Draft Regulations laid before Parliament under section 33(3) of the Pensions Act 2011, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

PENSIONS

The Pensions Act 2011(Transitional, Consequential and Supplementary Provisions) Regulations 2014

Made - - - - ***

Coming into force in accordance with regulation 1(2)

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 74(5), 97(1), (2)(b) and (3)(c), 101AF(1), (3)(b) and (4)(b)(**1**), 101I(**2**), 101L(1) and (2)(**3**), 113(1), 153(2)(c), 181(1)(**4**), 182(2) and (3) and 183(1)(**5**) of the Pension Schemes Act 1993(**6**), sections 10(3), 37(4)(a) to (c), (e) and (8)(**7**), 47(5)(a), 73(6), (7) and (8)(a)(**8**), 124(1)(**9**) and 174(2) and (3) of the Pensions Act 1995(**10**), sections 23(1)(b), 26(1)(**11**), 30(1) and 83(4) and (6) of the Welfare Reform and Pensions Act 1999(**12**), sections 117, 126(1)(b) and (5), 135(4)(b)(ii), 138(10)(a), 146(1), 161(3)(b), 179(1)(a) and (3), 189(11)(b), 190(1) and (3), 206(4)(a), 207(1)(a) and (2), 232, 286(1) and (2)(a)(ii) and (b)(**13**), 315(2), (4) and (5) and 318(1)(**14**) of and paragraphs 12(3A)(b)(**15**), 17(3A)(b)(**16**), 20(7) and 33(1) of Schedule 7 to the Pensions Act 2004(**17**), section 212(1)(**18**) of and paragraph 5(2) of Schedule 7 to the Equality Act 2010(**19**) and sections 30(1) and (2), 31(1) and 33(1) of the Pensions Act 2011(**20**).

(**1**) Section 101AF was inserted by the Pensions Act 2004 (c. 35) ("the 2004 Act").
(**2**) Section 101I was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c. 30) ("the 1999 Act").
(**3**) Section 101L was inserted by section 37 of the 1999 Act.
(**4**) Section 181(1) is cited for the meaning it gives to "prescribe" and "regulations".
(**5**) Section 183(1) was amended by sections 151, 173 and 177 of and Schedules 5, 6 and 7 to the Pensions Act 1995 (c. 26) ("the 1995 Act").
(**6**) 1993 c. 48.
(**7**) Section 37 was substituted by section 250 of the 2004 Act.
(**8**) Section 73 was substituted by section 270(1) of the 2004 Act.
(**9**) Section 124(1) is cited for the meaning it gives to "prescribed" and "regulations".
(**10**) 1995 c. 26.
(**11**) Section 26(1) is cited for the meaning it gives to "prescribed".
(**12**) 1999 c. 30.
(**13**) Section 286(2) was amended by section 124(1) and (3) of the Pensions Act 2008 (c.30) ("the 2008 Act").
(**14**) Section 318(1) is cited for the meaning it gives to "prescribed" and "regulations".
(**15**) Paragraph 12(3A) was inserted by section 101(1)(b) of and Schedule 2 to the 2008 Act.
(**16**) Paragraph 17(3A) was inserted by section 101(1)(b) of and Schedule 2 to the 2008 Act.
(**17**) 2004 c. 35.
(**18**) Section 212(1) is cited for the meaning it gives to "prescribed".
(**19**) 2010 c. 15.
(**20**) 2011 c. 19.

In accordance with section 185(1) of the Pension Schemes Act 1993(**21**), section 120(1) of the Pensions Act 1995, section 83(11) of the Welfare Reform and Pensions Act 1999 and section 317(1) of the Pensions Act 2004, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations has been laid before and approved by resolution of each House of Parliament in accordance with section 33(3) of the Pensions Act 2011.

PART 1

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014.

(2) These Regulations come into force on the day after the day on which they are made.

(3) Part 15 of these Regulations (Financial Assistance Scheme) extends to Northern Ireland.

