These notes refer to the Pension Schemes Act (Northern Ireland) 2016 (c.1) which received Royal Assent on 15 January 2016

Pension Schemes Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Categories of Pension Scheme

Section 1: Introduction

Section 2: Defined benefits scheme

Section 3: Shared risk scheme (sometimes known as "defined ambition")

Section 4: Defined contributions scheme

These sections define three new categories of pension scheme, which are: defined benefits scheme; shared risk scheme (sometimes referred to as 'defined ambition'); and defined contributions scheme. These categories apply only where legislation expressly states that they should, and do not apply in any public service pensions legislation.

The Pension Schemes Act currently defines a "money purchase scheme" as a scheme which offers, or may offer, only money purchase benefits. A money purchase benefit is generally taken to mean one which is derived from a pot of contributions, together with any investment returns on those contributions. The legislative definition of a money purchase benefit is a "benefit the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member". The 2012 Act added a stipulation that a benefit (other than a pension in payment) is only money purchase if "its rate or amount is calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purposes of its provision to or in respect of the member".

Schemes which fall outside this definition are not generally defined in pensions legislation but are simply considered to be "non-money purchase".

Sections 2 to 4 define three mutually exclusive categories of pension scheme. These categories are based on the type of promise the member has during the accumulation phase about the retirement benefit (income or pot). The first category is a defined benefits scheme (section 2). This type of scheme provides a pre-determined retirement income to all members, beginning at the scheme's normal pension age or decumulation point and continuing for life[1]. This income is predetermined insofar as it is set at a rate that is calculated according to promised factors as stipulated in the scheme rules or other scheme documentation. This is expressed as a "full pensions promise" to members. The normal pension age or earliest occasion for accessing the full benefits is fixed – that is, the only way the age or period of accumulation can change is by change to the scheme rules. Schemes where the normal pension age changes in line with state pension age, without requiring a change to the scheme rules, are thus excluded. Also excluded are schemes which apply a longevity factor to the benefit entitlement. Regulations may prescribe additional requirements which must be met for a scheme to fall within the defined benefit category.

The second category is a shared risk scheme (section 3). This type of scheme offers a "pensions promise" to all members at some point during the accumulation phase in relation to at least some of the retirement benefit that members might receive, whether this benefit is given in the form of a retirement income or a retirement lump sum.

The third category is a defined contributions scheme (section 4). This type of scheme gives no promise during the accumulation phase in relation to any of the retirement benefits that may be provided to members.

The definitions therefore describe the extent to which members receive a promise during the accumulation phase: a defined benefits scheme is a scheme which provides a full pensions promise to members about all benefits to be provided; a shared risk scheme provides a pension promise about at least some of the benefits to be provided by the scheme; and a defined contributions scheme provides no pensions promise during the savings period. For further definition of "pensions promise" and related terms, see section 5.

The following schemes provide examples for each of the categories. These are not exhaustive but are for illustration:

- a salary-related pension scheme where the retirement income to be paid out is determined according to a formula based on a salary: for example, 1/80 x average salary x years in pensionable service. The age or point at which this income can start to be paid in full to members can only be changed by a change to the scheme rules. This is a defined benefits scheme.

- a pension scheme into which the employer and employee pay contributions. These contributions are then invested, and so the retirement benefit in part depends on how those investments perform, but some contributions are used to purchase a deferred annuity or otherwise secure a promise about part of the income that will be received in retirement. The retirement benefit received is a combination of that promise and the funds accumulated via contributions and investment returns. This is a shared risk scheme.

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1 For example, some schemes might not have a normal pension age but might have a specific period of service defined by accumulation period.

- a pension scheme into which the employer and employee pay contributions, which are then invested. The retirement benefit depends wholly on the money contributed to the scheme and the investment return, and potentially any pooling of risk between members, and so the employee is given no promise or certainty during the accumulation phase. This is a defined contributions scheme.

For a scheme which does not fit into any of the categories, regulations must be made to treat the scheme as two or more schemes which do fit into the categories (see section 6).

Section 5: Meaning of "pensions promise" etc

This section explains what is meant by the terms "pensions promise" and "full pensions promise".

Subsection (1) states that (for the purposes of defining a defined benefits scheme), there is a "full pensions promise" provided to members, if, at all times before the benefit comes into payment, there is a promise about the level of benefit that will be received and the level of benefit is determined wholly by reference to that promise in all circumstances. (*Subsection (3)* contains more about what a promise about the level of benefit consists of.)

Subsection (2) states that (for the purposes of defining a shared risk or defined contributions scheme), a "pensions promise" is provided if there is a promise to members during the accumulation phase, in relation to a retirement benefit, about the level of benefit that will be received. The level is the rate of the income or the amount of the lump sum (see section 7). The promise must be expressed at a time before the benefit comes into payment, but unlike under a defined benefits scheme, does not need to be expressed at all times before payment, i.e. throughout the accrual phase.

Any pensions promise about a level of retirement benefit includes a promise about the factors that will be used to calculate the level of a retirement benefit (subsection (3)(a)). These factors, may, for example, include the length of pensionable service, or be linked to the member's salary, but do not include longevity factors. A promise that the level of retirement benefit will be calculated by reference to what the pot of contributions or investment returns can provide does not constitute a 'pensions promise' for the purposes of defining a defined benefits or shared risk scheme (subsection (3)(b)). Neither is it a promise where a scheme specifies the factors that will be used to distribute the assets between members and establish the value of a collective benefit (subsection (3)(c)).

