The Pensions Act 2011 (Transitional and Consequential) Regulations: a response by the National Association of Pension Funds

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Contents

The changing definition of “money purchase benefit”

Introduction

We are pleased that the Government has released draft regulations to implement section 29 Pensions Act 2011, which changes the definition of “money purchase benefits”. The Government’s approach is now clearer.

That said, the NAPF continues to believe that the decision to apply the new definition retrospectively, undermining the approach to member voluntary contributions, underpins and guaranteed investment return that has been taken by pension schemes for over fifteen years, is destructive and unnecessary. If any change to the definition is necessary at all – a proposition that is itself debatable – no reason has been put forward to overturn years of practice retrospectively. Instead of explaining why the disruption is necessary, the Government simply denies that it is changing the law or causing disruption.

It is ironic, in view of the “Defined Ambition” consultation running concurrently with this one, that the Government has chosen to unleash this uncertainty and expense on the very employers who have experimented with risk-sharing on a small scale. It is true that only a small proportion of schemes are affected by the change, but the affected schemes are precisely those where the employer attempted to give the employees a little more than plain vanilla “money purchase” benefits: schemes where the employer guaranteed a minimum investment return; or provided an underpin to a money purchase promise; or allowed members’ voluntary contributions to be paid along with their defined benefit pensions as income from the scheme at a better rate than an insurance company would give them.

There are a number of areas where neither the retrospective nor the prospective effect of the draft regulations have been thought through, as we discuss further below.

Retrospection

Under the Pensions Act 2011 (the” 2011 Act”), a new definition of “money purchase benefits” was inserted into Pensions Schemes Act 1993 (the “1993 Act”). The new definition restricts “money purchase benefits” to those “calculated by reference to assets which must necessarily suffice for the purposes of its provision to or in respect of the member.” This definition encompasses fewer benefits than the definition currently in use, which applies to benefits “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 2011 Act gives the Secretary of State broad latitude to apply the new definition retrospectively or prospectively. These broad powers were necessary because the new definition was enacted in haste, immediately after the Supreme Court supported the industry’s interpretation of the 1993 Act definition of “money purchase benefits” and rejected the interpretation put forward by the

Department for Work and Pensions. Time was needed for thoughtful application of the new definition in *Bridge Trustees v Houldsworth and another (2011)*.

Unfortunately, the Government has used its powers to disapply the retrospective effect of the new definition only sparingly. Often, the relief from retrospection is only partial – for example, in many circumstances the disapplication does not apply for periods following 28 July 2011.

Retrospective application of new law should be avoided unless there are clear and important policy reasons for making acts that were lawful in the past retrospectively unlawful. No such policy reasons have been articulated here. There has been talk of protecting schemes that relied on the Department's interpretation of the definition in the past – but the number of such schemes is vanishingly small. They could surely be accommodated without taking an approach that undermines the position of the majority of schemes, those that sought professional advice, and who followed legal advice and actuarial practice at the time. Even the PPF treated benefits such as voluntary contributions in payment as money purchase benefits when they were identifiable as such, as the number of draft regulations exempting PPF decisions from retrospection attests.

Therefore, the statements in the consultation that retrospection is necessary because "most" schemes were already treating benefits in accordance with the new definition; that the new definition somehow "clarifies" the Supreme Court's decision; or that it "restores" some other definition, are disingenuous. The new definition does not accord with past practice and should be acknowledged as a change that requires justification.

The Government states that its actions are necessary because European law requires that the funding and PPF protection provisions of Pensions Act 2004 be extended to benefits for which even the smallest deficit could occur. We understand why the Government believes this to be true. However, for the most part the law is being applied only prospectively in respect of funding and protection. By our count 31 of the 75 draft regulations are written to disapply retrospection to the protection and funding provisions of the law, at least in respect of events occurring prior to July 2011. There has been no explanation as to why retrospection is appropriate in respect of other provisions. Indeed, there has been little in the way of explanation as to why anything should change in respect of other provisions.

Investment guarantees

The Government's application of the new definition of "money purchase benefit" and its partial application of a new definition of "cash balance benefit" discourages employers from providing any sort of investment guarantee on a member's pension pot. This is especially true for employers who sponsor hybrid schemes, which is where such guarantees are now most often to be found.

