

# House of Lords Select Committee on Delegated Powers and Regulatory Reform

## Pensions Bill

### Memorandum from the Department for Work and Pensions

#### Introduction

1. The Pensions Bill was introduced in the House of Lords on 12<sup>th</sup> January 2011.
2. This memorandum identifies the provisions for delegated legislation in the Pensions Bill. It explains:
  - the purpose of the powers,
  - the reason why matters have been left to delegated legislation,
  - the parliamentary procedure selected for the exercise of these powers, and
  - why that parliamentary procedure has been chosen.

#### Background and summary

3. The measures contained within this Bill implement recommendations from three Government and independent reviews and amend legislation introduced by previous Acts.
4. As part of the Coalition Agreement, in June 2010 the Government announced a review of the timetable for increasing State Pension age to 66. The response to this review was published in the Government's White Paper, *A sustainable State Pension: when the State Pension age will increase to 66 (Cm 7956)*, in November 2010 which proposed changes to the timetable for increasing State Pension age to 66. This Bill implements the revised timetable set out in the White Paper.
5. A second review was announced by the Government in June 2010 on automatic enrolment into workplace pensions. The recommendations from the independent review on automatic enrolment were published in October

2010 in the report, *Making Automatic Enrolment Work*. These recommendations provide the basis for several of the measures contained within this Bill and build on the existing regime provided by the Pensions Act 2008.

6. The Independent Public Service Pension Commission (IPSPC) published its interim report in October 2010, which recommended that the most effective way to make short-term savings on public sector pensions is to increase member contributions. Primary legislation is required in respect of contributions from members of the judiciary. The Bill will introduce provision to allow pension contributions to be made by members of the judiciary towards the cost of providing personal pension benefits.
7. The Bill is organised into the following five parts:
  - Part 1 (clauses 1 to 3 and Schedules 1 to 3) – State Pension;
  - Part 2 (clauses 4 to 13) – automatic enrolment;
  - Part 3 (clauses 14 to 23 and Schedule 4) – occupational pension schemes;
  - Part 4 (clause 24 and Schedule 5) – judicial pensions; and
  - Part 5 (clauses 25 to 29) – miscellaneous and general.

### **Part 1 – State Pension**

8. Part 1 sets out the provisions for amending the State Pension framework. This includes changes to the timetable for increasing State Pension age to 66 and changing the reference period and group for whom the additional state pension will be consolidated.

### **Part 2 – automatic enrolment**

9. Part 2 contains measures to amend the automatic enrolment provisions for workplace pension schemes. This includes: the introduction of an “earnings trigger” for automatic enrolment, so that those earning below the trigger amount will not be required to be enrolled in a workplace pension, and new up-rating provisions for the qualifying earnings band on which contributions are made; the introduction of provision allowing for a period of up to three months before the automatic enrolment duty commences; a change to the

timing of automatic re-enrolment, so that regulations must secure that there is not more than one automatic re-enrolment date in any period of two years and nine months, rather than in any period of three years; and changes to the way an employer can certify that their pension scheme meets the necessary quality test.

### **Part 3 – occupational pension schemes**

10. Part 3 sets out the provisions for occupational pension schemes. These include amendments to existing pension legislation to ensure consistency in indexation requirements for occupational pensions and pension compensation. Part 3 contains provisions relating to the Pension Protection Fund, the Pensions Regulator, and the Financial Assistance Scheme. It also includes minor technical amendments to pension legislation.

### **Part 4 – judicial pensions**

11. Part 4 makes provision in respect of contributions towards personal pension schemes for members of the judiciary.

### **Part 5 – miscellaneous and general**

12. Part 5 contains miscellaneous amendments to existing pension legislation and provisions as to extent, commencement and short title of the Bill.

### **Extent**

13. The amendments made by the Bill generally extend to England and Wales and to Scotland. The amendments made by the following provisions have UK extent:

- clause 18 (Financial Assistance Scheme: amount of payments),
- clause 19 (Financial Assistance Scheme: transfer of assets).

Clause 24 and parts of Schedule 5 (Contributions towards cost of judicial pensions etc) also have UK extent.