A pensions promise is provided if the scheme sets out the promise, or if it requires the promise to be obtained from a third party. This enables a pension scheme to be defined on the basis of the member's experience of whether there is a pensions promise, regardless of whether it comes from the scheme itself, the employer or a third party.

Subsection (5) provides that, in relation to a shared risk or defined contributions scheme, there is also a promise if the scheme offers the option of a promise (or the option of requiring a promise). This means that the scheme categorisation depends on what the scheme offers to members, not the offer that individual members take up. Should a scheme offer a money purchase pension with the option for members to purchase a guarantee, because there is the potential for a pensions promise to be given, this scheme would be defined as a shared risk scheme.

Subsection (6)(a) states that discretions to vary the benefit do not affect a scheme's categorisation where it would be considered otherwise as offering a "full pensions promise". This is providing that the discretions are capable only of being used for reasons related to a member's individual circumstances and meet other requirements that may be specified in regulations. For example, a defined benefits scheme may make provision for early retirement on the grounds of ill health, on a case-by-case basis, without it affecting the categorisation of the scheme under the new definitions. Since these discretions are exercised only on an individual basis, they are different from discretions applied at the scheme level.

Subsection (6)(b) states that a scheme may also offer other discretions in relation to retirement benefit without affecting its categorisation as a defined benefits scheme, as long as those discretions are of a description specified in regulations.

Subsection (7) provides that certain promises about the level of retirement income are not to be counted as pensions promises if they are only given within a specified period of that income coming into payment and are conditional on it coming into payment by a particular date. This is to cater for defined contributions schemes which also provide a retirement income stream, and make a promise only shortly before the point of decumulation, about that income. Such schemes will need to discuss and make a commitment to the member about that retirement income before the first payment is made, but will usually only make the promise in relation to the final pot and only in the immediate run up to the retirement date, so it provides no more certainty to the member than other defined contributions schemes. This subsection enables this type of scheme to remain defined contributions. It does this by excluding from the definition of "pensions promise" promises which meet a four part test: that the promise is about the level of income; that promise is conditional on the income coming into payment by a certain date; that the promise is first given during a period in the run-up to that date (with the length of that period to be specified in regulations); and that it is not a promise of a specified description (to ensure that where a scheme makes a promise within the prescribed period which does give the member greater certainty, this will be counted as a pensions promise - for example, where a promise is made about an income before the sum total of the savings is known).

Subsection (8) states that, when working out whether there is a particular kind of promise in relation to some or all of the benefits that may be provided as set out in sections 2 to 4, account must be taken of benefits which may be provided only after the member has been a member of the scheme for a certain length of time and any other benefits that may be provided to the member at a future time – for example, where members start in a scheme with money purchase benefits and no promise, but then after a certain number of years or at a certain age start accruing benefits to which a promise attaches.

Section 6: Treatment of a scheme as two or more separate schemes

This section requires regulations to be made for a pension scheme that does not fit within any of the categories set out in the sections above (it is not a defined benefits, defined contributions or shared risk scheme) to be treated as if it were two or more separate schemes, each then fitting within a category, for the purposes of these definitions and other specified legislation.

An example of such a scenario would be where an existing scheme has a defined benefits section which is not open to new members, and a defined contributions section for new members. This type of scheme would not be defined as a shared risk scheme, since, though there are some elements of a pensions promise, the promise is not available to all members. Instead, regulations must be made providing for the scheme to be treated as if it were two schemes for the purpose of the categorisation – in the example given above, it is likely that the power would be used to treat the scheme as if it were a defined benefits scheme and a defined contributions scheme.

The section also enables regulations to be made to provide for other circumstances in which a scheme can be treated as two or more schemes, each fitting within one of the scheme categories.

Section 7: Interpretation of Part 1

This section defines the terms for the purposes of Part 1.

"Normal pension age", in relation to retirement benefits, refers to the earliest age at which, or occasion on which, the pension scheme member is entitled to receive benefits from the scheme without adjustment for taking benefits early or late. If there is no such age or occasion, "normal pension age" will be the normal minimum pension age as defined by section 279(1) of the Finance Act 2004 – that is, before 6th April 2010, age 50, and on or after that date, age 55. A "fixed" normal pension age means a pension age (or other decumulation occasion) that cannot be changed except by an amendment to the scheme rules.

"Pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act – that is, as "a scheme or other arrangements comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people: on retirement; on having reached a particular age, or; on termination of service in an employment".

"Retirement benefit" refers to the benefit that a member of a pension scheme receives, which can be provided either in the form of a "retirement income" or a "retirement lump sum".

"Retirement income" is a pension or annuity payable to the member on reaching normal pension age. A "retirement lump sum" is a lump sum which is payable to the member on reaching normal pension age or made available for the provision of other retirement benefits on or after this time (this may include the purchase of an annuity).

Part 2 – Collective Benefits

Section 8: Introduction and definition

Section 8 sets out the defining characteristics of a "collective" benefit.

Where, in all circumstances the rate or amount of the benefit payable to or in respect of a member depends entirely on (a) the amount available to pay that member's and other members' benefits and (b) factors used to determine what proportion of that amount is available for the provision of the particular benefit, these benefits are defined as 'collective' in the Act. The definition also provides that a benefit which is a money purchase benefit or a benefit of a prescribed description is not a collective benefit.