There are a number of reasons that the new approach will discourage employers from taking this relatively inexpensive step. First, there seems to be some confusion as to what category these benefits fall into:

- it is not clear under the new legislation whether such a benefit will be considered a "cash balance benefit" (as is suggested in the consultation paper), an "underpin benefit" a "top up

benefit", or whether the category will depend on the extent to which the guarantee "bites"; and
- two slightly different definitions of "cash balance benefit" are used in the draft regulations -- one definition (set out in draft regulation 2) might include investment guarantees, and the other (under section 51ZB of the Pensions Act 1995 and applying only to pensions as opposed to benefits) would not. It is not clear why one definition applies in some circumstances and the other applies in other circumstances.

In addition:

- if they are cash balance benefits, the form of PPF protection provided is inappropriate and in many circumstances could result in members losing a substantial portion of their savings;
- it is unclear how transfer values will be calculated on these benefits, and if they are treated as cash balance benefits it is possible that the transfer value could include guarantees of future returns on the benefits, even though they will no longer be invested in the scheme; and
- they will now need to be revalued in accordance with a different methodology, or possibly two methodologies, and there are complications around this.

If we understand the PPF protection that is being extended to members in respect of these benefits correctly, it is inappropriate. We start with the proposition that PPF protection of even traditional cash balance benefits – which consist of a promise of a particular cash sum at retirement – is not well understood. Although the promise from the scheme is for a lump sum, the compensation is paid as an income stream which is reduced in the same way a defined benefit pension would be reduced. The new provisions being inserted to Schedule 7 Pensions Act 2004 via amendments to the Pension Protection Fund (Compensation) Regulations 2005 do not make clear how this would happen, other than through the application of "actuarial factors published by the Board."

This is not the place to debate whether this form of compensation is suitable for a traditional cash balance scheme, but it most certainly is inappropriate to extend it to a benefit where the investment return is expected to exceed the guarantee. It looks as though compensation may only be available in respect of the guaranteed benefit, translated to an income stream and reduced to the compensation cap and by the 90% ceiling where the member has not reached normal pension age. If the member has final salary benefits in the scheme as well, the reduction could be substantial from the outset, but in any case the investment return above the guarantee would be lost and potentially available to subsidise the deficit in the scheme, even if that deficit relates entirely to the employer's final salary promise.

Finally, the exemption of such benefits from retrospective application of a requirement for indexation when they are put into payment applies only where they are attributable to service in which the member was contracted out of state second pension, and where the scheme rules do not require any form of indexation in payment. It is not clear why the exemption should be so restricted, especially because indexation is not required for these benefits going forward.

These benefits sit more easily within the definition of “money purchase underpin benefits” than that of cash balance benefits, in which case they could continue to be treated as money purchase benefits. However, the draft regulations and accompanying commentary cause uncertainty regarding the way money purchase underpin benefits work – is the entire benefit money purchase in all circumstances or could it potentially fluctuate between money purchase and cash balance, depending on investment returns? In that case, how would unfairness to members be avoided in the case of transfers, revaluation, etc which would change from time to time, and how would the differing circumstances of members in relation to the guarantee (the guarantee would be more likely to bite for later joiners)? How does the Government propose that such fluctuations in treatment be explained to members?

Underpins

As mentioned above, it is not clear how the definitions of “money purchase underpin benefits” and “top-up benefits” in draft regulations 73 and 74 are meant to work.
To take the example of benefits to which an investment guarantee attaches, are we to understand that under draft regulations 73 and 74, whether the benefit is considered money purchase or non-money purchase will depend on whether the investment return exceeds the guarantee? This of course departs from prior court determinations that money purchase benefits that are subject to an underpin may remain money purchase whether or not the guarantee “bites”.

Assuming that the new definitions of “underpin benefits” and “top-up benefits” are dependant on the extent to which the non-money purchase promise “bites” (as some of the consultation materials suggest), which parts of the disclosure regulations apply where, as in our example of a guaranteed benefit, the return and the guarantee fluctuate over the course of a year? Would revaluation methodologies need to change from year to year depending on the status of the guarantee? Can transfers be calculated differently for different members, depending on whether the guarantee has been exceeded on the present benefit?

And inasmuch as there are no provisions removing the retrospective effect of the legislation to underpin and top-up benefits, how will schemes that have followed the law in effect over the past seventeen years bring themselves into compliance?

