

2016 No. 294

PENSIONS

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

<i>Made</i> - - - -	<i>3rd March 2016</i>
<i>Laid before Parliament</i>	<i>7th March 2016</i>
<i>Coming into force</i> - -	<i>6th April 2016</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 113(1) and (3), 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a), sections 74(2) and (3)(e), 91(5)(c)(iii), 124(1) and 174(2) and (3) of the Pensions Act 1995(b), sections 122(5), 129(1)(b), (1A)(b) and (3), 130(5)(b), 135(4), 138(9B), 170(2), 315(2), (4) and (5) and 318(1) of, and paragraphs 24(1) and (2), 25(1) and 33 of Schedule 7 to, the Pensions Act 2004(c) and section 83 of the Pension Schemes Act 2015(d).

In accordance with section 185(1) of the Pension Schemes Act 1993(e), section 120(1) of the Pensions Act 1995 and section 317(1) of the Pensions Act 2004, the Secretary of State for Work and Pensions has consulted such persons as he considers appropriate.

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- (a) 1993 c. 48. Paragraph (ca) of section 113(1) was inserted by section 52(1) of the Child Support, Pensions and Social Security Act 2000 (c. 19). There are amendments to section 181(1) not relevant to these Regulations. Section 181(1) is cited for the meaning it gives to “prescribed” and “regulations”. Section 183(1) was amended by paragraph 79 of Schedule 5 paragraph 15(a) of Schedule 6 and Parts III and IV of Schedule 7 to the Pensions Act 1995 (c. 26) (“the 1995 Act”).
- (b) 1995 c. 26. Section 74(2) was amended by section 270(2)(b) of the Pensions Act 2004 (c. 35), and section 74(3)(e) was inserted by section 270(2)(c) of that Act. Section 91(5) was amended by paragraph 57(4)(a) of Schedule 12 to the Welfare Reform and Pensions Act 1999 (c. 30); there are other amendments to section 91(5) but none is relevant. Section 124(1) is cited for the meaning it gives to “prescribed” and “regulations”.
- (c) 2004 c. 35. The Pensions Act 2004 is modified in its application to multi-employer schemes by S.I. 2005/441, as amended by S.I.s 2005/993 and 2005/2113; there are other amendments to S.I. 2005/441 but none is relevant. Section 129 is modified for certain cases by regulations 17(3) and 65(1) of S.I. 2005/441 to read as if subsection (1A)(b) were inserted. Section 129(1)(b) is cited in its unmodified form. Sections 135(4)(za) and 138(9B) were inserted by sections 58(3) and 59(10), respectively, of the Pension Schemes Act 2015 (c. 8). Section 318(1) is cited for the meaning it gives to “prescribed” and “regulations”. Paragraphs 24(1) and 25(1) of Schedule 7 were amended by paragraphs 25 and 19(3)(a), respectively, of Schedule 4 to the Pensions Act 2011 (c. 19).
- (d) 2015 c. 8.
- (e) Section 185(1) was amended by paragraph 46 of Schedule 3 and paragraph 80(a) of Schedule 5 to the 1995 Act.

PART 1

General

Citation and commencement

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

PART 2

Occupational pension schemes amendments

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

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

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

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

(3) In regulation 8(6) (requirements to be satisfied by transferee schemes, annuities etc.)(c)—

(a) in sub-paragraph (a), for “Chapter 5 of Part 4” substitute “Chapter 2 of Part 4ZA”; and

(b) in sub-paragraph (b)(i)(aa), after “trivial commutation lump sum” insert “, an uncrystallised funds pension lump sum”.

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

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

PART 3

Pension Protection Fund amendments

Amendments to the Pension Protection Fund (Compensation) Regulations 2005

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

(a) S.I. 1996/3126.

(b) 2004 c. 12. *See* paragraph 4A of Schedule 29 (registered pension schemes: authorised lump sums: uncrystallised funds pension lump sum), which was inserted by paragraph 57 of Schedule 1 to the Taxation of Pensions Act 2014 (c. 30).

(c) Paragraph (6) of regulation 8 was inserted by S.I. 2005/706 and amended by S.I. 2009/2930.

(d) S.I. 1997/785. Paragraph (1B) of regulation 2 was inserted by S.I. 2006/744 and amended by S.I. 2015/493.

