EXPLANATORY MEMORANDUM TO

THE OCCUPATIONAL PENSION SCHEMES (COLLECTIVE MONEY PURCHASE SCHEMES) (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes technical amendments to clarify two areas of the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022[1]. The first amendment concerns the provisions governing how reductions to member benefits in collective money purchase schemes can be managed so that it operates as originally intended to mitigate, where appropriate, the impact on members. The second amendment clarifies the categories of flexi-access drawdown fund[2] to which accrued rights in a collective money purchase scheme that is being wound up, can be transferred.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of) is Great Britain.

4.2 The territorial application of this instrument (that is, where the instrument forms part of the law of) is Great Britain.

4.3 It is envisaged that Northern Ireland will make corresponding regulations.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Pensions, Paul Maynard, has made the following statement regarding Human Rights:

"In my view the provisions of the Occupational Pensions Schemes (Collective Money Purchase Schemes) (Amendment) Regulations 2023, are compatible with the Convention rights."

[1] www.legislation.gov.uk/uksi/2022/255/contents/made

[2] a financial product that allows the policy holder to withdraw as much or as little of their retirement savings as they wish, while choosing how the remainder of their savings is invested.

6. Legislative Context

6.1 Part 1 of the Pension Schemes Act 2021[3] provided the legislative framework to introduce collective money purchase pension schemes to Great Britain. Part 2 provided corresponding legislation for Northern Ireland. The Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 came into force on 1 August 2022. Those regulations provide the detailed framework within which single or connected employer collective money purchase schemes can seek authorisation to operate. It also sets out the detail of how The Pensions Regulator's supervisory framework will apply and what the trustees of these schemes will need to do if something goes wrong with the scheme including when a scheme might need to be wound up. The regulations are supported by a Code of Practice[4] produced by The Pensions Regulator.

6.2 This instrument, which is subject to the affirmative resolution procedure, makes some technical amendments to regulations 17 and 19, and paragraphs 2(1) and 14(2)(c) of Schedule 6 to the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022, ensuring that collective money purchase schemes can operate as originally intended, that they are run well and that the interests of members are protected.

7. Policy background

What is being done and why?

7.1 Collective money purchase schemes provide an alternative to existing occupational pension provision[5] in which the contributions of members and employers are pooled and invested with a view to delivering benefits for members at the level to which the scheme aspires. They offer potential benefits in economies of scale and the opportunity for greater investment in higher returning assets than are usually associated with defined contribution occupational pension schemes. Another benefit is the collective nature of these schemes, which means that investment and longevity risks are shared across the membership. As these schemes provide an income to pensioner members there is no need for members to make complex financial decisions at the point of retirement. The income in retirement is subject to periodic adjustment, which is designed to achieve a balance between a scheme's assets and the amount required for the provision of benefits.

7.2 If confidence in this new provision is to be built, then it is essential that only well-run schemes are allowed to operate in line with our published policy intent. Industry stakeholders, however, raised concerns on two areas of the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 suggesting that the policy objectives should be clearer to enable them to work as originally intended. These concerns were reiterated in responses to the 'Extending Opportunities for

[3] www.legislation.gov.uk/ukpga/2021/1/contents/enacted
[4] www.thepensionsregulator.gov.uk/en/document-library/new-code-of-practice/collective-defined-contribution
[5] There are broadly two main types of occupational pension schemes in the UK currently; 'defined contribution' - a non-guaranteed pension pot based on how much is paid in and how well investments perform, and 'defined benefit' – an employer guaranteed pension based on your salary and how long you have worked for your employer.

Collective Defined Contribution Pension Schemes' consultation[6], which was launched in January 2023. In its response[7] to this consultation, the government confirmed it would take steps to address these two areas and this instrument amends the existing regulations accordingly.

7.3 The first area this instrument seeks to amend concerns the Valuation & Adjustment provisions[8], which are an integral element of collective money purchase pension schemes. It requires the scheme to carry out an annual valuation exercise to ensure that a balance is maintained between the value of the available assets of the scheme and the amount needed to provide the target benefits to members. If, for example, the value of the assets is lower than the amount needed to pay the benefits, the scheme will be required to make a cut to the benefits to regain that balance. Conversely, if the value of the assets is more than the amount needed to pay the benefits then the trustees will be required to pay an increase to the members.

7.4 Regulation 17 of the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 also provides that where a cut to benefits must be made, the trustees of the collective money purchase scheme can smooth the impact of the benefits cuts on members over three years. This is called a Multi-Annual Reduction. Regulation 17(10) currently provides that if a subsequent annual valuation, which occurs during a Multi-Annual Reduction, shows that an increase in benefits is required then the trustees, having taken advice from the scheme actuary[9], will be required to offset that increase against the reduction to benefits which is already planned as part of the Multi-Annual Reduction.

7.5 The policy aim, as stated in paragraph 85 of the 'Government response to the consultation on draft regulations to support Part 1 of the Pension Schemes Act 2021 and associated consequential changes'[10], was to produce overall a smaller reduction to benefits, an elimination of the reduction to benefits, or an increase to benefits as appropriate which would be to the benefit of the members. This meant that the increase would firstly be offset against the remaining planned reductions of the Multi-Annual Reduction. Stakeholders, however, advised that the way this regulation was originally drafted required increases to be calculated in a particular way which limited their effectiveness when seeking to offset against reductions under a Multi-Annual Reduction and therefore did not meet the published policy objective.