Section 9: Duty to set targets for collective benefits

Section 9 provides that regulations may require that trustees or managers of pension schemes offering collective benefits set targets in relation to the rate or amount of those benefits. In particular, regulations can be made about the way that targets are expressed, recorded and published. The intention is that members of a scheme with collective benefits should be provided with a reasonable estimate of the benefits that they can expect to receive from the scheme; in the absence of a well defined pot over which the individual has clear ownership, the target is a way of illustrating for the member what they might receive. Regulations may also require trustees or managers to set initial targets at such a level that the probability of meeting the target will fall within a range specified in regulations and for this to be certified by an actuary. The setting of targets is to ensure that schemes providing collective benefits operate in a transparent manner and provide some assurance to members in relation to those benefits.

Section 9(3) provides that regulations may, in particular, make provision for matters to which the actuary should have regard, and may require trustees or managers to provide the actuarial certificate to a specified person. Regulations may also make provision about the content of the actuarial certificate and require the trustees or managers to obtain the certificate from an actuary who has certain qualifications or meets other specified requirements.

Section 10: Policy about factors used to determine each benefit

Section 11: Power to impose requirements about factors used to determine each benefit

Section 10 provides that regulations may require trustees or managers to have a policy on the factors used to calculate members' benefits and to implement that policy. Section 11 allows the Department to prescribe requirements about the factors to be used.

Section 12: Payment Schedule

Section 13: Overdue contributions and other payments

Section 12 provides for a power to make regulations which may require trustees or managers to prepare a payment schedule which shows the contributions due for payment to the scheme in respect of any collective benefits, and the dates on which these contributions are payable. Section 13 gives a regulation-making power to require a specified person to be notified in the event of any payment shown in a payment schedule becoming overdue. Regulations can also make provision for the recovery of overdue payments.

Sections 12(4) and 13(3) provide that regulations may make provisions corresponding, or similar, to those set out in Articles 85 and 86 respectively of the 1995 Order (which deal with schedules of payments for money purchase schemes).

Section 14: Statement of investment strategy

Section 15: Investment performance reports

Articles 35 and 36 of the 1995 Order (together with the Occupational Pension Schemes (Investment) Regulations (Northern Ireland) 2005) outline the requirements and principles governing investments for trust-based schemes, including a requirement for the trustees to draw up a statement of investment principles. Amongst other things, this statement must cover the trustees' policies in relation to the kinds of investment to be held, the balance between different kinds of investment, risks, and the expected return on investments.

Section 14 gives a regulation-making power to require trustees or managers of a scheme to produce a statement about the investment strategy to be followed in connection with the provision of "collective" benefits.

Section 14(3) gives a power for these regulations to make corresponding or similar provision to that which applies to trust-based schemes under the 1995 Order. Regulations may provide for specific requirements about what must be included in the statement of investment strategy, and how frequently the strategy should be reviewed.

Under section 15 regulations may be made requiring the trustees or managers of schemes to obtain regular reports on the performance of investments held for the provision of collective benefits. Regulations may provide for how frequently the investment performance reports should be obtained, from whom they should be obtained and what the reports must include.

Section 16: Investment powers

Under this section regulations may make provision in relation to investment powers of trustees or managers of schemes containing collective benefits. The regulations may also make provision allowing trustees or managers to delegate decisions about investments to another person and provision about the investment powers of any person to whom such decisions have been delegated. In this way trustees or managers can delegate powers to those with investment knowledge to act in an appropriate way. These regulations may make similar provision to Article 34 or 36 of the 1995 Order, which contain provision relating to powers of investment, delegation and choice of investments for occupational trust based schemes.

Section 17: Restriction on borrowing by trustees or managers

This section provides for a power to make regulations to prohibit trustees or managers of schemes containing collective benefits from borrowing money or acting as a guarantor, except in specified cases. This also applies to anyone to whom the trustees or manager have delegated decisions about collective benefit investments.

Section 18: Investment powers: duty of care

This section provides a power to make regulations to ensure that trustees or managers of schemes which contain collective benefits, and those who have had investment functions delegated to them, cannot be excluded from liability when exercising their investment functions involving collective benefit investments. This requirement will help to ensure that those responsible for collective benefit investments cannot avoid their duty of care in respect of how they manage the funds, in turn helping to ensure the funds are properly managed and providing a safeguard for members. This section allows current restrictions that apply under Article 33 of the 1995 Order to trustees of trust based occupational schemes in relation to investment functions to similarly apply in relation to those running schemes which offer collective benefits.

Section 19: Valuation reports

Section 20: Valuation process

Section 19 gives a regulation-making power which may require those schemes offering collective benefits to obtain a document, prepared by an actuary, which values the assets held by the scheme for the purposes of providing collective benefits and assesses the probability of the scheme being able to meet any targets in relation to those benefits. This document is defined in the Act as a "valuation report". Among other matters, the regulations may make provision about the content and frequency of valuation reports, may require that the actuary preparing the report must have particular qualifications or meet other requirements and may require the actuary to certify whether the probability falls within the required probability range or not.

Section 20 provides for a power to make provision about the methods or assumptions to be used by an actuary when drawing up a valuation report. Regulations made under this section may require an actuary to have regard to guidance when preparing the valuation report and may impose other requirements on the actuary.