(e) S.I. 2005/670; relevant amending instruments are S.I.s 2006/580, 2007/782, 2010/560, 2013/627 and 2014/1711.

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

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

(3) In regulation 2(2) (circumstances where a person shall be entitled to early payment of compensation)(b), for sub-paragraph (b) substitute—

“(b) that on the date on which the compensation is to become payable early the person has attained—

(i) except in a case to which paragraph (ii) applies, normal minimum pension age as defined in section 279(1) of the 2004 Act(c);

(ii) in a case where the person has a protected pension age of less than 50 by virtue of paragraph 22 of Schedule 36 to the 2004 Act (rights to take benefit before normal minimum pension age)(d), the age of 50.”.

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

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

(b) omit paragraph (3).

(5) In regulation 25(3) (cash balance schemes: modification of Schedule 7 to the Act)(f), for “In this regulation” substitute “In this Part”.

(6) In Part 10, after regulation 25(g) insert—

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

25A.—(1) In its application to a cash balance scheme, paragraph 37 of Schedule 7 to the Act (other definitions)(h) applies as if, after sub-paragraph (4) there were inserted—

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

(2) In its application to a cash balance scheme other than a scheme to which regulation 25 applies, paragraph 37(1) of Schedule 7 to the Act applies as if, before the definition of “deferred member” there were inserted—

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

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- (a) The definition of “PPF trivial commutation lump sum” was inserted by S.I. 2006/580; there are other amendments to regulation 1(2) but none is relevant.
- (b) Sub-paragraph (b) of regulation 2(2) was substituted by S.I. 2010/560.
- (c) See regulation 1(2) of S.I. 2005/670 for the meaning of “the 2004 Act”.
- (d) Paragraph 22 was amended by paragraphs 54 and 55 of Schedule 10 to the Finance Act 2005 (c. 7), paragraph 43 of Schedule 23 to the Finance Act 2006 (c. 25), paragraph 432 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and paragraph 7 of Schedule 5 to the Finance Act 2014 (c. 26).
- (e) Regulation 19(1) was amended by S.I. 2006/580. Paragraph (3) of regulation 19 was inserted by S.I. 2006/580 and amended by S.I.s 2013/627 and 2007/782. There are other amendments to regulation 19 but none is relevant.
- (f) Paragraph (3) of regulation 25 was inserted by S.I. 2014/1711.
- (g) Regulation 25 was amended by S.I.s 2010/560 and 2014/1711.
- (h) See regulation 1(2) of S.I. 2005/670 for the meaning of “the Act”. There is an amendment to paragraph 37 not relevant to these Regulations.
- (i) S.I. 2014/1711.

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

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

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

(a) in paragraph (3)—

(i) after the definition of “EEA regulator”, insert—

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

(ii) after the definition of “home state regulator”, insert—

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

(b) after paragraph (6), insert—

“(7) In these Regulations, references to the centre of a person’s main interests are to be construed in accordance with Article 3 of the Insolvency Regulation.”.

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

(a) omit paragraph (4); and

(b) for paragraph (5) substitute—

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

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

“Applications and notifications to the Board

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

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

(a) an individual;

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

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

(d) a partnership; or

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

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

(a) S.I. 2005/590; relevant amending instruments are S.I.s 2005/993, 2005/2113, 2005/2153, 2005/2224, 2009/451, 2010/2628, 2012/917, 2014/1664 and 2014/1711.

(b) Regulation 1 was amended by S.I.s 2005/2113, 2005/2153, 2009/451, 2010/2628, 2011/99, 2012/917, 2014/1711 and 2015/575. There are other amendments to regulation 1 but none is relevant.

(c) OJ L 160 30.6.2000, p. 1.

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

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

(f) See regulation 1(3) of S.I. 2005/590 for the meaning of “the Act”.

(g) 2006 c. 46.

(h) 1986 c. 45.

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

(5) This paragraph applies to an employer if—

- (a) the centre of the employer’s main interests is situated within the territory of a member State other than the United Kingdom;
- (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation; and
- (c) the employer does not have an establishment in the United Kingdom.

(6) In this regulation references to a member State do not include Denmark.”.