Voluntary Contributions

Many schemes have assured members over the years that member voluntary contributions put into payment from the scheme as an “extra” benefit (usually in addition to a defined benefit from another section of the scheme) would be treated as a money purchase benefit on wind-up. This meant that benefits based on member contributions would be discharged outside of the priority order and unless the assets of the scheme were even lower than the value of the voluntary contributions in payment, they would be paid at 100%.

Those promises, made on the basis of the law at the time, may no longer be capable of fulfilment because of the new regulations. AVCs will be treated as non-money purchase benefits, and as a result will be subject to the same priority as other defined benefits and subject to caps and reductions if paid out as compensation from the PPF.

The PPF Board has been given a discretion in regulation 52 to discharge AVCs put into payment prior to April 2015 as money purchase benefits. However, a possible exercise of a discretion should the employer become insolvent provides little comfort to members or to administrators who told them in good faith that their benefit would be protected. There can be no confidence as to when the discretion will or will not be used. (Indeed, there would be no need for retrospective application of the employer debt regulations if it were anticipated that the liability in respect of member contributions in payment would remain outside the priority order.) In addition, we do not see any provision that provides any comfort to members in the event of a wind-up outside the PPF where liabilities exceed assets.

In addition, exemption from retrospection in respect of indexation applies only to voluntary contributions attributable to contracted out service and in cases where the scheme rules do not provide for some other form of indexation. We think the exemption from retrospection should apply without such exceptions, and that indexation should continue to be inapplicable to voluntary payments paid as extra benefit from the scheme, full stop.

It is also unfortunate that there has been no effort to define member voluntary contributions. We assume that employer contributions derived from voluntary contributions and salary sacrifice contributions are included. However, this is not at all clear from the regulations and needs to be made explicit.

Employer Debt

As currently drafted, the regulations require trustees to revisit employer debt calculations retrospectively to 28 July 2011. This is a senseless exercise. The parties to transactions giving rise to a debt on the employer were required to follow the law in place at that time.

The Government's logic here that from July 2011 administrators "should have been aware of the Department's intention to legislate following the announcement on 27 July 2011 and therefore should not have acted on the basis that affected benefits would continue to be money purchase" (para 72) is little short of outrageous. The length and complexity of the draft regulations and the two year hiatus before initiation of the consultation is proof that the mind of the Government could not have been read with any accuracy, even assuming that it would be appropriate to follow probable law rather than the very prescriptive requirements actually on the books .

Although there has been some talk of "moral hazard" surrounding the change to the money purchase definition, just exactly what harm is anticipated where the parties follow the same procedures that were considered appropriate in June 2011 has yet to be explained. Indeed, most schemes that are being asked to undergo this exercise will do so because they have member voluntary contributions in payment. Inasmuch as pensions purchased with voluntary contributions are likely to be fully funded and can as a result of these regulations be used to subsidise underfunded employer obligations, it is not unlikely that the overall funding position of the scheme will improve and employers will be found to have over- rather than underpaid.

The exercise required under the regulations will involve further consultant, actuarial and legal expense, funds that would be better spent on member benefits in affected schemes, all of which will have a deficit.

Wind-up

The Secretary of State was given very specific powers to disapply all retrospection in respect of wind-up, as is the case for employer debt. However, under the draft regulations wind-ups that have not completed as of 28 July 2011 will need to be revisited. Unless there is some evidence that members have been treated unfairly, there is little merit in introducing new costs into the winding-up procedure in this way, particularly in the wind-ups that would be most affected – those where there are insufficient assets to cover member benefits as it is.

The statement in the consultation paper that "[u]ntil the *Bridge* judgment, it was not possible for a money purchase scheme to become underfunded except where there was fraud or error" (par 60), is demonstrably untrue and a bit of a nonsense in the context of the new regulations, which would be unnecessary if it were true. The approach to wind-up should take account of this reality rather than denying it.

Valuation

We agree that any changes to scheme valuations should take place prospectively. We appreciate that the Government recognises that disturbing scheme valuations and recovery plans already signed off and in use would serve no useful purpose. We would expect scheme liabilities to change very little as a result of the change in definition of "money purchase benefits", and are pleased that the Government has recognised this. We cannot understand why this sensible approach was not taken regarding all applications of the new definition.