### **Parliamentary Scrutiny**

14. The Department for Work and Pensions has considered in each case the appropriate parliamentary procedure to be followed in exercising the

delegated powers under the Bill. The commentary below on each power sets out which parliamentary procedure has been proposed and why that procedure is considered appropriate.

### **Consultation requirements**

15. The Department for Work and Pensions is required to consult on policy in respect of proposed regulations under certain social security enactments with the Social Security Advisory Committee.
16. It is only Part 1 of this Bill that is relevant to social security; no delegated powers taken in Part 1 will attract this obligation.

### **Other matters**

17. All of the delegated powers are to be made by way of statutory instrument. In respect of Parts 1 to 3 and 5, these are exercisable by the Secretary of State. In respect of Part 4, these are exercised by the Lord Chancellor (or, in relation to certain offices in Scotland, by the Secretary of State) with the concurrence of the Treasury.
18. A list of all the provisions of the Bill containing powers to make delegated legislation is contained in an annex to this memorandum.

### **Analysis of delegated powers by clause**

#### **Part 1 – State Pension**

##### **Clause 3 and Schedule 3 – consolidation of additional pension**

19. Currently, the Pensions Act 2008 ties the consolidation start date to the flat rate introduction year. The consolidation of additional State Pension is a measure to provide a single value for a person's additional pension, the method for calculation of which has changed over time, so as to enable easier prediction of entitlement in retirement. The flat rate of additional pension is a measure by which, instead of bands of different rates by which additional pension is calculated, one flat rate is applicable. These measures were

introduced to simplify the additional pension by the Pensions Acts 2007 and 2008; both are yet to have effect.

20. These provisions have since been found to be too restrictive.
21. Consolidation will have no impact on a person's overall State Pension income over the course of their retirement. As contracted-out pension rights are offset against additional State Pension entitlement built up before 1997, a number of people would only gain additional State Pension for that period at some time after pensionable age. This is because differences in the way private pension schemes increase rights in accrual and pensions in payment compared to the State scheme can mean that at State Pension age a person's additional State Pension entitlement for that period might be small, or non-existent, but increase later on in retirement. Under consolidation, actuarial factors would be applied to a person's contracted-out pension rights in order to smooth the disparities in entitlement that occur during retirement. This is likely to affect around 11 million people who built up contracted-out pension rights between 1978 and 1997. As a result, there are short-term costs to the Exchequer associated with consolidation, in that additional State Pension entitlement for the pre-1997 period would be paid from State Pension age. However, the measure would provide some flexibility as to when these costs would be incurred.
22. Clause 3 introduces Schedule 3. Paragraphs 2 and 4 of Schedule 3 amend sections 45 and 122 of the Social Security Contributions and Benefits Act 1992 to enable the Secretary of State to specify the tax year from which consolidation will occur and also the applicable date after which persons reaching pensionable age will be affected. This power is required to ensure there is sufficient flexibility to determine when the short-term costs outlined above will be incurred.
23. The order will designate a particular date or tax year from which the existing statutory provisions will have effect. As such, it is similar in nature to a

commencement order and accordingly has not been assigned a parliamentary procedure.

## **Part 2 – automatic enrolment**

### **Clause 4 – automatic re-enrolment where employer interrupts scheme membership**

24. Section 2 of the Pensions Act 2008 provides that where a jobholder is an active member of a qualifying scheme, the employer must not take an action or make an omission by which the jobholder ceases to be an active member of the scheme, or the scheme ceases to be a qualifying scheme, except in certain cases.
25. The clause substitutes a new section 2(3) to provide that one case is where the employer makes arrangements to re-enrol the jobholder into an automatic enrolment scheme within the prescribed period.
26. This clause also amends section 5(4) of the Pensions Act 2008 (automatic re-enrolment) to give the Secretary of State the power to provide in regulations that the duty to re-enrol does not apply in prescribed circumstances where the jobholder has ceased to be an active member of a qualifying scheme because of any action or omission by the jobholder (or by the employer at the jobholder's request) or has opted out of pension saving under section 8 of the Pensions Act 2008.
27. This clause also amends section 54 of the Pensions Act 2008 (inducements) so that a link is no longer made between that section and the period prescribed in section 2 in the situation (under s54(1)(b)) where an employer has induced a jobholder to opt out of scheme membership. A separate power is proposed to prescribe a period within which an employer may make arrangements to offer alternative scheme membership in order to avoid a contravention of the inducements measure.
28. These powers give the Department the flexibility to consult on what period or circumstance is appropriate and to keep the matter under review. The

negative resolution procedure is appropriate because these powers are uncontroversial.