The section also contains a power to require the trustees or managers to decide the methods or assumptions to be used by the actuary and a power for regulations to set out matters that the trustees or managers must take into account, or principles they must follow, when making that decision. These principles might, for example, state the parameters of the economic and actuarial assumptions must be used.

Section 21: Policy for dealing with a deficit or surplus

Under this section, regulations may provide that trustees or managers of schemes offering collective benefits are required to have a policy for dealing with circumstances where the probability of a scheme meeting a target in relation to a collective benefit is outside of the required range of probability set out in regulations - termed in the Act as a "deficit" or "surplus".

Trustees and managers will usually have some flexibility and discretion about how they react to a "deficit" or "surplus", therefore the section sets out powers which may require the policy to contain provision for a "deficit" or "surplus" to be dealt with in one or more of a range of ways. Regulations may require the policy, to contain an explanation of the possible effect of the policy on members in different circumstances and to be drawn up with a view to achieving certain results within a specified period of time. Regulations may require consultation with members about the policy and any changes to it, and may make provision for the policy to be regularly reviewed or revised. Regulations may also make provision about the content of the policy and set out matters or principles that trustees must take into account or follow in setting the policy.

Section 22: Power to impose requirements about dealing with a deficit or surplus

This section provides for regulations to set out circumstances in which a deficit or surplus must be dealt with in a particular way. The regulations can set out specific things trustees or managers must do and the time within which they must do them.

Section 23: Deficits attributable to an offence or the imposition of a levy

This section sets out a regulation-making power to allow an amount to be treated as a debt due from an employer to a scheme offering collective benefits in situations where a deficit in relation to a target benefit has resulted from a specified offence or the imposition of a specified levy. In this context, section 23(2) provides that regulations may mirror, or be similar to, any provision made by Article 75 (amounts deemed to be debts due from an employer) of the 1995 Order.

Section 24: Payment of amounts out of collective benefit funds

Regulations under this section will ensure that assets held in relation to collective benefits are used to provide those benefits. However, there is a power to make exceptions to this general rule. It may be that there are some limited circumstances when it may be appropriate for an employer or some other party to be entitled to some share of any surplus from the scheme. For example, where an employer wishes to assist a collective benefit scheme that falls into difficulty by putting some extra funds in, then to encourage such an action there may be arrangements in place to allow the possibility of full or partial repayment to the employer if the scheme has a future surplus. Regulations under this section may be similar to existing provisions in Article 37 of the 1995 Order.

Section 25: Policy for calculating cash equivalent of benefits

This section contains a power to require trustees or managers of a scheme offering collective benefits to have and to follow a policy for the calculation and verification of cash equivalents of collective benefits. The cash equivalent is used for the purpose of calculating transfer values and for valuing rights for sharing pensions on divorce.

Regulations under this section may require trustees or managers to ensure that the policy is consistent with any requirements imposed by regulations under section 93 or 97I of the Pension Schemes Act or Article 27 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 or any other specified requirements. Regulations may also make provision about the content of the policy, the review and revision of the policy, and may require trustees or managers to consult about the policy. The regulations can also set out the sort of things trustees or managers must take into account or principles they must follow in setting the policy.

Section 26: Winding up

This section provides for regulations about the winding up of schemes providing collective benefits. The regulations can also apply to part of a scheme providing collective benefits.

The regulations can make provision about the distribution of assets between members, the operation of the scheme during wind up, discharge of liabilities, and excess assets on wind up. The 1995 Order already makes provision in relation to these areas for some occupational pension schemes.

The section therefore provides for regulations to disapply, amend or otherwise modify the application of Articles 38, 73, 73A, 73B, 74 and 76 of the 1995 Order, which concern the winding up of occupational pension schemes. It also provides for regulation-making powers to make provision corresponding or similar to any provision made by Articles 38, 73, 73A, 73B, 74 and 76 of the 1995 Order.

Section 27: Requirement to wind up scheme in specified circumstances

This section provides for regulations to set out circumstances in which the trustees or managers must wind up either the whole or part of a scheme providing collective benefits. The powers have been drafted to ensure that any wind up required under this provision will be as effective as if it had been made under powers conferred by the scheme. Regulations made under this section may also override any other legislation or scheme rules that would otherwise prevent wind up, and override any need for any consent or procedure that would otherwise be required.

Section 28: Policies about winding up

Under this section, regulations may provide that trustees or managers of schemes offering collective benefits are required to have a policy for dealing with the winding up of a scheme providing collective benefits and to follow the policy.

The regulations can require trustees or managers to consult about the policy and to make provision for reviewing and revising the policy.

The regulations can also make provision about the content of the policy and can set out the sort of things trustees or managers have to take account of or the principles they have to follow when putting the policy together.

The regulations can require the policy to include an explanation of the circumstances in which trustees or managers are required to wind up the scheme and the circumstances in which they have the power to decide when to wind up. If they have the power to decide when to wind up, regulations can require the policy to set out how they intend to use that power.

The regulations can also require the policy to include an explanation of how assets will be distributed, and if the trustees or managers have the power to decide how to distribute assets, how they intend to use that power.

Section 29: Working out which assets are available for the provision of which benefits

This section provides for regulations to set out how to work out which benefits are available for the provision of collective benefits, which assets are available for the provision of which collective benefits (for example if there is more than one section in a scheme providing collective benefits) and which assets are available for the provisions of benefits other than collective benefits.