Death benefits

We understand that the Government intends that schemes that offer death benefits by reference to salary but which are in every other way money purchase will remain money purchase schemes. However, it would appear that such schemes do not remain money purchase schemes for all purposes, and there are issues regarding early leavers and preservation, cross border provisions, and indexation, among other areas. Because of the indiscriminate application of the new definition, it is difficult to identify how treatment of such schemes in these areas will change.

Costs

It is difficult to estimate the legal and actuarial costs associated with compliance with the new regulations, because many of those costs are likely to be in the nature of dealing with the unanticipated consequences of retrospection. However, at a minimum, every scheme that has annuitised voluntary contributions internally, given a guarantee of any nature in respect of a currently money purchase benefit, or includes an underpin, will need to parse through these convoluted regulations and determine how they apply to the particular circumstances of the scheme. This will involve legal and in many cases actuarial advice, even before they go about including the benefits in their valuations (or initiating a valuation for the first time), computing PPF levies, and attaching the other trappings of defined benefit provision to the benefits. For these schemes, the expense will be considerable.

In addition, as it now stands, many schemes will be required to revisit transactions entered in good faith; recalculate benefits in wind-up; in other ways unwind (or at least consider unwinding) previous, already complicated and expensive arrangements; and explain to members why longstanding agreements regarding the nature and protection of benefits is changing.

Cash balance schemes will need to check through the regulations to see whether the new provisions pertaining to such schemes affect them, and which definitions apply to them and when those definitions apply generally. Schemes that gave guarantees on investment returns will consider urging their members to transfer to “plain vanilla” money purchase arrangements if otherwise their benefits are likely to subsidise deficits elsewhere in the scheme on wind-up.

Communications exercises will need to be undertaken explaining to members that should the scheme fall into the PPF, their formerly money purchase benefits may not be paid at 100% any more, but rather will be subject to PPF caps and reductions. They will in many cases need to be told that PPF protection will take a very different form than the more flexible benefit they were promised.

Perhaps this is the place to mention that the impact assessment does not address the costs of the change, but rather compares the impact of the current approach to the impact of allowing the new definition to apply retrospectively in all cases, after which the Government congratulates itself on taking the less draconian course, thereby “minimising the burden on industry”. Reading the impact statement can only be compared to an excursion through Lewis Carroll’s Looking Glass, so great is the detachment from fact.

Conclusion

We are not convinced that any legislation was required in the wake of the *Bridge* decision. However, we understand the Government’s reasons for believing that certain of the benefits affected by the change in definition should be subject to the funding and protection regime of Pensions Act 2004. What we do not understand is the insistence that all aspects of treatment of member voluntary contributions in payment, investment guarantees and underpin benefits should be subject to new regulations of both retrospective and prospective effect. The indiscriminate application of retrospection is particularly troubling.

As we have stated in the past, the new definition should be applied prospectively, selectively and carefully.

Consultation questions

The Regulations

Question 1

Is there a more cost-effective way of implementing the transitional, supplementary and consequential provisions that support the coming into force of section 29?

The most cost effective way in which to apply the regulations would of course be to apply them prospectively only. This would allow 31 of the 75 draft regulations to be retired, and would remove any concern on the part of schemes that they need to review practice over the past 16 years in any respect due to the change in definition.

Scheme types

Questions 2 -6, Scheme specific questions

N/A

Implementation

Question 7

Do you believe that splitting the Regulations into two stages would be helpful to schemes and if so why it would be helpful?

We have suggested applying the new definition only in respect of the funding and protection provisions and waiting until the Defined Ambition consultation and proposals are further developed to apply the definition in other contexts (such as revaluation and indexation). We continue to think that the broad brush approach to application of the new definition will lead to disruption of longstanding arrangements and unexpected consequences. Convincing employers that they should dip a toe into Defined Ambition schemes will be very difficult if these regulations introducing this much uncertainty have been applied to existing benefits where risk has been shared.

Question 8

If so, which Regulations should we delay until the second stage?

The regulations as drafted do not lend themselves to a tiered approach because they rest on the assumption that the entire framework for certain benefits has changed. We would have favoured a few, carefully targeted regulations that addressed solely the issues of protection and funding for benefits that could develop a deficit. We would have liked to see more thought devoted to whether the current approach to PPF protection for members of cash balance schemes was really appropriate where the benefit is one where contributions are subject to a guarantee. We think that attempts to tinker with revaluation, indexation, transfers and various other aspects of these benefits are going to cause more harm than good and that if the approach to benefits such as cash balance arrangements and contributions to which investment guarantees attach is going to change then this should be considered as part of the Defined Ambition legislation.