**Clause 5 – earnings trigger for automatic enrolment and re-enrolment**

**Clause 8 – review of earnings trigger and qualifying earnings band**

**Clause 9 – rounded figures for earnings trigger and qualifying earnings band**

29. The purpose of these powers is to provide a mechanism for the Secretary of State by order to revise the amount of the earnings trigger that is provided for in clause 5 of the Bill, to provide a new mechanism for the Secretary of State by order to revise the amounts of the upper and lower limits of the qualifying earnings band that is provided for in section 13 of the Pensions Act 2008 and to allow the Secretary of State to specify rounded figures for a pay reference period in place of the proportionate figures that would otherwise apply.
30. Clause 8 provides that, when considering whether an amount should be increased or decreased, the Secretary of State may take into account the income tax personal allowances, the national insurance earnings limits and thresholds, the general level of prices and earnings, the level of the basic state pension for single adults, and any other factors that the Secretary of State considers relevant.
31. Clauses 8 and 9 are Henry VIII powers because the Secretary of State may by order amend an amount initially set in primary legislation. This amends an existing Henry VIII power in the Pensions Act 2008. The reason an order-making power is needed is to provide flexibility, given that the relevant factors to which the thresholds are linked will change over time.
32. Clause 8 also provides that where an order is made under section 14(2) of the Pensions Act 2008, as substituted by the clause, the affirmative resolution procedure will apply. This is to ensure an appropriate level of Parliamentary scrutiny in recognition of the significance of the amount of the earnings trigger and of the limits of the qualifying earnings band.

### **Clause 6 – postponement or disapplication of automatic enrolment**

33. The clause is intended to allow employers to apply an individual waiting period of up to three months to an individual jobholder’s automatic enrolment date. In order to apply a waiting period, the employer will have to inform their workers of this intention via a notice.
34. The delegated power will allow the Secretary of State to specify in regulations when the notice must be served and what requirements in relation to the notice apply.
35. The power to prescribe these matters allows flexibility to consult on what period for service of the notice is appropriate and what requirements should be set, and to keep those matters under review.
36. While the overall concept of waiting periods may be controversial, the regulations specifying timing and content of the notice are not. The Department therefore does not feel that this regulation needs an affirmative procedure. The overall waiting period policy will be debated as a matter of course as the Bill goes through Parliament.

### **Clause 7 – timing of automatic re-enrolment**

37. This clause amends a regulation making power in section 6 of the Pensions Act 2008, which currently enables the Secretary of State to make regulations for securing that, for any employer, there is not more than one automatic re-enrolment date within any period of three years. This clause amends the period to two years and nine months.
38. It is intended that the regulations will allow for three months of flexibility either side of the three year anniversary of the staging date and, thereafter, the three year anniversary of the previous re-enrolment date. Primary legislation will therefore make it clear that automatic re-enrolment will not be required more frequently than once in any period of two years and nine months. The power is not controversial and the Department therefore thinks that the negative resolution procedure is appropriate.



## **Clause 10 – certification that alternative to quality requirement is satisfied**

39. Section 28 of the Pensions Act 2008 already provides for money purchase occupational pension schemes, personal pension schemes and certain hybrid schemes to which subsection (1)(a) of section 24 applies to be certified as having satisfied the relevant quality requirement and enables regulations and guidance to prescribe the detail. However, feedback from stakeholders has indicated that the certification model envisaged should be further simplified. The regulatory framework, however, remains the same with detailed requirements set out in a combination of regulations and guidance.
40. Using regulations and guidance to prescribe the finer details enables the Secretary of State to road test the detailed processes with employers who will be the end users of certification. This approach is also consistent with the regulatory framework in which scheme quality requirements for defined benefits schemes operate.
41. The regulation making power in section 28(1) enables regulations to prescribe that a scheme satisfies the relevant quality requirements, if there is a certificate in force in relation to the employer. Section 28(2) provides that the person giving the certificate must state that in their opinion it is able to satisfy the relevant quality requirements. The clause amends section 28(2) to provide that the person giving the certificate may state instead, that in their opinion, the scheme is able to satisfy prescribed alternative requirements.
42. The regulation making power in amended subsection (5) of section 28 will be used to set out the detailed certification processes in regulations and in particular regulations may provide for:
- the person(s) that can give a certificate,
  - the period for which a certificate can be in force,
  - the procedures to be complied with for giving a certificate,
  - requiring the person giving the certificate to comply with guidance,
  - arrangements for phasing in contributions,
  - a modification for certain hybrid schemes,