(4) In these Regulations—

"the Act" means the Pensions Act 2011;

"the 1993 Act" means the Pension Schemes Act 1993;

"the 1995 Act" means the Pensions Act 1995;

"the 1999 Act" means the Welfare Reform and Pensions Act 1999;

"the 2004 Act" means the Pensions Act 2004;

"the applicable rules" has the meaning given by section 94(2) of the 1993 Act (right to cash equivalent)(**22**);

"the appointed day" is the day appointed for the coming into force of section 29 of the Act (definition of money purchase benefits);

"assessment period" is to be construed in accordance with section 132(2) to (6) of the 2004 Act;

"the Board" means the Board of the Pension Protection Fund established under section 107 of the 2004 Act;

"cash balance underpin benefits" are cash balance benefits to which, under an occupational pension scheme, a member only has rights if the amount of the cash balance underpin benefits exceeds a defined benefit minimum promised to the member;

"cash equivalent" means a cash equivalent or guaranteed cash equivalent mentioned in section 93A(1) (salary related schemes: right to statement of entitlement)(**23**) or 94(1)(**24**) of the 1993 Act;

"defined benefit minimum" except in Part 2 and regulation 9 (money purchase underpin benefits and top-up benefits) means—

(a) in relation to money purchase underpin benefits or cash balance underpin benefits, benefits which are not money purchase benefits, but which accrue or may accrue under

(**21**) Section 185(1) was amended by sections 122, 151 and 177 of, and Schedules 3, 5 and 7 to the 1995 Act.
(**22**) Section 94(2) was substituted by section 319(1) of and paragraph 13 of Schedule 12 to the 2004 Act.
(**23**) Section 93A was inserted by section 153 of the 1995 Act and was amended by section 84(1) of and paragraph 34 of Schedule 12 to the 1999 Act.
(**24**) Section 94(1) was amended by section 154(1) and (2) of the 1995 Act.

an occupational pension scheme in respect of the same period of a member's pensionable service as the member's rights to money purchase underpin benefits or cash balance underpin benefits; or

(b) in relation to top-up benefits, a specified minimum value or amount, where, under an occupational pension scheme, a member is promised that the member's rights to money purchase benefits or cash balance benefits will be at least equal to that specified minimum value or amount;

"eligible scheme" has the meaning given by section 126 of the 2004 Act (eligible schemes);

"further assessment period" means the assessment period mentioned in section 159(3) of the 2004 Act (closed schemes: further assessment periods);

"money purchase underpin benefits" are money purchase benefits to which, under an occupational pension scheme, a member only has rights if the amount of the money purchase benefits exceeds a defined benefit minimum promised to the member;

"multi-employer scheme", except in Part 7 (deficiencies in the assets) has the meaning given by section 307(4) of the 2004 Act (modification of this Act in relation to certain categories of schemes)(**25**);

"the Regulator" means the Pensions Regulator established under section 1 of the 2004 Act;

"top-up benefit", except in Part 2 and regulation 9, is a benefit—

(a) the value or amount of which is greater than nil; and

(b) to which, under an occupational pension scheme, a member only has rights where the amount of the member's rights to money purchase benefits falls short of a defined benefit minimum promised to the member; and

"value or amount" includes in particular a rate of pension, whether specified under the scheme or determined by reference to external criteria, such as a statutory minimum requirement.

Meaning of "cash balance benefit"

2.—(1) For the purposes of these Regulations, a benefit is a "cash balance benefit" if conditions 1 and 2 are met.

(2) Condition 1 is that a sum of money ("the available sum") is available under the scheme for the provision of the benefit to or in respect of the member.

(3) Condition 2 is that under the scheme—

(a) there is a promise about the amount of the available sum; but

(b) there is no promise about the rate or amount of any pension to be provided from the available sum.

(4) The promise mentioned in paragraph (3)(a) includes in particular a promise about the change in the value of, or the return from, payments made under the scheme by the member or by any other person in respect of the member.

(5) The promise mentioned in paragraph (3)(b) includes a promise that—

(a) the amount of the available sum will be sufficient to provide a pension of a particular rate or amount; and

(b) the rate or amount of a pension will represent a particular proportion of the available sum.

(6) But a benefit is not prevented from being a cash balance benefit merely because under the scheme there is a promise that—

(**25**) Section 307 was amended by section 31(2) of the 2004 Act.