Section 30: Requirement to obtain actuarial advice

Section 31: Sub-delegation

Section 32: Publication of documents etc

Section 33: Enforcement

Section 30 provides that regulations may require trustees or managers to consult an actuary who has specified qualifications or meets other specified requirements before making a specified decision or taking other specified steps.

Section 31 provides a power for regulations to confer discretion on a person in relation to the provisions in Part 2 of the Act, for example, regulations may make provision for the methods or assumptions to be used by an actuary but leave some discretion about these matters to the actuary.

Section 32 provides that where regulations made under Part 2 of the Act require the trustees or managers to prepare or obtain a document, regulations may also impose requirements about the publication of that document and require copies of that document to be sent to certain persons.

Section 33 provides a power for the regulations made under Part 2 of the Act to provide for civil penalties to apply where a person breaches requirements in those regulations.

Section 34: Overriding requirements

This section allows for regulations made under Part 2 of the Act to override any conflicting provisions in scheme rules.

Section 35: Interpretation of Part 2

This section defines a number of expressions used in Part 2 of the Act.

The section also provides that a power conferred by this Part of the Act to make provision corresponding or similar to any provision made by an Article of the 1995 Order includes a power to make provision corresponding or similar to any provision that may be made by regulations under that Article.

Part 3 – General Changes to Legislation about Pension Schemes

Section 36: Pensions promise obtained from third party

This section relates to the possibility of a pensions promise, for the purposes of a defined benefits or shared risk scheme being obtained from a third party, as set out in section 5. It contains a regulation-making power to require that trustees or managers of a scheme must not obtain any such promise from a third party unless conditions set out in the regulations are met. Regulations under this section may also provide for civil penalties to apply to a person who fails to comply with them. This section also makes changes to Article 34(7) of the 1995

Order to add this section to the list of provisions that Article 34, which makes its own provisions in relation to trustees' power of investment, cannot override.

Section 37: Duty to act in the best interest of members

Regulations under this section may require managers in non-trust based schemes to act in members' best interests when taking certain specified decisions. This duty may apply in shared risk schemes and defined contribution schemes offering collective benefits.

Regulations may provide for the duty to override obligations that are inconsistent with that duty, but do not otherwise affect any other duty that might arise. Where a manager has breached or threatened to breach the duty under such regulations to act in members' best interests, regulations may provide that the manager will be subject to the same consequences as would follow from breach of a fiduciary duty.

Section 38: Disclosure of information about schemes

Section 109 of the Pension Schemes Act sets out a power for the Department to make regulations in relation to occupational and personal pension schemes, setting out requirements to keep certain persons informed of various matters including the scheme's constitution, its administration and finances, and the rights and obligations that may arise under the scheme.

This section amends section 109, removing the list at subsection (2) of the persons who can be kept informed under provisions of the regulations, and instead specifying that it applies in respect of 'persons of prescribed descriptions' – that is, the persons who should be kept informed will be set out in secondary legislation.

The section also introduces a requirement for schemes to have regard to any guidance prepared by the Department when complying with disclosure requirements.

Section 39: Extension of preservation of benefit under occupational pension schemes

This section amends Part 4 of the Pension Schemes Act, which concerns the preservation of benefit for early leavers of occupational pension schemes. Pension scheme members whose pensionable service is terminated before reaching normal pension age are entitled to payment of the benefit accrued up to that point, providing they have two years' qualifying service or have previously transferred their rights into the scheme from a personal pension. (Members who leave without a preserved benefit are entitled to transfer the value of the benefits they have accrued or receive a refund of their own contributions.)

The preserved benefit to which former members are entitled – termed "short service benefit" – is the same as that which would have been payable for that period if they had remained members in pensionable service in the scheme until retirement.

The 2015 Act introduces a requirement that, where all benefits for a member are money purchase benefits, a preserved pension must be provided after 30 days' qualifying service.

The section amends section 67 of the Pension Schemes Act so that schemes must provide a short service benefit where leavers have at least 30 days' qualifying service and all the pension benefit is a non-salary related one (that is, not calculated either by rate or amount with reference to the member's salary) or where it is a collective benefit. If any of the pension benefit is salary related, the two year rule still applies.

Where a benefit may be calculated on a salary related basis in some circumstances and on a non-salary related basis in others (e.g. an underpin benefit which pays the higher of the two calculations), it will be treated as salary-related for these purposes.

If a member's pensionable service began before the amendments came into operation, the previous requirements for preservation of benefits will continue to apply.

The section also ensures the uniform accrual rules do not apply in respect of collective benefits.

Section 40: Revaluation of accrued benefits

Schedule 1: Early leavers: revaluation of accrued benefits

When a member stops being an active member of a scheme more than a year prior to retirement, the accrued benefits are required to be "re-valued" at the scheme's normal pension age to provide a measure of inflation protection over the period of deferral. Sections 79 to 82 of, and Schedule 2 to, the Pension Schemes Act set out the procedure for revaluation based on benefit type.

The existing section 80 of the Pensions Schemes Act takes the final salary method as its default method of revaluation for accrued benefits. This method requires benefits to be increased by inflation capped at 5 or 2.5 per cent each year (depending on when pensionable service occurred), but there is an alternative for average salary, flat rate or money purchase benefits. In these cases, the legislation allows for revaluation using the average salary and flat rate methods, where trustees or managers consider these methods, respectively, to be more appropriate than the final salary method, and the money purchase method where benefits are money purchase or benefits from a personal pension scheme.