- the timeframe for completing certain processes,
- the employer to calculate the amount of contributions that should have been paid during the certification period,
- cases where the requirements or any section 26 agreements in relation to the contributions payable in respect of any relevant jobholders during the certification period did not satisfy prescribed conditions, and
- where the payment of contributions did not satisfy prescribed conditions, for the scheme not to be treated as having satisfied the relevant quality requirement unless prescribed steps are taken.

43. The parliamentary procedure for this power is affirmative because it is recognised that a power to prescribe an alternative requirement is a wide power and that Parliament will wish to consider the detail of proposed regulations.

**Clause 11 - transitional period for defined benefits and hybrid schemes to be optional**

44. The clause is intended to correct a flaw in section 30 of the Pensions Act 2008. Section 30 currently provides that where an employer offers a defined benefit or hybrid scheme, the automatic enrolment date is deferred where certain conditions are satisfied. The clause amends section 30 such that employers are able to choose whether or not to defer the automatic enrolment date.
45. As a part of the process, the employer will be required to provide the jobholder with an appropriate notice at a prescribed time to the effect that it intends to defer the automatic enrolment date.
46. The delegated powers in the clause will allow the Secretary of State to specify in regulations the period within which the notice must be served and what the form and content of this notice should be. The Department will need to consult with employers as to what that period should be and will need the flexibility to be able to amend this provision in the future if necessary.

47. The parliamentary procedure for this power is the negative resolution procedure. This procedure has been selected because the power is uncontroversial.

### **Part 3 – occupational pension schemes**

#### **Clause 17 and Schedule 4 – Pension Protection Fund**

48. Paragraphs 1 to 13 of Schedule 4 (requirements to obtain actuarial valuations) make amendments to the Pensions Act 2004 so as to permit the Board of the Pension Protection Fund (“the Board”), where it is able to do so, to determine the funding position of an eligible pension scheme without obtaining a fresh actuarial valuation in accordance with the requirement in section 143(2) or 158(3) of the Pensions Act 2004. Paragraph 5(1) and (2) of Schedule 4 substitutes subsection (2) of and inserts a new subsection (2A) into section 143 of the Pensions Act 2004. Existing powers in subsection 143(3) permit regulations to provide that specified debts and obligations may, in prescribed circumstances, be regarded as assets or liabilities of a scheme for the purposes of an actuarial valuation. Section 143(4) and (5) also provide powers to prescribe how the assets and protected liabilities of schemes eligible for the Pension Protection Fund are to be determined, calculated and verified. The amendments made by paragraph 5(3) and (4) of Schedule 4 apply the regulation making powers in section 143(3) to (5) to cases where the Board makes a funding position determination under the substituted section 143(2)(a).
49. Paragraph 5(6) of Schedule 4 inserts a new subsection (5C) into section 143 of the Pensions Act 2004. This subsection requires the Board to issue a statement setting out how (subject to any regulations made under subsection (4)) it will make a funding position determination.
50. Paragraph 6 of Schedule 4 inserts a new section 143A, dealing with the procedure for making, and the effect of, a funding position determination under section 143(2)(a) (substituted by paragraph 5(2) of Schedule 4). Subsection (5) of section 143A requires a notice under subsection (4) to be in

the prescribed form and contain the prescribed information. Since, in particular, section 143A deals with the binding effect of a funding position determination, the Department considered it appropriate to provide powers to prescribe the form and content of the notice.