(a) the rate or amount of the benefit payable in respect of a deceased member will be a particular proportion of the rate or amount of the benefit which was (or would have been) payable to the member; or

(b) the amount of a lump sum payable to a member, or in respect of a deceased member, will represent a particular proportion of the available sum.

PART 2

Money purchase underpin benefits and top-up benefits

Interpretation and application of this Part

3.—(1) This Part—

(a) applies in relation to any period after 1st January 1997; and

(b) is subject to the contrary provision for transitional purposes made by these Regulations.

(2) In this Part—

(a) "defined benefit minimum" means—

(i) in relation to money purchase underpin benefits, benefits which are not money purchase benefits, but which accrue or may accrue under an occupational pension scheme in respect of the same period of a member's pensionable service as the member's rights to money purchase underpin benefits; or

(ii) in relation to top-up benefits, a specified minimum value or amount, where, under the scheme, a member is promised that the member's rights to money purchase benefits will be at least equal to that specified minimum value or amount; and

(b) a "top-up benefit" is a benefit—

(i) the value or amount of which is greater than nil; and

(ii) to which, under an occupational pension scheme, a member only has rights where the amount of the member's rights to money purchase benefits falls short of a defined benefit minimum promised to the member.

Money purchase underpin benefits

4.—(1) If, at the relevant date, a member of an occupational pension scheme has rights under the scheme to money purchase underpin benefits, the existence of a contingent promise under the scheme to provide a defined benefit minimum to the member does not prevent the money purchase underpin benefits from being money purchase benefits for as long as the defined benefit minimum is of equal or lower value than the amount of the member's rights to money purchase underpin benefits.

(2) In this regulation "the relevant date" means the date as at which the amount of the money purchase underpin benefits and the value of a defined benefit minimum promised under the scheme is being compared (for any purpose) in order to determine which is greater.

Top-up benefits

5.—(1) If, at the relevant date, a member of an occupational pension scheme has rights to—

(a) money purchase benefits, the amount of which is less than a defined benefit minimum promised to the member under the scheme; and

(b) a top-up benefit,

the amount of the member's rights to money purchase benefits by reference to which the top-up benefit is calculated and the value of the top-up benefit must be aggregated to form a single benefit, which is not a money purchase benefit.

(2) In this regulation "the relevant date" means the date as at which the amount of the member's rights to money purchase benefits and the amount of the top-up benefit is being calculated (for any purpose).

PART 3

Application of Part 4 of the Act and these Regulations to the Imperial Home Decor Pension Scheme

6. No provision of Part 4 of the Act (money purchase benefits) or of these Regulations applies to or in relation to the Imperial Home Decor Scheme.

PART 4

Protected rights

Schemes which provided protected rights as cash balance benefits etc

7.—(1) This regulation applies to an occupational pension scheme—

(a) which was contracted-out in relation to an earner's employment under section 9(3) of the 1993 Act (requirements for certification of schemes: general)(**26**) in relation to a period before the appointed day; and

(b) which provided protected rights in the form of—

(i) cash balance benefits;

(ii) a defined benefit minimum (in relation to money purchase underpin benefits or cash balance underpin benefits); or

(iii) top-up benefits,

in relation to the earner's pensionable service under the scheme.

(2) Where this regulation applies, Part III of the 1993 Act (certification of pension schemes and effects on members' state scheme rights and duties) has effect (in relation to periods before, including or after 6th April 2012) as if—

(a) references in Part III of that Act and regulations made under that Part to—

(i) "money purchase benefits" included cash balance benefits, a defined benefit minimum or top-up benefits (as the case may be);

(ii) "money purchase scheme" included a scheme which included cash balance benefits, top-up benefits or defined benefit minima (as the case may be); and

(iii) "money purchase contracted-out scheme" included a scheme which was contracted-out on a money purchase basis (whether or not the scheme included only money purchase benefits); and

(**26**) Subsection (3) of section 9 was repealed by section 15(3)(a) of and paragraph 4 of Schedule 4 to the Pensions Act 2007 (c. 22) ("the 2007 Act") with effect from 6th April 2012.