The basic principle behind the non-final salary provisions is that both active scheme members and those who have left the scheme before normal pension age should be treated in the same way. Their rights in relation to accrued benefits should not be affected because they have, for example, changed their place of employment and consequently left that pension scheme. The methods are set out in Schedule 2 to the Pension Schemes Act. For the final salary method, the annual Occupational Pensions (Revaluation) Order (Northern Ireland) sets out the percentages to be used for people retiring during the following year. The average salary and flat rate methods state that benefits are to be re-valued in the same way as they would have been had the member remained in pensionable service. In the money purchase method the requirement is to apply the same investment return on the accrued benefits to both active and deferred members.

The Pensions (2012 Act) (Consequential and Supplementary Provisions) Regulations (Northern Ireland) 2014 (S.R. 2014 No. 213) introduced an additional cash balance method for cash balance benefits not calculated by reference to final salary which accrue after section 27 of the 2012 Act is commenced. This also required active and deferred members to be treated in the same way.

Schedule 1 to the Act amends the Pension Schemes Act. There will be no changes to the method applicable for benefits which accrued before the changes come into operation or for relevant pension credits rights where entitlement arose before the changes come into operation. A new “default method” will apply for all benefits except those which are money purchase, salary related or flat rate. (“Salary related” will include final salary cash balance schemes). The default is simply to revalue benefits as they would have been had the member remained in pensionable service. The exceptions for the default method remain money purchase benefits, flat rate benefits and what are now termed “salary related” benefits. A salary related benefit must be re-valued using the final salary method except where those benefits are average salary and trustees or managers consider the average salary method more appropriate. Money purchase benefits should be re-valued using the money purchase method. These methods continue to apply the definitions set out in Schedule 2 to the Pension Schemes Act where referenced.

Collective benefits will be re-valued using the default method.

Schedule 1 (see new section 80D) also sets out the revaluation procedure for hybrid benefits – those benefits which are made up of different components, the highest of which is paid. In this case, each component will be re-valued separately before deciding which is the highest. This replicates the effect of provision currently contained in regulations. In new section 80E there is provision for schemes which have used certain alternative methods of revaluation (primarily public service pension schemes) to continue to do so.

There is also a power (in new section 81A) to add revaluation methods for personal pension schemes. This is to allow for the possibility that in the future the design of personal pensions introduces a wider range of benefits than are provided for by the new provisions.

Section 41: Collective benefits exempt from indexation

Section 42: Regulatory own fund schemes exempt from indexation

Section 43: Power to create other exemptions from indexation

The 1995 Order makes provision for indexation of pensions under occupational pension schemes (other than public service pension schemes). Section 41 excludes collective benefits from the requirement to annually increase pensions in payment set out in Article 51 of the 1995 Order.

Section 42 amends the provision in Article 51 of the 1995 Order to ensure schemes set up as "Regulatory Own Funds" will be exempt from requirements to index benefits. This is because it may not always be appropriate for such schemes to index the benefits offered. Section 42(3) introduces a definition of a "Regulatory Own Fund scheme" which refers directly to Article 17 of European Council Directive (2003/41/EC).

Section 43 amends Article 51 of the 1995 Order to insert a regulation-making power that may disapply the requirement to annually increase pensions in payment in respect of a pension, or part of a pension, of a specified description. The power cannot be used to remove the requirement to index pensions that came into payment or parts of pension attributable to pensionable service that has occurred before the day on which regulations come into operation, or to a pension or any part of a pension under a defined benefits scheme. The regulations will therefore not be able to affect rights already accrued or benefits under a defined benefits scheme.

Section 44: Removal of requirement to maintain a register of independent trustees

This section removes the statutory requirement for regulations to provide that the Pensions Regulator compile and maintain a register of trustees (the relevant regulations are the Occupational Pension Schemes (Independent Trustee) Regulations (Northern Ireland) 2005 (S.R. 2005 No. 169)).

Article 23 of the 1995 Order allows the Pensions Regulator to appoint an independent trustee to a scheme whose employer has suffered an insolvency event. The Regulator can only appoint a trustee from the trustee register, which it must establish and maintain. But the Regulator has another, general power (under Article 7 of the 1995 Order) to appoint trustees to replace a person found not to be "fit and proper" to be a trustee. In relation to this there is no requirement to appoint from a register of trustees. This section removes the requirement to maintain a register of trustees under Article 23, in order that the Regulator can instead follow the same procedure as when appointing trustees under Article 7.

Section 45: Rules about modification of schemes

Article 67 of the 1995 Order contains provisions to protect members against detrimental modifications to their "subsisting rights" – that is, "any right which at that time has accrued to or in respect of the member to future benefits under the scheme rules; or any entitlement to the present payment of a pension or other benefit which the member has at that time, under the scheme rules".

The section replaces the existing regulation-making power to disapply Article 67 for the exercise of a power in a prescribed manner and replaces it with a power to disapply in prescribed cases.

Modifications can only be made if the value of the benefits is the same before and after the change or if the member agrees. Some changes can only be made if the member agrees: these are called "protected modifications". Article 67A sets out the circumstances in which a modification to members' rights is a 'protected modification'.

Currently, Article 67A states that a change is a "protected modification" where money purchase benefits would replace non-money purchase benefits, or where the change would result in a reduction to a pension in payment.