51. Paragraph 11 of Schedule 4 amends section 158 of the Pensions Act 2004, permitting the Board to make a funding position determination without obtaining an actuarial valuation in suitable cases. Paragraph 11(2) of Schedule 4 substitutes a new section 158(3). Paragraph 11(3) and (4) of Schedule 4 amends subsections (4) and (5) of section 158 so as to extend the regulation-making powers in section 143 to apply to the making of a funding position determination (under new section 158(3)(a)) as well as to an actuarial valuation (made under new section 158(3)(b)).
52. There are numerous provisions in the Pensions Act 2004 governing the assets and liabilities which may be taken into account for the purposes of ascertaining the funding position of an occupational pension scheme and the process by which a determination may be reached. These provisions need to be flexible in order to ensure that novel or unusual types of assets and liabilities are covered. This provides clarity for the Board and for trustees and managers of eligible pension schemes. The Department's view is that it is appropriate for secondary legislation to set out the detail, both as to substantive matters and as to process. It is envisaged that the regulations made under this power will be used to amend, or to make provision similar to, that in the Pension Protection Fund (Valuation) Regulations 2005 (SI 2005/672).
53. Paragraphs 14 and 15 of Schedule 4 (requirement to obtain protected benefits quotation) amend sections 151 and 152 of the Pensions Act 2004 so as to provide an alternative route of entry to the Pension Protection Fund ("PPF") for eligible pension schemes which otherwise meet the criteria for transfer to the PPF, but are unable to obtain a quotation (normally from an insurance provider) of the costs of providing for the scheme's liabilities to members. Section 152 permits schemes (particularly those which are only marginally

under-funded) another chance to transfer to the PPF where the scheme has initially failed to satisfy the funding test. Where the trustees or managers of such schemes have used their best endeavours to obtain a 'protected benefits quotation' but have been unable to do so, the amended provisions will require the Board to assume responsibility for the scheme if satisfied that the value of the assets of the scheme at the time of reconsideration is less than the amount of the protected liabilities at that time.

54. Paragraph 14 of Schedule 4 amends section 151(4)(a) so as to provide a power to prescribe the form of the evidence required to accompany an application for reconsideration under section 151. Paragraph 15(5) and (7) amends section 152 so as to omit subsections (4) and (8), which provide powers to prescribe the form of determination notices under (respectively) subsections (3) and (7).
55. Paragraph 15(9) of Schedule 4 (inserting subsections (10A) to (10D) into section 152 of the Pensions Act 2004) provides the Board with the power to obtain a valuation of the scheme's assets and protected liabilities as at the reconsideration time. New subsection (10B) provides a power for the Secretary of State to prescribe the requirements which apply to a valuation under subsection (10A). New subsection (10C) applies the regulation making powers, duty to issue a statement and power to issue guidance in subsections (3) to (6) of section 143 (with modifications) to a determination under subsection (2B) and a valuation under subsection (10A), as they apply in relation to a determination under section 143(2)(a) and a valuation obtained under subsection (2)(b) of section 143. These powers are provided so as to ensure that valuations for the purposes of section 152 may be made on a basis consistent with the assumptions which apply for the purposes of valuations obtained under section 143.
56. Paragraph 17 (parliamentary control of subordinate legislation) amends section 316(2) of the Pensions Act 2004 so as to change the Parliamentary procedure for instruments made under sections 117(1) or (3), and (with

exceptions) instruments made under section 178(1) or paragraph 26(7) of Schedule 7 from affirmative to negative.

