

Statement

Changes to the definition of money purchase benefits

July 2014

The Pensions
Regulator

Introduction

From 24 July 2014, section 29 of the Pensions Act 2011 ('2011 Act'), which amends the statutory definition of money purchase benefits contained in section 181 of the Pension Schemes Act 1993, comes into effect.

The amended definition of money purchase benefits will have retrospective effect from 1 January 1997. Regulations¹ (the 'Bridge regulations') will provide transitional measures for affected schemes.

Schemes affected by the coming into force of section 29 of the 2011 Act are those schemes which offer benefits that have the potential to develop a funding deficit, but which the scheme has treated as money purchase benefits. Following the coming into force of section 29 of the 2011 Act, such benefits will now explicitly fall outside of the clarified definition of money purchase benefits.

Subject to the transitional measures provided by the Bridge regulations, affected schemes will need to comply with the legislative and regulatory requirements that apply to non-money purchase schemes.

We expect that the schemes most affected by the change are those which offer:

- cash balance benefits. These are subject to some kind of promise (such as a guaranteed interest rate or rate of return) and provide a sum of money which is available at normal pension age, which is used either to purchase an annuity from a provider, or to provide a scheme pension.
- scheme pensions that are derived from cash balance or money purchase benefits where the scheme pays retirement income directly from its own funds (known as 'internal annuities')².

1
The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 and The Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014.

2
Excludes retirement income being paid from an income drawdown arrangement.

Background

The definition of money purchase benefits is a fundamental concept of pensions law. The regulatory framework that protects members of occupational pension schemes is built on the understanding that money purchase benefits cannot develop a funding deficit. As a result, schemes that provide money purchase benefits only are not subject to a regulatory regime in respect of funding of accrued rights in the same way as occupational defined benefit schemes, nor are the members of such schemes protected by the Pension Protection Fund.

The decision of the Supreme Court in the case of *Bridge Trustees v Houldsworth and another* (2011) (often referred to as 'the Bridge case') created uncertainty in respect of the legal definition of money purchase benefits contained in section 181 of the Pension Schemes Act 1993. Section 29 of the 2011 Act clarifies the definition of money purchase benefits and restores it to the meaning the Government intended it to have before the Bridge case.

Impact of the Bridge regulations

The Bridge regulations, which were subject to extensive consultation by the Department for Work and Pensions (DWP), provide transitional, supplementary and consequential measures to support the commencement of section 29 of the 2011 Act.

The Bridge regulations, in the main and subject to two limited circumstances, do not require trustees to revisit past decisions so that decisions made between 1 January 1997 and the coming into force of section 29 of the 2011 Act will be validated. Further information is set out in the DWP's Response to Public Consultation³.

3

The issue of retrospection is discussed throughout DWP's **Response to Public Consultation** ('consultation response'). For further information on DWP's policy on retrospection in general, refer to paragraphs 32-38 of the consultation response. For further details of the two limited circumstances where retrospection will apply once Section 29 of the 2011 Act comes into effect, refer to paragraph 121 in relation to winding-up and paragraphs 130-134 in relation to deficiencies in the assets (employer debt).

Trustee actions

Trustees need to consider whether their scheme may be affected by the clarified definition of money purchase benefits. Affected schemes are more likely to be hybrid schemes and schemes that offer cash balance benefits and/or internal annuities. Where it is determined that a scheme no longer offers money purchase benefits only, that scheme may be subject to different legislative and regulatory regimes, subject to the transitional measures provided by the Bridge regulations.

We urge trustees to review their scheme's trust deed and rules and seek independent legal advice in order to determine the character of benefits provided by their scheme in light of the clarified definition of money purchase benefits. Trustees of hybrid schemes should also consider whether benefits within their scheme that have previously been treated as money purchase benefits continue to satisfy the definition of money purchase benefits. Conducting such a review and obtaining the necessary legal advice should assist trustees of affected schemes in complying with the appropriate legislative and regulatory regimes.

Following the review of your scheme, if you find that, despite its current or historic treatment as a money purchase scheme, it offers benefits that have the potential to result in a funding deficit (and therefore falls outside the amended definition of money purchase benefits), then you must notify us immediately, using the contact details provided below, so that we can amend our records.

Further information

We encourage trustees to read this statement in conjunction with the following documents published by DWP⁴ in order to be confident that they fully understand the potential impact on their scheme:

- The Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014
- The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014
- The Pensions Act 2011 (Consequential and Supplementary Provisions) Regulations 2014 and The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 – Response to Public Consultation
- Section 29 of the Pensions Act 2011.

4
Available at www.gov.uk/government/consultations/definition-of-money-purchase-benefits-in-occupational-pension-schemes

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