This section amends Article 67A to include a modification where a right to benefits that include a pensions promise is to be replaced by a right to benefits where there is no pensions promise, where a right to a retirement income in respect of which there is a pension promise becomes a right to benefits other than retirement income and where a right or entitlement to a benefit which is not a collective benefit is replaced with a right or entitlement to collective benefits.

This section also amends Article 67A to provide that a reduction to a collective benefit in payment is not a "protected modification".

It also updates the list of relevant override provisions in Article 67A to include regulations made under Part 2 of this Act and regulations made under Schedules 17 and 18 to the 2015 Act. This means where these regulations override conflicting provision in the scheme rules, that the regulations are treated as part of the scheme rules for the purposes of the subsisting rights provisions.

Section 46: Pension sharing and normal benefit age

When a pension is shared on divorce etc, the former spouse's or civil partner's share may (or, in the case of unfunded public service schemes must) be retained in the pension scheme as a pension credit benefit. Schemes must have a normal benefit age when they start to pay the pension credit benefit. At the moment this must be between 60 and 65.

As longevity increases, some pension schemes will start to increase their normal pension age above 65. This section amends section 97C of the Pension Schemes Act to allow a pension scheme to increase its normal benefit age for a pension share to a permitted maximum. The permitted maximum is 65, or if higher, the highest normal pension age for any benefit payable to, or in respect of, ordinary members of the scheme.

The section also amends section 97B of the Pension Schemes Act to provide a new definition of "normal benefit age" and "normal pension age.

Section 47: Other amendments to do with Parts 1 and 2

Schedule 2: Other amendments to do with Parts 1 and 2

Schedule 2 makes consequential amendments to existing pensions legislation to take account of the categories of scheme defined in Part 1 and collective benefits defined in Part 2. The Schedule also makes some resulting changes to replace references to money purchase schemes to limit the number of ways of categorising schemes in legislation.

Where there are references in existing legislation to a "money purchase scheme", these are generally replaced by references to "a scheme under which all the benefits that may be provided are money purchase benefits". This does not change the effect of the legislation – rather, they are technical changes to limit the number of categories that can be attached to pension schemes.

In other cases, the new categories are themselves substituted for existing definitions.

Pension Schemes (Northern Ireland) Act 1993

Section 120 of the Pension Schemes Act places a duty on the Department for Employment and Learning to pay unpaid contributions to schemes in the event of employer insolvency and consequent default on employer contributions. The amount that the Department is required to pay is the least of three amounts set out in paragraphs (a) to (c) of subsection (3). Subsection (3A) states that where the scheme is a money purchase scheme, the amount is the lesser of the amounts specified in paragraphs (a) and (c) (paragraph (b) is not relevant to money purchase schemes). The Schedule amends the wording to replace "money purchase scheme" with "defined contributions scheme, or a shared risk scheme under which all of the benefits that may be provided are money purchase benefits". The Schedule also amends subsection (3A) so that it also applies to a shared risk scheme under which all the benefits that may be provided are money purchase benefits or collective benefits. This updates the provision to ensure it applies in the right way to schemes which offer collective benefits and that they are covered by the appropriate provision, as well as ensuring all schemes which are shared risk and have only money purchase and collective benefits, and schemes which are defined contributions and provide a guaranteed income after the point of retirement, are captured.

Section 176 of the Act is amended so that the terms, "defined contributions scheme", "defined benefits scheme", and "shared risk scheme", as set out in Part 1 of this Act and "collective benefit", as set out in Part 2 of this Act, apply in that Act.

Pensions (Northern Ireland) Order 1995

Article 37 of the 1995 Order makes provision in relation to payments to employers when a trust-based occupational scheme is in surplus. Paragraph 7 of the Schedule amends paragraph (1A) of Article 37 to disapply that Article in relation to funds held for the purposes of collective benefits. Funds held for the purposes of providing collective benefits should only be used to provide those benefits except in very limited circumstances. Employer liability in respect of collective benefits is limited to the employer contributions and they cannot be required to make any additional payments where the funds are insufficient to meet the targets. Correspondingly, they should not, as a general rule, have a right to any surplus in the fund. Regulations made under section 24 will set out any exceptions to the rule that the funds must only be used for provision of collective benefits.

Articles 51 and 51A of the 1995 Order relate to indexation requirements for pension schemes (that is, the method by which pensions in payment are increased annually to take account of inflation). The Schedule amends paragraph (1)(a)(iii) of Article 51, which exempts pensions in money purchase schemes from indexation requirements in certain circumstances, by substituting "defined contributions scheme" for "money purchase scheme". It consequently amends Article 51A to replace 'money purchase scheme' with "defined contributions scheme". This means that the indexation requirements exclude all defined contributions schemes, including money purchase schemes, schemes offering collective benefits, and those that are defined as self-annuitising under Article 51A.

Article 73 of the 1995 Order deals with distribution of liabilities when an occupational pension scheme winds up. Paragraph 11 of the Schedule amends paragraph (2) of Article 73 to reflect the new scheme categories found in Part 1 of the Act.

Paragraph 11 of the Schedule applies the existing provisions on wind up to the new categories of defined benefits, shared risk and defined contributions schemes. The provisions on winding up do not apply to schemes under which all the benefits that may be provided are money purchase benefits or prescribed schemes or schemes of a prescribed description. This maintains the current position.