57. Paragraph 17(2) of Schedule 4 omits paragraph (a) of section 316(2) of the Pensions Act 2004 so as to require regulations made under section 117(1) or (3) to be subject to negative resolution. Regulations made under section 117(1) impose the PPF administration levy, which is paid by schemes eligible for the PPF. The administration levy funds money paid by the Secretary of State towards the expenses of the Board, other than those paid out of the PPF or the Fraud Compensation Fund. Regulations made under section 117(3) set the rate and time at which the administration levy is payable.
58. Paragraph 17(3) of Schedule 4 amends paragraph (f) of section 316(2) (the levy ceiling) so as to require orders made by the Secretary of State under section 178(1), except those made by virtue of section 178(8), to be subject to negative resolution. The Board is required by section 175 to impose the pension protection levies, payable by schemes eligible for the PPF for each financial year. Orders made under section 178(1) set the amount which is to be the levy ceiling for the coming financial year. That amount must (in accordance with section 178(3)) be increased in line with increases in earnings during the previous year. Section 178(8) provides power in certain circumstances to increase it by a greater amount.
59. Paragraph 17(4) of Schedule 4 amends paragraph (s) of section 316(2) (the compensation cap) so that orders made under paragraph 26(7) of Schedule 7 (orders specifying the compensation cap in respect of payments from the PPF) by virtue of paragraph 27 of Schedule 7 are subject to negative, rather than affirmative, resolution. The compensation cap is applied to limit the amount of periodic compensation paid to those scheme members who are below their scheme's normal pension age at the start of an assessment period (this is usually triggered by the insolvency of the sponsoring employer). The Secretary of State is required by paragraph 27 of Schedule 7 to make an order under paragraph 26(7) increasing the compensation cap annually in line with any increase in the general level of earnings.

60. The Department considers that the negative resolution procedure is more appropriate for instruments made under these sections since (with the exception of regulations made under section 117(1)) the setting of levy rates and increases in the compensation cap are routine matters which depend on increases in the general level of earnings. The Secretary of State has very little flexibility in these processes. Orders made by under section 178(1) by virtue of subsection (8) of that section, which permits the Secretary of State to make an order which exceeds the increase in the general level of earnings, will remain subject to affirmative resolution. Similarly, only orders under paragraph 26(7) made by virtue of paragraph 27, which increase the compensation cap in line with earnings, will be subject to negative resolution. The Department considers that the changed procedure for routine instruments will generate a saving of Parliamentary and Departmental time.
61. Different considerations apply to regulations under section 117(1), which provide for the imposition of an administration levy. However, the Department has used the power to make the Occupational Pension Schemes (Levies) Regulations 2005 (SI 2005/842), which both impose the levy and set the rate and time at which it is payable. If regulations under section 117(1) and (3) were to be subject to a different Parliamentary procedure, the change is less likely to generate savings in time. Furthermore, it is not uncommon to find that the first use of such a power is subject to affirmative resolution, with subsequent instruments being subject to negative resolution. The changes are also consistent with the Parliamentary procedure (negative resolution) which applies to the setting of the general levy (which funds, among other things, the Pensions Regulator) under section 175 of the Pension Schemes Act 1993. The Department considers, therefore, that it is appropriate for regulations under section 117(1) to be subject to the negative resolution procedure.
62. Paragraph 21 amends Schedule 7 to the Pensions Act 2004, substituting a new paragraph 25A. This paragraph replaces an existing regulation-making power to prescribe circumstances in which, and conditions subject to which, a person who is entitled to pension compensation may choose to receive it

from a later date than normal pension age. (The Board will decide an appropriate increase calculated on an actuarial basis due to the postponed payment.) The intention is to use the power to provide for situations where a person may be required to receive compensation from their normal pension age under Schedule 7 to the Pensions Act 2004 even though they may, given the choice, wish to receive payment at a higher rate from a later date.

63. Paragraph 28 amends Schedule 5 to the Pensions Act 2008 to provide powers parallel to those in paragraph 25A of Schedule 7 to the Pensions Act 2004, permitting pension compensation credit members of the Pension Protection Fund to postpone payment of compensation. Paragraph 28 of Schedule 4 omits paragraph 11 of Schedule 5 and inserts new paragraph 16A, which replaces an existing regulation-making power in paragraph 11. This permits the Secretary of State to prescribe circumstances in which, and conditions subject to which, a person who is entitled to pension compensation by virtue of a pension compensation sharing order may choose to postpone payment of their compensation to a date beyond normal benefit age.
64. These provisions replace existing delegated powers in the Pensions Acts 2004 and 2008. The 2004 Act contains various other incidences of powers which allow the Secretary of State to set out the circumstances in which payment of compensation may be made to PPF members (see, for example, section 168(2), and paragraph 25 of Schedule 7). The Department considers that delegated powers are appropriate to deal with the technical and administrative detail attached to the process of postponing payment of compensation.
65. The parliamentary procedure for each of the delegated powers introduced by the amendments in Schedule 4 is negative. This procedure has been selected for the following reasons.
66. The powers for scheme valuations prior to transfer are similar to those in section 143(3)-(5) of the Pensions Act 2004 under which regulations subject to negative scrutiny have already been made.