(5) In regulation 7A (applications and notifications to the Board – multi-employer schemes)(a), for paragraph (2) substitute—

“(2) In the case of a scheme, or a section of a scheme, to which this regulation applies, the prescribed requirement for the purposes of section 129(1A)(b) and (4)(a)(ii) of the Act (applications and notifications for the purposes of section 128) is that at least one of paragraphs (3), (5) and (6) applies to the employer.

(3) This paragraph applies to an employer if it is not—

- (a) an individual;
- (b) a company as defined in section 1(1) of the Companies Act 2006;
- (c) a company which may be wound up under Part 5 of the Insolvency Act 1986;
- (d) a partnership; or
- (e) a relevant body as defined in regulation 5(2).

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

(5) This paragraph applies to an employer if it is an EEA insurer or an EEA credit institution.

(6) This paragraph applies to an employer if—

- (a) the centre of the employer’s main interests is situated within the territory of a member State other than the United Kingdom;
- (b) insolvency proceedings have been opened against the employer in a member State in accordance with Article 3 of the Insolvency Regulation; and
- (c) the employer does not have an establishment in the United Kingdom.

(7) In this regulation references to a member State do not include Denmark.”.

(6) In regulation 8 (applications and notifications to the Board – further provision)(b)—

(a) for paragraph (1), substitute—

“(1) Except in a case to which regulation 8A applies, the prescribed period for making an application to the Board under section 129(1) of the Act (applications and notifications for the purposes of section 128) shall be the period of—

- (a) 28 days; or
- (b) such longer period of not more than three months as the Board may determine is reasonable in the circumstances of a particular case,

(a) Regulation 7A was inserted by S.I. 2005/2153 and amended by S.I. 2009/451.

(b) Regulation 8(1) was amended by S.I. 2005/2153. There are other amendments to regulation 8 but none is relevant.

beginning with the date on which the trustees or managers of an eligible scheme become aware that the employer in relation to the scheme is unlikely to continue as a going concern.”; and

(b) in paragraph (2)—

(i) at the end of sub-paragraph (e) omit “and”;

(ii) at the end of sub-paragraph (f) insert “; and”;

(iii) after sub-paragraph (f) insert—

“(g) if the application was not sent to the Board within the period specified in paragraph (1)(a) of this regulation, the reasons for this.”.

(7) In regulation 9 (confirmation of scheme status by insolvency practitioner)(a)—

(a) in paragraph (1)—

(i) in the opening words of sub-paragraph (a), for “a company” substitute “not an individual or a partnership”; and

(ii) in the opening words of paragraph (i) of sub-paragraph (a), for “the company” substitute “the employer”; and

(b) in the opening words of paragraph (2)(a), for “a company” substitute “not an individual or a partnership”.

(8) In regulation 10(3) (confirmation of scheme status by Board)(b)—

(a) in sub-paragraph (a), for the words “the employer is a company, an EEA credit institution or an EEA insurer” substitute “the employer is not an individual or a partnership”; and

(b) in sub-paragraph (c), omit the words “but is not an EEA credit institution or an EEA insurer”.

(9) In regulation 16 (restrictions on winding up, discharge of liabilities etc.)(c)—

(a) in the opening words of paragraph (1), for “subsection (2)” substitute “paragraph (2)”;

(b) before sub-paragraph (a) of paragraph (1) insert—

“(za) a right or entitlement to benefits that are not money purchase benefits may be converted into, or replaced with, a right or entitlement to money purchase benefits under an eligible scheme are where, before the beginning of the assessment period in relation to the scheme, a person has—

(i) a right or entitlement under the scheme rules in respect of flexible benefits (as defined by section 74 of the Pension Schemes Act 2015(d)) that are not money purchase benefits;

(ii) notified the trustees or managers of the scheme that the person wishes to exercise an option under the scheme rules to convert those benefits (or a portion of them) into, or replace them (or a portion of them) with, money purchase benefits for the purpose of designating sums or assets as available for the payment of drawdown pension, dependants’ drawdown pension, nominees’ drawdown pension or successors’ drawdown pension (as defined by paragraphs 4, 18, 27B and 27G of Schedule 28 to the Finance Act 2004(e), respectively); and

(iii) complied with any requirements, and satisfied any conditions, to which the exercise of that option is subject;”;

(c) in paragraph (1)(a)—

(a) Regulation 9 was amended by S.I. 2005/993.

(b) Regulation 10 was amended by S.I. 2009/451.

(c) Regulation 16 was amended by S.I.s 2005/993 and 2005/2224.

