EXPLANATORY MEMORANDUM TO

THE PENSIONS ACT 2011(CONSEQUENTIAL AND SUPPLEMENTARY PROVISIONS) REGULATIONS 2014

2014 No. [XXXX]

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

2. Purpose of the instrument

2.1 This instrument, together with the Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 ("the Transitional Regulations"), provides transitional, consequential and supplementary measures to support the coming into force of the clarified definition of money purchase benefits in section 29 of the Pensions Act 2011[1] takes effect. This instrument provides an alternative method of revaluation for certain types of benefits known as a cash balance benefits. It also adds decisions made by the Board of the Pension Protection Fund, in accordance with powers under the Transitional Regulations, to the list of matters than can be reviewed.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Section 29 of the Pensions Act 2011, once commenced, will have retrospective effect to 1 January 1997. Regulations 3 and 4 of this instrument amend primary legislation with prospective effect.

3.2 The enabling powers for this instrument are sections 31(1) and 33(1)(a), (b) and (c) of the Pensions Act 2011. Under section 33(4) of the Pensions Act 2011, regulations are subject to negative Parliamentary procedure, unless they contain provisions which amend primary legislation, in which case section 33(3) of that Act requires the affirmative procedure.

3.3 Related provisions subject to the negative procedure are contained in the Transitional Regulations.

3.4 The provisions in this instrument and those in the Transitional Regulations were originally contained in one instrument laid in draft for approval of both Houses of Parliament on 6 May 2014. That instrument has been withdrawn and replaced by this instrument, which contains only those provisions subject to the affirmative Parliamentary procedure, and by the Transitional Regulations, containing only provisions subject to the negative Parliamentary procedure. Accordingly the procedure for free issue of the two separate instruments has been applied.

3.5 The Department's decision to withdraw the original instrument and to replace it with two separate instruments was prompted by the Committee's request for a memorandum from the Department concerning the appropriate Parliamentary procedure for the original instrument.

4. Legislative Context

4.1 The definition of money purchase benefits is fundamental to pensions law. The law treats money purchase benefits differently from other benefits, such as those offered by final salary schemes. A range of statutory provisions protect members

[1] http://www.legislation.gov.uk/ukpga/2011/19/part/4/enacted

with benefits that are not money purchase against the risk that their scheme is not able to meet the pensions promise. These provisions do not apply to money purchase benefits.

4.2 The Supreme Court judgment in Bridge Trustees v Houldsworth and another (2011) [2] decided that certain benefits could be considered money purchase benefits even though it was possible for them to have a shortfall in their funding. This created uncertainty about the types of benefit structure that fall within the definition of money purchase benefits.

4.3 Section 29 of the Pensions Act 2011 clarifies the definition of money purchase benefits by limiting it to those benefits that cannot have a funding shortfall.

4.4 Section 29 will take effect back to 1 January 1997 to ensure that decisions made by trustees acting in accordance with the clarified definition, rather than with the Supreme Court decision, are not called into question. This instrument provides supporting measures that allow schemes with benefits which may be affected by section 29 to continue revaluing those benefits in accordance with the rules of the scheme, rather than having to comply with existing legislative requirements for benefits that are not money purchase. It also ensures that decisions in relation to affected benefits made by the Board of the Pension Protection Fund are subject to review.

4.5 These provisions will not apply to the Imperial Home Décor Pension Scheme (the scheme considered by the Supreme Court) because it is an established principle that a successful litigant should receive the benefit of a decision made in their favour.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain. The Department for Social Development in Northern Ireland will be producing its own legislation replicating these Regulations for Northern Ireland.

6. European Convention on Human Rights

6.1 The Minister of State, Steve Webb MP, has made the following statement regarding Human Rights, 'in my view the provisions of the Pensions Act 2011(Transitional, Consequential and Supplementary Provisions) Regulations 2014 are compatible with the Convention rights**'.**

7. Policy background

- **What is being done and why**

7.1 Occupational pension schemes offer benefits that are either money purchase benefits or non-money purchase benefits. The Government's view is that the term 'money purchase benefits' should only refer to those pension rights which are wholly backed by matched assets and cannot develop surpluses or deficits.