67. The powers for reconsideration of schemes that have not transferred are similar to those in section 151(12)(a) of the Pensions Act 2004 under which there is provision for regulations subject to negative scrutiny to be made.
68. The powers for pension compensation – postponement of compensation replace existing regulation-making powers under which there is provision for regulations subject to negative scrutiny to be made. This procedure has also been selected in view of the uncontroversial nature of the amendments.

**Clause 18 – Financial Assistance Scheme: amount of payments**

69. Section 286 of the Pensions Act 2004 requires all annual payments made by the Financial Assistance Scheme to scheme members to be at least 80 per cent of their expected pension, less the amount paid by the scheme and subject to a cap. Section 18 of the Pensions Act 2007 requires all initial payments made to scheme members to be 90 per cent of the expected pension and all initial payments to survivors to be at least half of the member’s entitlement, also less the amount paid by the scheme and subject to a cap.
70. These provisions were inserted into the primary legislation when the Financial Assistance Scheme provided relatively limited and simple payments. Since then, new provisions to allow for early payments where people are in ill health and polygamous marriages have been introduced. The regulations providing for these payments are unnecessarily complex as a result of these restrictions in primary legislation.
71. Clause 18 of this Bill will allow for regulations to make exceptions to these requirements, so that the existing Regulations can be simplified considerably when they are consolidated. The Government does not intend to use this power to affect the amount of assistance which the Financial Assistance Scheme pays.
72. All the detailed provisions relating to the Financial Assistance Scheme are contained in regulations which are subject to affirmative procedure. This

allows for in-depth consultation on the proposed measures with the relatively limited range of relevant stakeholders and for parliamentary scrutiny.

73. Currently, member annual and initial payments are 90 per cent of the member's expected pension, less the amount paid by the scheme and subject to a cap. Expected pension is the amount of pension the member had accrued in their scheme as at the date their scheme began to wind up plus revaluation under the rules of the Financial Assistance Scheme to their normal retirement age. The Government has no intention of reducing this amount.
74. The Regulations make provision for members who meet certain ill-health conditions to apply for assistance up to five years before their normal retirement age. The amount is actuarially reduced to reflect the potentially longer payment period. These payments are called ill-health and interim ill health payments rather than annual and initial payments, since they may be less than the 80 per cent and 90 per cent specified in the primary legislation. A similar situation arises for the survivors of a polygamous marriage (because they share the amount which could be paid to one survivor). The provisions largely replicate the provisions covering annual and initial payments.
75. Excepting these beneficiaries from the restrictions in the primary provisions will allow all entitlements to be covered by the annual and initial payments provisions in the Regulations. This will allow the Regulations on the Financial Assistance Scheme to be shortened considerably and made easier to understand.
76. The parliamentary procedure for this power is affirmative. Regulations made under section 286 of the Pensions Act 2004 and section 18 of the Pensions Act 2007 are subject to affirmative procedure and it is therefore considered appropriate that this power should also be affirmative to allow for the same level of parliamentary scrutiny.

### **Clause 19 – Financial Assistance Scheme: transfer of assets**

77. This clause amends section 286(3)(c) so that scheme assets can be transferred to a prescribed person.
78. The purpose of this power is to put beyond doubt that assets of pension schemes that qualify for the Financial Assistance Scheme can be transferred to a person other than the Financial Assistance Scheme Manager. This is in line with current secondary legislation which already provides for relevant assets to transfer to the Secretary of State (The Financial Assistance Scheme Regulations (S.I. 2005/1986), as amended by The Financial Assistance Scheme (Miscellaneous Amendments) Regulations (S.I. 1149/2010)). The Department has no plans to amend existing provisions to change the person to whom assets transfer. However, the new primary power will provide an opportunity for secondary legislation to be amended so as to make its meaning clearer to the reader.
79. The parliamentary procedure for this power is affirmative. This procedure has been selected because the power amends section 286 of the Pensions Act 2004. All secondary legislation made under that section is subject to the affirmative procedure.