General Questions

Question 9

Do the proposed changes in the Regulations give rise to particular difficulties that you can identify?

Yes. See remarks above.

Question 10

What are these difficulties and why do the proposals give rise to them?

See remarks above for an overview.

Question 11

How do you think these difficulties could be addressed?

As explained in the discussion under "remarks", at a minimum:

- Retrospection should be disapplied altogether, and particularly to employer debt decisions and wind-ups;
- If it is not disapplied altogether, any retrospection should be selective, justified by clearly articulated policy considerations and fully thought through;
- The effect of the change on guaranteed benefits, which on our reading of the new regulations could now often be significantly reduced in value to the member in an insolvent wind-up, should be reconsidered;
- The way the new definition interacts with the definition of "money purchase underpin benefits" and "top up benefits", and how a scheme with money purchase underpins should be governed needs to be clarified;
- Transfer provisions for cash balance schemes need to be clarified;
- "Member voluntary contributions" should be defined, and should include employer contributions related to member contributions and salary sacrifice contributions;
- The numerous technical defects in the regulations, which we expect will be explained in detail by the professional organisations, should be corrected; and
- Unintended consequences, some but far from all of which will be brought to light by this consultation, should be thoroughly explored.

These are only the obvious problems. Unless a new approach to the regulations is taken, we can expect many more to emerge from the woodwork as schemes attempt to apply the new law.

Winding up

Question 12

Will the proposed wind-up Regulations cause any difficulties?

For schemes that have not completed wind-up, yes. It is expensive to ask lawyers to look through complex new regulatory provisions to determine how those provisions apply to the particular circumstances of the scheme. Further expense will be involved when the scheme must revisit past calculations and decisions. For all of this kerfuffle, the effect on the outcome for members is unlikely to be substantial. The approach is clearly disproportionate.

Question 13

At what stage would you consider a wind-up to be almost at the point of being completed?

We think that the costs of revisiting calculations in respect of a wind-up would outweigh any possible benefits at the point at which the benefits due to any cohort of the membership have been calculated.

Question 14

How can it be objectively determined that a wind-up has been completed?

We think that a wind-up is usually completed at the time the trustees are given their discharge, which is usually after the purchase of annuities for members. The stage at which decisions in respect of the wind-up should be revisited is considerably before this point.

Deficiencies in assets – Employer debt

Question 15

Will the proposals in the Regulations cause problems for schemes that are considering revisiting debt events following the coming into force of section 29?

We don't understand the reference to "considering revisiting debt events". Under the regulations as written, schemes that experienced a debt event after July 2011 have no option but to revisit that event. And yes, there will be considerable problems.

In a multi-employer situation, where a debt event occurred after 28 July 2011 but before the new regulations are effective, lawyers will need to be consulted, first, on whether any of the benefits treated as money purchase are now non-money purchase and to which members the additional liabilities should be attributed. This may not always be clear, particular in the case of underpins and voluntary contributions in payment. Assuming that this can be determined, new calculations regarding the debt and its distribution must be made. After that, the trustees (assuming the scheme is not wound-up), taking legal advice, will need to make additional judgments regarding the funding test and reapportionment, all of which may be taking place in the context of employers who have departed the scheme or no longer exist.

In a single-employer scheme, the regulation is written so that the trustees or managers consider the position first and recalculate later, but they can scarcely consider the situation without having the figures to hand.

Question 16

If so, what alternative would you suggest that addresses risks to employers and scheme members remaining in the scheme following a debt event?

It would be helpful if the Department would describe the risks to which it refers. The risks of which we are aware – that the employer or remaining employers supporting the scheme will be unable to meet the liabilities in the future –doesn't really change, and will have been addressed if not resolved through procedures undergone under the prior regime. The value of the benefits that have changed character from money purchase to non-money purchase is unlikely to be significant, and therefore any conceivable reallocation of remaining debt is unlikely to be significant. The scheme's liabilities will in any event fluctuate from time to time. This is reflected in the Government's approach to the application of the new regime to scheme funding and protection generally and it is hard to see why it is taking such a different approach here.