(d) 2015 c. 8.

(e) Paragraphs 4 and 18 were amended by paragraphs 3 and 13 of Schedule 16 to the Finance Act 2011 (c. 11) respectively and paragraphs 27B and 27G were inserted by paragraph 3 of Schedule 2 to the Taxation of Pensions Act 2014.

- (i) in paragraph (i), for “(salary related schemes: right to a statement of entitlement);” substitute “(right to statement of entitlement: benefits other than money purchase); and”;
- (ii) omit paragraph (ii); and
- (d) in paragraph (2)—
 - (i) in the opening words, for “A transfer” substitute “A conversion or replacement of benefits under an eligible scheme under paragraph (1)(za), a transfer”; and
 - (ii) in sub-paragraph (b), after “reduce the” insert “value or”, and after “amount of” insert “the benefits (or the portion of them) to be converted or replaced.”.
- (10) After regulation 17 (payment of scheme benefits)(a), insert—

“Exception to section 138(2A)

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

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

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

(3) A lump sum shall not be paid by virtue of this regulation unless the trustees or managers of the scheme—

- (a) are satisfied that to do so is consistent with the objective of ensuring that the scheme’s protected liabilities do not exceed its assets or, if they do exceed its assets, that the excess is kept to a minimum; and
- (b) reduce the amount of the lump sum to the extent necessary to ensure that it does not exceed the actuarial equivalent of the compensation that would be payable to the member in respect of the benefits (or the portion of them) in respect of which the lump sum is paid in accordance with the pension compensation provisions, if the Board were to assume responsibility for the scheme in accordance with Chapter 3 of Part 2 of the Act.

(4) For the purpose of paragraph (3)(b) the actuarial equivalent of the compensation that would be payable is to be calculated from tables designated by the Board for the purpose of paragraph 24(4) (commutation of periodic compensation) of Schedule 7 to the Act.”.

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

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

(2) In regulation 8 (further provision for discharge of liabilities in respect of money purchase benefits), after paragraph (1) insert—

(a) Regulation 17 was amended by S.I. 2009/451.
 (b) S.I. 2006/580, amended by S.I. 2013/627. There are other amendments but none is relevant.

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

(a) had attained normal minimum pension age, or was within six months of attaining that age; or

(b) met the ill-health condition in paragraph 1 of Schedule 28 to the 2004 Act^(a), the notice given by the Board under paragraph (1) shall also include the information listed in Part 1, and paragraph 12, of Schedule 10 to the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (information on the Pensions Guidance)^(b).”.

(3) In regulation 9A (PPF money purchase lump sums)^(c), for paragraph (2) substitute—

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

PART 4

Disclosure of information amendments

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

7. The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013^(d) are amended as set out in regulations 8 to 10.

Amendment to regulation 2

8.—(1) In regulation 2(1) (interpretation), after the definition of “transferrable rights” insert—

““unfunded public service defined benefits scheme” has the meaning given in section 95(2C) of the 1993 Act (ways of taking right to cash equivalent)^(e)”.

(2) In regulation 2(2), for sub-paragraph (a) substitute—

“(a) a member has an opportunity to transfer flexible benefits where—

(i) the member—

(aa) has transferrable rights in relation to flexible benefits; or

(bb) would have transferrable rights in relation to flexible benefits if the member stopped accruing rights to some or all of the flexible benefits (see sub-paragraph (b)),

and the making of a transfer or transfer payment in respect of the flexible benefits is not prohibited by section 135(4)(a) of the 2004 Act (restrictions on winding up, discharge of liabilities etc.)^(f); or

(ii) the member has an opportunity to transfer accrued rights to flexible benefits out of the scheme under the scheme rules;”.

(a) See regulation 1(2) of S.I. 2006/580 for the meaning of “the 2004 Act”.

(b) S.I. 2013/2734, amended by S.I. 2015/482. There are other amendments but none is relevant.

(c) Regulation 9A was inserted by S.I. 2013/627.

(d) S.I. 2013/2734 amended by S.I. 2014/1711 and S.I. 2015/482.

(e) 1993 c. 48. Section 95(2C) was inserted by section 68(1) and (3) of the Pension Schemes Act 2015 (“the 2015 Act”).