7.6 This statutory instrument, therefore, amends regulation 17 to reflect the original policy intention and thereby enable increases to be applied in such a way that allows for a greater offsetting against reductions under a Multi-Annual Reduction. It also clarifies how this provision would work where there may be more than one Multi-Annual Reduction in effect and sets out the circumstances, if there is still an increase

[6] www.gov.uk/government/consultations/extending-opportunities-for-collective-defined-contribution-pension-schemes/extending-opportunities-for-collective-defined-contribution-pension-schemes#ministerial-foreword
[7] www.gov.uk/government/consultations/extending-opportunities-for-collective-defined-contribution-pension-schemes/outcome/government-response-extending-opportunities-for-collective-defined-contribution-pension-schemes
[8] These are set out in sections 18 to 23 of the Pensions Schemes Act 2021and regulations 17 to 21 of the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022.
[9] a person who compiles and analyses statistics and uses them to calculate insurance risks and premiums.
[10] Government response to the consultation on draft regulations to support Part 1 of the Pension Schemes Act 2021 and associated consequential changes - GOV.UK (www.gov.uk)

remaining after offsetting has taken place, in which any remaining increase must be applied to the calculation of members' benefits.

7.7 The instrument also makes changes to regulation 19 of the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022. This provision concerns the information that actuarial valuations must contain. The instrument stipulates that the actuarial valuation must include details of any variation to a Multi-Annual Reduction as a result of offsetting an increase to benefits. In addition, it requires the actuarial valuation[11] to include whether any remining increase to benefits has been applied after the offsetting process has concluded.

7.8 The second area the instrument addresses is paragraph 2(1)(b) of Schedule 6 to the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022. This provision relates to how a collective money purchase scheme should be wound up. For example, in a single or connected employer collective money purchase scheme if the sponsoring employer becomes insolvent then the scheme would be unable to continue to operate. The trustees would be required to identify appropriate schemes or alternative payment arrangements to which the members' accrued rights to benefits would be transferred. Once this process has been completed the scheme would then be closed. Scheme rules, may for example, provide that in the event of the member's death their accrued rights to benefits be passed onto a dependant or nominee.

7.9 Paragraph 2(1)(b) originally provided that the accrued rights to benefits under the scheme could only be transferred to a member's flexi-access drawdown fund. Stakeholder feedback suggested that it would be helpful for this legislation to be clearer about the categories of other flexi-access drawdown funds that the accrued rights under the scheme may be transferred to. This instrument amends Schedule 6 to achieve this objective. It also includes these additional categories of flexi-access drawdown fund to which accrued rights in a collective money purchase scheme that is being wound up, can be transferred, in paragraph 14(2) of Schedule 6.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union

9. Consolidation

9.1 Informal consolidated text of instruments is available to the public free of charge via 'the National Archive' website.[12]

10. Consultation outcome

10.1 This instrument clarifies existing and agreed policy in the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 and does not depart from what was originally set out in the previous consultations. Therefore, government did not deem a full public consultation to be necessary or proportionate. Instead, we ran a technical consultation from 16 October to 27 October 2023 with several stakeholders with a view to ensuring that the amending regulations accurately reflected the policy intent.

[11] An actuarial valuation is a type of appraisal of a pension fund's assets versus liabilities, using investment, economic, and demographic assumptions, to determine the funded status of a pension plan.
[12] www.legislation.gov.uk

10.2 Six written responses were received from a range of interested parties including pension schemes, advisers, legal firms, and actuaries. In addition, direct engagement was undertaken with a number of industry stakeholders. The Pensions Regulator and His Majesty's Revenue and Customs also provided input throughout the development of the draft secondary legislation.

10.3 The responses we received broadly agreed with the approach taken with the draft statutory instrument, with the majority raising drafting and minor technical points. Having considered these, drafting changes have been made to the statutory instrument to provide greater clarity and more accurately reflect the policy intent. There have been no changes in policy intent as a result of the responses received.

11. Guidance

11.1 There is no guidance provided for this instrument because the amendments it makes, seeks only to clarify the original policy intention. As stated in paragraph 6.1, The Pensions Regulator published a Code of Practice to support the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022 on the 1 August 2022 and has the facility to produce additional guidance to supplement the Code of Practice if needed.

12. Impact

12.1 There is no significant impact on business, charities, or voluntary bodies. The main impact will be on persons seeking to establish and operate a collective money purchase scheme, persons who choose to apply to The Pensions Regulator for authorisation of such a scheme and persons who operate a collective money purchase scheme.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because this instrument only seeks to clarify the agreed policy in the Occupational Pension Schemes (Collective Money Purchase Schemes) Regulations 2022, the impact of which are already captured in a full impact assessment[13]. We do not expect any notable additional burdens to those already accounted for in the impact assessment, which estimated an annual net cost to business of £0.4 million.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Department for Work and Pensions will be informally monitoring these regulations to make sure that they operate as intended. This will involve engagement with The Pensions Regulator and any collective money purchase scheme that is established. This also forms part of the broader evaluation of collective money purchase schemes the Department is doing to inform the work broadening provision on collective money purchase schemes to include multi-employer schemes.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Paul

[13] https://www.legislation.gov.uk/uksi/2022/255/impacts

Maynard MP, Parliamentary Under-Secretary of State for the Department for Work and Pensions has made the following statement:

14.3 "Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate to make provision for review in the Occupational Pension Schemes (Collective Money Purchase Schemes) (Amendment) Regulations 2023".

15. Contact

15.1 Julian Barker at the Department of Work and Pensions, Telephone: 07941893143 or email: julian.barker@dwp.gov.uk can be contacted with any queries regarding the instrument.

15.2 Rob O' Carroll, Deputy Director for Automatic Enrolment and Defined Contribution Pensions Policy, at the Department for Work and Pensions can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister for Pensions (Parliamentary Under-Secretary of State), Paul Maynard MP at the Department for Work and Pensions, can confirm that this Explanatory Memorandum meets the required standard.