Question 17

What impact will the requirement for the actuary to issue a fresh valuation certificate have on schemes and employers?

This will constitute an additional cost, as will revisiting decisions and events based on this new valuation.

Question 18

Are there alternative ways to deal with this issue?

We need more instruction on the nature of "this issue". If it is moral hazard, we do not see how that applies – there is a very prescriptive law in place that deals with the amount and the apportionment of liability. All that we are talking about here are some relatively small adjustments in that liability – that is why there has been very little outcry about the addition of these liabilities going forward.

Question 19

Do you think the proposals in the Regulations for a multi-employer scheme with a scheme apportionment arrangement, withdrawal arrangement or flexible apportionment arrangement would cause particular difficulties for the following?

The Pension Protection Fund if the scheme has entered a Pension Protection Fund assessment period after 27 July 2011: - We leave the answer to this question to the PPF.

Members: - No. They are unlikely to be affected in the end.

Employers: - Inasmuch as it is their money that is being wasted on this exercise, they are unlikely to be happy.

Trustees and scheme managers: - This will be a distraction and an expense.

Revaluation

Question 20

Do you agree that schemes should not have to revisit benefits already in payment?

Yes.

Question 21

If schemes did have to, can you give any indication of the costs and practical issues involved?

Detecting which pensions in payment would be affected would cost administrative and legal fees. Recalculating the benefits would involve actuarial fees. It is unlikely that benefits in payment would change, but assuming that they did, attempting to reformulate the benefit in payment would probably be close to impossible. Informing HMRC of any changes in the recalculated benefits and arranging new tests against the Lifetime Allowance would be burdensome and expensive.

Question 22

Do you see any risk that the value of benefits accrued in relation to past periods of service will be adversely affected?

Inasmuch as the trustees or managers are given some latitude to ensure that this does not happen, we think it will not, although of course there is a cost to the new method of revaluation.

Question 23

Do you see any problems with this approach that only applies the new method to future accruals?

Cost and complexity are problems.

Indexation

Question 24

Do you know of any cash balance type schemes which did not provide for indexation on annuities/scheme pensions put into payment prior to January 2012?

This depends on what is meant by "cash balance type" benefits. Under the old definition of "cash balance", no. Under the new definition of cash balance, yes. Contributions attracting investment guarantees have not been considered cash balance benefits and have been paid subject to indexation only where the scheme rules so required or the member so requested.

Question 25

If so, how many schemes and members are involved?

We have not had sufficient time to gather this information.

Question 26

Will the arrangements made for these schemes cover all methods of indexation used by these schemes?

No. We do not understand why the member's service must have been contracted out in order for the provisions to apply. Also, the language should protect benefits that were indexed, but not in accordance with section 51 1995 Pensions Act.

Question 27

Do you agree that schemes should not have to revisit benefits already in payment?

Yes.

Question 28

If schemes did have to do so, can you give any indication of the costs and practical issues involved?

It is difficult to see how it could be done. In many cases annuity policies have been purchased based on the law in effect at the time and the trustees have been given a discharge. It is unclear how these decisions could be unwound. Where the benefits are paid from the scheme, the tax laws would penalise a scheme administrator who paid out a lower pension in order to provide indexation.

Transfers

The Department would like to hear how schemes that have cash balance type benefits have been calculating transfer values.

We have not had sufficient time to gather this information.

Question 29

Do you agree that schemes should not have to revisit transfers which have already taken place?

Yes.

Question 30

If schemes did have to do so, can you give any indication of the costs and practical issues involved?

It would be enormously expensive, and of negligible value to members. Once the transfer has been made, clawing back funds would be difficult, although it might in some cases be marginally easier to send along a supplement if there was an underpayment. In some cases, of course, the benefits will have been put into payment, possibly in the form of an annuity. In others, there has been another transfer and finding the benefit would be difficult. In any case the difference in value would not be large, and therefore the effort and expense would be disproportionate to the change, and very difficult to justify. If the Government was going to go down this road, a new set of regulations mandating cooperation with schemes attempting to make marginal adjustments to past transfers would be necessary.

The Pension Protection Fund

Question 31

Do you consider the transitional arrangements for valuations and levies will work in practice for any scheme that is newly eligible or for existing schemes that include benefits that can no longer be considered money purchase?

