

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

Regulation 4 amends the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/670). Paragraph (3) amends regulation 2(2), which specifies the minimum age at which compensation can be paid, to refer to "normal minimum pension age" as defined in the Finance Act 2004 (c. 12), rather than age 55. This means that any future changes to the minimum age in tax legislation will automatically apply. Paragraph (4) is consequential on changes introduced by the 2014 Act and the Finance Act 2011 (c. 11), and removes specific restrictions on the age at which a person can be paid periodic compensation by the Pension Protection Fund ("the PPF") as a "trivial commutation lump sum" (an option where the total value of a person's PPF compensation and pension rights under all schemes is less than £30,000). Regulation 4(5) clarifies the application to cash balance benefits of references in Schedule 7 to the Pensions Act 2004 (c. 35) to lump sums received as a result of commuting a pension, or part of a pension.

Regulation 5 amends the Pension Protection Fund (Entry Rules) Regulations 2005 (S.I. 2005/590). Paragraphs (4) and (5) amend the conditions which an eligible scheme's sponsoring employer must satisfy in order for an application to be made to the PPF for it to assume responsibility for the scheme. The amended regulations require one or more of three conditions to be satisfied: first, the employer is not any of a specified list of types of employers (those generally able to have a qualifying insolvency event); second, the employer is an EEA insurer or EEA credit institution (as defined in S.I. 2005/590); or third, specific circumstances have arisen in relation to an employer with business operations in one or more EU Member States other than the UK, which prevent a qualifying insolvency event from occurring. Paragraph (6) permits the time limit for applying to the PPF to be extended by up to two months in a particular case if the PPF considers it reasonable in the circumstances. Paragraphs (7) and (8) make technical amendments to the circumstances in which certain notices must be issued by an insolvency practitioner or by the PPF in relation to the status of a scheme. Paragraphs (9) and (10) make amendments, in consequence of changes introduced by the Pension Schemes Act 2015, permitting non-money purchase benefits to be paid as an uncrystallised funds pension lump sum, or converted into money purchase benefits, during a PPF assessment period in limited circumstances.

Regulation 6 amends provisions of the Pension Protection Fund (General and Miscellaneous Amendments) Regulations (S.I. 2006/580) regarding the discharge of money purchase benefits which transfer into the PPF. Paragraph (2) requires the PPF to provide information to relevant individuals about the availability of guidance from Pension Wise. Paragraph (3) replaces the requirement to have reached the age of 60 before being paid a lump sum by the PPF in respect of money purchase benefits with a requirement to have reached normal minimum pension age (or for the ill-health condition specified in tax legislation to be met), reflecting changes to tax legislation made by the 2014 Act.

Regulations 7 to 10 amend the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (S.I. 2013/2734) ("the 2013 Regulations").

Regulation 8 amends the circumstances in which a member is treated as having an "opportunity to transfer flexible benefits" for the purposes of the 2013 Regulations. It provides that a member is not treated as having such an opportunity if they are prevented from transferring their benefits as a result of their scheme being in a PPF assessment period.

Regulation 9 inserts a new regulation 19A into the 2013 Regulations.

New regulation 19A(1) and (3) requires trustees or managers of the scheme to give a member retirement risk warnings when they give a member the means to require the trustees to take any of the actions set out in regulation 19A(2), if they have already given, or are giving, the member information in accordance with regulations 18A, 18B or 19 of the 2013 Regulations. The actions in regulation 19A(2) are the application of sums held for the purpose of providing flexible benefits for the purchase of an annuity, the payment of a lump sum in respect of flexible benefits and the designation of sums or assets held for the purpose of providing flexible benefits as available for the payment of drawdown pension. At the same time, regulation 19A(4) requires trustees to give members a statement noting the importance of reading the risk warnings and accessing pensions guidance or independent advice. Regulation 19A(5) removes the statutory obligation to give retirement risk warnings where the warnings have already been given in the previous 12 months. Regulation 19A(6) defines retirement risk warning. Regulation 19A(7) provides an exemption from the requirement to send a retirement risk warning where trustees or managers of the scheme do not conclude any of the actions in regulation 19A(2) before asking the member questions and providing an appropriate risk warning based on the answers to those questions and the characteristic features and attributes of an annuity, lump sum or drawdown pension. Regulation 19A(8) provides that the exemption under regulation 19A(7) only applies where trustees or managers of the scheme have asked the member whether the member has received pensions guidance or independent advice and encouraged this if the member has not done so or is unsure as to this fact.

Regulation 10 amends Schedule 2 of the 2013 Regulations so that there is no requirement to give information regarding flexible benefits under Part 1 of Schedule 2 where flexible benefits are not available to members of an occupational pension scheme that is an unfunded public service defined benefits scheme unless it is a scheme in relation to which section 95(2)(a)(i) of the 1993 Act has been disapplied.

An analysis of the impact of Part 4 of these Regulations on the costs to business and the voluntary sector has been made. A copy of this impact assessment is available in the libraries of both Houses of Parliament. Copies may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D, Caxton House, Tothill Street, London SW1H 9NA. No impact assessment has been produced for the remainder of these Regulations, as they do not impose costs on businesses, the voluntary sector or the public sector.