7.2 These Regulations make changes to primary legislation with prospective effect. Some pension schemes have always treated benefits affected by the Supreme court's decision as non-money purchase (ie in accordance with section 29), but those schemes which have treated the benefits as money purchase will be affected

[2] [2011] UKSC 42

by the coming into force of section 29. The Transitional Regulations, which also form part of the implementation of section 29, deal with how existing regulatory requirements will apply to those benefits that have been treated as money purchase but do not meet the clarified definition of money purchase benefits. The majority of schemes affected will be those offering a mixture of money purchase and non-money purchase benefits.

Cash balance benefits

7.3 A cash balance benefit is where a pot of money (which may be a notional pot) is built up through contributions, but there is some form of promise in relation to the amount accumulated. No promise is made in relation to the level of pension to be provided.

7.4 Regulation 3 amends the Pension Schemes Act 1993 ("the 1993 Act") to allow trustees or managers of an occupational pension scheme to revalue cash balance benefits which are not calculated by reference to a member's final salary by the "cash balance method".

7.5 It does this by inserting new subsections (3A) and (3B) into section 84 of the 1993 Act to make provision respectively for cash balance benefits attributable to service falling on or after the appointed day, or falling partly before and partly on or after the appointed day. It allows trustees or managers to revalue cash balance benefits not calculated by reference to final salary by the "cash balance and flat rate method", as an alternative to the "final salary method". This method calculates the rate or amount of the benefit solely by reference to the members' length of service.

Reviewable matter – Pension Protection Fund

7.6 Regulation 4 amends Schedule 9 to the Pensions Act 2004 Act. Schedule 9 is a list of matters relating to decisions made by the Board of the Pension Protection Fund that are subject to review.

7.7 This list is extended to include directions and determinations made by the Board of the Pension Protection Fund about whether any of the benefits affected by the clarified definition should be treated as money purchase benefits for a transitional period. This will allow people to challenge decisions made by the Board of the Pension Protection Fund.

- **Consolidation**

7.8 Informal consolidated text of instruments is available to the public free of charge via 'The Law Relating to Social Security' (Blue Volumes) on the Department for Work and Pensions website at http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/ or the National Archive website legislation.gov.uk . An explanation as to which instruments are maintained on each site is available here."

8. Consultation outcome

8.1 The Department held a public consultation on a set of draft Regulations that included both provisions in this instrument and the more detailed Transitional Regulations, between 31 October 2013 and 12 December 2013. There were 95 written responses from pensions industry representatives, trustees and employers. During the consultation period the Department held four stakeholder forums that were attended by over 100 people in total.

8.2 None of the responses related directly to changes to primary legislation in this instrument.

8.3 More generally the majority of stakeholders (68 of the written responses) were of the view that where schemes had not acted consistently with the Department's understanding of money purchase benefits, they could incur some costs if required to revisit decisions made after 27 July 2011. This was the date of the Department's statement of intention to clarify the definition of money purchase benefits. These Regulations take account of this and now validate actions and decisions taken after 27 July 2011 and the coming into force date in all areas. All other responses were silent on the issue.

8.4 The Government response can be found at: https://www.gov.uk/government/consultations/definition-of-money-purchase-benefits-in-occupational-pension-schemes

9. Guidance

9.1 The Pension Protection Fund guidance about reviewable matters and will be updated to reflect these changes.

10. Impact

10.1 These Regulations are of net but unquantified benefit to business and civil society organisations.

10.2 The impact on the public sector is minimal and arises from the need to ensure that members of occupational pension schemes are included in pension protection measures in respect of non-money purchase benefits. This complies with the European directive to protect member benefits and ensure that members receive a meaningful income in retirement.

10.3 An impact assessment that relates to this instrument and the Transitional Regulations is attached and will be published alongside this Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 Pensions legislation exempts, for most purposes, schemes with less than 12 members and there are very few small businesses which provide an occupational pension scheme. Therefore any impact would be negligible.

11.2 As these regulations are deregulatory, neither sunsetting provisions nor the Small and Micro-Business Assessment are applicable.

12. Monitoring & review

12.1 There is no planned evaluation of this Statutory Instrument. It will be monitored through ongoing stakeholder engagement with the pensions industry.

13. Contact

13.1 Alison Humberstone OBE at the Department for Work and Pensions Tel: 0207 449 5132 or email; alison.humberstone1@dwp.gsi.gov.uk can answer any queries regarding the instrument.