We believe they should work for most schemes, but have not had sufficient time to test this fully.

Question 32

Do you know of any schemes where money purchase contributions have been made other than from additional voluntary contributions to increase pension entitlement and paid from scheme funds on retirement?

This depends largely on the definition of “additional voluntary contributions”. Sometimes an employer puts extra money into a departing employee’s pension in order to secure additional benefits, but this is usually pursuant to an agreement and the employee normally would have had the option to take the benefit in cash. Is this an “additional voluntary contribution” under your definition?

Question 33

Will the draft Regulations for the conversion of a lump sum work in the case of all relevant benefits?

We are unable to determine from the regulations how this will work. Until there is a bit more clarity around the factors that will be applied to the lump sum and whether the lump sum consists of guaranteed benefits only (and what will be considered to have been guaranteed), it is difficult to say. However, as discussed in our remarks, we do not think that the method is appropriate for benefits consisting of contributions to which investment guarantees attach because the amount expected at retirement does not relate directly to the guarantee, which often acts as a underpin.

Question 34

Do you know of any schemes which would have been considered money purchase before the coming into force of section 29 and which will not be money purchase after, where the employer had suffered an insolvency event before the commencement of section 29?

No.

Scheme Funding

Question 35

What, if any, transitional measures do you think are required for schemes that began to wind up on or after 28 July 2011 and are still winding up on the appointed day?

The transitional measures should allow these schemes to wind up using the definition of "money purchase benefits" that was in effect when the first calculation was made.

Question 36

Are there problems with the requirement for the scheme actuary to provide an estimate as to the solvency of the scheme under regulation 18 of the Occupational Pension Schemes (Scheme Funding Regulations) 2005?

We are not aware of any.

Question 37

Have you experienced administrative difficulties in moving from schedule of payments to a schedule of contributions?

We do not have this information.

Pension Sharing on Divorce

Question 38

If schemes did have to revisit past valuations can you give any indication of the costs and practical issues involved?

Clawing back benefits from the spouse, where the spouse has taken a transfer value out of the scheme may not even be possible. Transferring additional benefit is marginally more feasible, but would involve administrative expense of running down the spouse's transfer payment and calculating an addition to it.

Cross-Border Schemes

Question 39

Will these proposed changes give rise to any difficulties for your scheme in terms of the clarity of the requirements in the legislation?

N/A

Question 40

Are specific transitional measures required for schemes affected by section 29 in respect of the existing modifications for cross-border schemes in the Occupational Pensions Schemes (Scheme Funding) regulations 2005?

We expect that there are, but have not had sufficient time to research what they might be.

Disclosure

Question 41

Do you agree that schemes should not have to revisit actions taken in respect of disclosure requirements and that the transitional provision captures all relevant areas?

Yes.

Question 42

If you are a scheme with cash balance benefits do you agree with the proposed amendments to the disclosure regulations and would this mean you need to revisit your disclosure requirements?

N/A

Question 43

If so, can you give an indication of the costs and practical issues involved?

N/A

Question 44

We would be particularly interested to hear about the benefit information you have been issuing to scheme members and whether this is provided automatically to the member on a regular basis?

N/A

Question 45

What are your views on the suggested proposal for a pension illustration?

Inasmuch as an illustration will be required in order to give the member an idea of the income he or she is likely to receive in retirement, it makes sense.

Question 46

Can you suggest an alternative to ensure the member receives this information?

We don’t understand the question.

Question 47

What types of information have you have been issuing to scheme members who are approaching retirement?

N/A.

Underpin and top-up benefits

Question 48

Are there any alternative approaches to the treatment of members whose money purchase amount exceeds compensation levels?

Where the money purchase amount exceeds compensation levels, the benefit should be preserved in full to the member.

Scheme Modifications

Question 49

What action by the Government do you believe is necessary in respect of this issue?

At present, it would be possible after the regulations become effective to change a final salary benefit to a pension pot with a guarantee without going through the procedures required by section 67 Pensions Act 1995 regarding protected modifications.

Automatic Enrolment

Question 50

Do you think that the commencement of section 29 will impact on Automatic Enrolment requirements in a way not covered by the regulations?

We are not aware of any ways not covered by the regulations.

Question 51

If so, what changes do you think need to be considered in the regulations to address that impact?

N/A