(f) See regulation 2(1) of S.I. 2013/2734 for the meaning of “the 2004 Act”. Section 135(4) was amended by section 58(3) of the 2015 Act.

New regulation 19A

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

“Retirement risk warnings

19A.—(1) Subject to paragraphs (5) and (7), the trustees or managers of the scheme must give a retirement risk warning to a member in accordance with this regulation where they are giving a member—

- (a) information in accordance with regulation 18A, 18B or 19 or the member has been given such information previously; and
- (b) an application form, online access, information about access or any other method of access that enables the member to require the trustees or managers of the scheme to take any of the actions in paragraph (2).

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

- (a) the application of sums or assets held for the purpose of providing flexible benefits for purchasing an annuity;
- (b) the payment of a lump sum in respect of flexible benefits; or
- (c) the designation of sums or assets held for the purpose of providing flexible benefits as available for the payment of drawdown pension.

(3) A retirement risk warning under paragraph (1) must be given at the same time as the method of access in paragraph (1)(b) and before any of the actions set out in paragraph (2) are concluded.

(4) When giving a retirement risk warning to a member, the trustees or managers of the scheme must also give the member a statement that asks the member to note the importance of—

- (a) reading the retirement risk warning; and
- (b) accessing pensions guidance or independent advice.

(5) A retirement risk warning for any specific action in paragraph (2) need not be given to a member within 12 months of a retirement risk warning for that action having been given in accordance with this regulation to that member.

(6) For the purpose of—

- (a) this regulation, “retirement risk warning” means a statement that sets out the characteristic attributes and features of an annuity, lump sum and drawdown pension referred to in paragraph (2) and the factors in paragraph (b)(iv); and
- (b) sub-paragraph (a)—
 - (i) the statement must be generic in nature and not tailored to or based on the personal circumstances of any individual member;
 - (ii) the statement may be limited to the characteristic attributes and features of an annuity, lump sum or drawdown pension referred to in paragraph (2) in respect of which the trustees or scheme managers are giving the member a method of access in paragraph (1)(b);
 - (iii) characteristic attributes and features are those that have the potential to adversely affect the retirement income of any member or their widow, widower, surviving civil partner, nominee, successor or other dependant; and
 - (iv) the factors are those that have the potential to affect the appropriateness of an annuity, lump sum and drawdown pension for a member such as: the impact of health status and lifestyle choices; whether a member has dependants, is in debt or in receipt of means tested benefits; and any other relevant factors.

(7) Subject to paragraph (8)—

- (a) a retirement risk warning under paragraph (1) need not be given where the trustees or managers of the scheme give the member an appropriate risk warning before any of the actions listed in paragraph (2) are concluded;
 - (b) an appropriate risk warning must be given either verbally or in writing; and
 - (c) for the purposes of sub-paragraphs (a) and (b), an appropriate risk warning is a statement—
 - (i) that sets out the risks associated with any of the actions listed in paragraph (2) that the member is proposing to require the trustees or managers of the scheme to take and that have the potential to adversely affect the retirement income of that member or their widow, widower, surviving civil partner, nominee, successor or other dependant; and
 - (ii) that is based on the characteristic attributes and features of an annuity, lump sum or drawdown pension referred to in paragraph (2) and answers to questions the trustees or managers of the scheme have asked the member in order to identify any factors or other variables that increase the risks referred to in paragraph (i).
- (8) Paragraph (7) only applies where the trustees or managers of the scheme have—
- (a) asked the member whether they have received pensions guidance or independent advice; and
 - (b) if the member has not received such guidance or advice, or is unsure, encouraged the member to use pensions guidance or to take independent advice to understand the options available to that member at retirement.”.

Amendments to Schedule 2

10.—(1) Schedule 2 (basic information)(a) is amended as follows.

- (2) In paragraph 4B, at the beginning, insert “Subject to paragraph 4C”.
- (3) After paragraph 4B, insert—

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

- (4) In paragraph 22B, at the beginning, insert “Subject to paragraph 22C”.
- (5) After paragraph 22B, insert—

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

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

3rd March 2016

Altmann
Minister of State,
Department for Work and Pensions

(a) Schedule 2 was amended by S.I. 2015/482. There are other amendments to Schedule 2 that are not relevant to these Regulations.
 (b) 1993 c. 48. Section 95(2A) and (2B) were inserted by section 68(1) and (3) of the 2015 Act.

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.

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