An "employer debt" is a reference to a statutory debt arising under Article 75 of the 1995 Order. Article 75 of the 1995 Order applies to an occupational pension scheme (other than a scheme which is a money purchase scheme, or a prescribed scheme or a scheme of a prescribed description) where there is a funding deficit in circumstances where either the scheme is winding up or a prescribed event has occurred in relation to the employer.

Paragraph 12 of the Schedule provides that Article 75 will not apply to an occupational pension scheme which offers only collective benefits, money purchase benefits, or a combination of the two. This paragraph also provides that where a scheme offers a combination of collective and non-collective benefits, the scheme is to be treated for the purposes of Part 1 of the 1995 Order as two separate schemes, with one scheme relating to the collective benefits and the other relating to the other benefits. Not all benefits in a defined contributions scheme will necessarily be money-purchase – some or all may be collective benefits.

Articles 85 and 86 of the 1995 Order make provision requiring trustees or managers of occupational money purchase schemes to prepare schedules of payments for scheme members. The Schedule amends this requirement so that it applies to all defined contribution schemes and any shared risk schemes under which either all of the benefits that may be provided are money purchase benefits, or a combination of money purchase and collective benefits. The wording of paragraph (2)(a) of Article 85 is altered to place focus on the type of benefits that are being offered, in order that ‘relevant benefits’ are considered regardless of whether a scheme is a defined contributions or a shared risk scheme. Article 121 of the 1995 Order is amended so that the terms “defined contributions scheme”, “defined benefits scheme” and “shared risk scheme”, as set out in Part 1 of this Act and “collective benefit” as set out in Part 2 of the Act, apply in that Order and to include a definition of “occupational” in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme.

Welfare Reform and Pensions (Northern Ireland) Order 1999

Article 35 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 makes provision about the treatment of pension credits in winding up. Currently it does not apply to a money purchase scheme. The amendment replaces the reference to a money purchase scheme with a reference to a scheme under which all the benefits that may be provided are money purchase benefits. This does not change the effect.

Pensions (Northern Ireland) Order 2005

The majority of the amendments made to the 2005 Order take out a number of references to money purchase schemes and update provisions in that Order to take account of the new pension scheme categories and the introduction of collective benefits. In most cases, the effect of the provisions is to extend exemption of the provision from schemes offering only money purchase benefits to schemes in which all benefits are collective or a combination of collective and money purchase. However, in paragraph 24 is a further qualification – with the effect that the provision does apply to schemes with only money purchase benefits which include a third party promise.

Article 2 of the 2005 Order defines terms used throughout that Order. Paragraph 21 of Schedule 2 of this Act inserts the new scheme category and collective benefit definitions and omits the definition of ‘money purchase scheme’. It also updates the list of overriding provisions contained in the definition of “scheme rules” in the 2005 Order, to include regulations made under Part 2 of this Act, and under Schedule 17 and 18 to the 2015 Act. This means that where these regulations override conflicting provision in the scheme rules the regulations are treated as part of the scheme rules for the purposes of the 2005 Order.

Paragraphs 22, 28, 31 and 33 also amend the definition of pensions legislation in Articles 9, 85, 231 and 267 of the 2005 Order to include provisions in and made under the Act, ensuring that the Regulator can take action where there are breaches of the Act and Regulations made under it and to allow for modification of the provisions where schemes receive contributions from a European employer.

Article 110 of the 2005 Order defines those occupational pension schemes which are eligible to be taken over by the Board of the Pension Protection Fund. Paragraph 29 of the Schedule amends the 2005 Order to include reference to the new categories of occupational pension scheme in Part 1 of the Act, (defined benefits, shared risk and defined contributions schemes) as eligible for the Pension Protection Fund. This paragraph also has the effect that occupational pension schemes that offer only money purchase and collective benefits, and occupational pension schemes that offer only collective benefits are not eligible for the Pension Protection Fund.

Pensions (No. 2) Act (Northern Ireland) 2008

Sections 20 to 28 of the Pensions (No. 2) Act set out the requirements that a pension scheme must meet if it is to be a qualifying scheme for the purposes of meeting an employer’s enrolment duties under pension legislation. (This is sometimes referred to as “automatic enrolment”.)

The amendments in Schedule 2 to the Act replace the existing definitions of “defined benefits scheme”, “money purchase scheme” and “hybrid scheme” in these sections with the new definitions set out in Part 1 of this Act, and change the section headings accordingly. The quality requirements are on the whole unchanged (except where stated).

Section 26 is amended to refer to a personal pension scheme “that is a defined contributions scheme”. The requirements are the same except it will no longer be a requirement that all benefits under the scheme must be money purchase benefits.

Section 78 is amended to insert the definitions of “defined benefits scheme”, “defined contributions scheme” and “shared risk scheme” as set out in Part 1 of this Act and “collective benefit” as set out in Part 2 of the Act, as well as defining “occupational” as it applies to these pension schemes. The original references to “defined benefits”, “money purchase scheme” and “hybrid scheme” are omitted.

Part 4 – General

Section 48: Power to make consequential amendments

Section 49: Regulations

Section 50: Crown application

Section 51: Interpretation

Section 52: Commencement

Section 53: Short title

These sections relate to the power to make consequential amendments, general provision in respect of regulations and orders under the Act, the interpretation of terms used in the Act, the commencement of provisions in the Act and the short title of the Act.