

# **PENSION SCHEMES ACT 2015**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3 – General Changes to Pensions Legislation about Pension Schemes**

##### *Section 46: Other amendments to do with Parts 1 and 2*

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

136. *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.
137. 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.
138. In other cases, the new categories are themselves substituted for existing definitions.

#### **Pension Schemes Act 1993**

139. Section 124 of the Pension Schemes Act 1993 places a duty on the Secretary of State to pay unpaid contributions to schemes in the event of employer insolvency and consequent default on employer contributions. The amount the Secretary of State 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). Schedule 2 of the Pension Schemes Act 2015 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 inserts a new 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.

#### **Pensions Act 1995**

140. Section 37 of the Pensions Act 1995 makes provision in relation to payments to employers when a trust-based occupational scheme is in surplus. Paragraph 7 of Schedule 2 of the Pension Schemes Act 2015 amends subsection (1A) of section 37 of the 1995 Act to disapply that section in relation to funds held for the purposes of

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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 of the 2015 Act will set out any exceptions to the rule that the funds must only be used for provision of collective benefits.

141. Sections 51 and 51A of the Pensions Act 1995 relate to indexation requirements for pension schemes (that is, the method by which pensions in payment are increased annually to take account of inflation). Schedule 2 of the Pension Schemes Act 2015 amends subsection (1)(a)(iii) of section 51 of the 1995 Act, 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 section 51A of the 1995 Act 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 section 51A.
142. Section 73 of the Pensions Act 1995 deals with distribution of liabilities when an occupational pension scheme winds up. Paragraph 11 of Schedule 2 of the Pension Schemes Act 2015 amends subsection (2) of section 73 of the Pensions Act 1995 to reflect the new scheme categories found in Part 1 of the 2015 Act .
143. [Paragraph 11](#) 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.
144. An ‘employer debt’ is a reference to a statutory debt arising under section 75 of the Pensions Act 1995. Section 75 of the Pensions Act 1995 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.
145. Paragraph 12 of Schedule 2 to the Pension Schemes Act 2015 provides that section 75 of the 1995 Act will not apply to an occupational pension scheme which offers only collective benefits, money purchase benefits, or a combination of the two.
146. [Paragraph 12](#) 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 Pensions Act 1995 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.
147. Sections 87 and 88 of the Pensions Act 1995 make provision requiring trustees or managers of occupational money purchase schemes to prepare schedules of payments for scheme members. Schedule 2 of the Pension Schemes Act 2015 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 subsection (2)(a) of section 87 of the 1995 Act 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

148. Section 124 of the Pensions Act 1995 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, apply in that Act 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 Act 1999**

149. Section 38 of the Welfare Reform and Pensions Act 1999 makes provision about the treatment of pension credits in winding up. Currently it does not apply to a money purchase scheme. The amendment made by paragraph 19 of Schedule 2 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 Act 2004**

150. Paragraphs 23 to 38 of Schedule 2 make amendments to the Pensions Act 2004. The majority of the amendments made to the Pensions Act 2004 by paragraphs 26 to 38 of Schedule 2 take out a number of references to money purchase schemes and update provisions in the 2004 Act 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 26 of Schedule 2 there is a further qualification – with the effect that the provision (which relates to freezing orders) does apply to schemes with only money purchase benefits which include a third party promise.
151. Paragraphs 24, 30, 33 and 36 of Schedule 2 also amend the definition of pensions legislation in sections 13, 90, 254 and 291 of the Pensions Act 2004 to include provisions in and made under the Pension Schemes Act 2015, ensuring that the Regulator can take action where there are breaches of the 2015 Act and regulations made under it and to allow for modification of the provisions where schemes receive contributions from a European employer.
152. Section 126 of the Pensions Act 2004 defines those occupational pension schemes which are eligible to be taken over by the Board of the Pension Protection Fund. Paragraph 31 of Schedule 2 amends the Pensions Act 2004 to include reference to the new categories of occupational pension scheme in Part 1 of the 2015 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.
153. Section 318 of the Pensions Act 2004 defines terms used throughout that Act. Paragraph 38 of Schedule 2 to the Pension Schemes Act 2015 inserts the new scheme category and collective benefit definitions introduced by the 2015 Act 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 Pensions Act 2004, to include regulations made under Part 2 of the 2015 Act, and under Schedule 17 and 18 to the Pensions Act 2014. 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 2004 Act.

### **Pensions Act 2008**

154. Sections 20 to 28 of the Pensions Act 2008 set out the requirements that a pension scheme must meet if it is to be a qualifying scheme for the purposes of meeting an

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employer's enrolment duties under pensions legislation. (This is sometimes referred to as 'automatic enrolment'.)

155. The amendments made by Schedule 2 to the Pension Schemes Act 2015 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 the 2015 Act, and change the section headings accordingly. The quality requirements are on the whole unchanged (except where stated).
156. Section 26 of the 2008 Act 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.
157. Section 99 of the 2008 Act is amended to substitute the definition of 'defined benefits scheme' and insert the definitions of 'collective benefit', 'defined contributions scheme' and 'shared risk scheme' as set out in Part 1 of the 2015 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.