### **Clause 21 – contribution notices and financial support directions**

80. The Pensions Regulator’s operational experience has shown that in some cases the time periods for affected parties to make representations in response to a Pensions Regulator warning notice that it is considering issuing a financial support direction or contribution notice (its regulatory functions) can be unduly restrictive for business.
81. The problem is that in more complex cases (where the companies involve large multi-national or multi-employer groups) the Regulator’s investigation and evidence gathering is of necessity more time-consuming; this can mean that within the fixed statutory deadline there is a more limited period for business to respond. Some affected parties (employers and their advisers) have been critical of the current approach.

82. The substantive amendments to sections 38 and 43 of the Pensions Act 2004 made in the Bill provide that the statutory timeframe within which the Regulator must currently decide to exercise its regulatory functions instead concludes with giving a warning notice of the Regulator's intention to exercise its regulatory functions. The proposed power would fix a maximum period, following the giving of a warning notice, by which it must determine to exercise its regulatory function. During that period affected parties could make representations.
83. The aim of the proposed change to the primary legislation is to allow businesses more appropriate time in which to make representations. Delegated legislation would allow for consultation on whether there should be a maximum length of the period for representations beyond which the Regulator could not exercise its regulatory functions.
84. The parliamentary procedure for this power is negative. This procedure has been selected because negative resolution is more appropriate given the uncontroversial nature of limiting the period the Regulator will be allowed within which to issue a determination notice following the giving of a warning notice.

#### **Part 4 – judicial pensions**

##### **Clause 24 – contributions towards cost of judicial pensions etc**

85. The purpose of the powers introduced by clause 24 and Schedule 5 is to prescribe in regulations that contributions are to be taken from judicial office-holders towards the costs of their personal pensions. Those personal pensions are constituted in accordance with specified judicial pension schemes in primary legislation.
86. The principle of contribution towards the costs of the provision of judicial pension schemes will be in the primary legislation. Regulations are necessary because they will contain the technical and detailed information, such as the

rate of contributions and provision regarding those who transfer from one judicial pension scheme to another. This detail is better suited to secondary legislation. Existing secondary legislation (the Judicial Pensions (Contributions) Regulations 1998 (S.I. 1998/1219)) contains similar provisions relating to contributions made by judicial office-holders in relation to widow's, widower's and surviving civil partner's benefits payable under judicial pension schemes and it would therefore be consistent to follow that model in the present legislation.

87. The powers are conferred on the Lord Chancellor (or, in relation to certain offices in Scotland, the Secretary of State) with the concurrence of the Treasury.
88. The powers generally extend to England and Wales, to Scotland and to Northern Ireland.
89. The parliamentary procedure for these powers is negative. The negative procedure is appropriate given the detailed nature of the regulations. It would also be consistent with the existing secondary legislation relating to contributions towards widow's, widower's and surviving civil partner's benefits payable under the judicial pension schemes.

## **Part 5 - miscellaneous and general**

### **Clause 25 - grants by the Secretary of State to advisory bodies etc**

90. Section 174 of the Pension Schemes Act 1993 enables the Pensions Regulator to make grants to persons or bodies providing advice or assistance in connection with occupational or personal pensions. This section contains a power to make regulations to enable grants to be made to persons or bodies carrying out other functions in connection with such pensions.
91. Clause 25 amends section 174 to enable the Secretary of State to make grants to persons or bodies providing advice or assistance in connection with occupational or personal pensions and the amendment includes a

corresponding power to make regulations. So, the power would enable the Secretary of State to make grants to persons or bodies carrying out other specified functions in line with the existing power in relation to the Pensions Regulator.

92. It is not known at this stage what other functions might need to be specified. This power provides flexibility to enable a grant to be made to a body to carry out a new function.
93. The parliamentary procedure for this power is negative. This procedure has been selected because the exercise of this power is not controversial and using the negative scrutiny procedure is in line with the existing power in relation to grants made by the Pensions Regulator.

#### **Clause 26 – service of documents and electronic working**

94. The Secretary of State already has powers, contained in section 305 of the Pensions Act 2004, to make provision by order with respect to:
- the time and location at which an electronic transmission is deemed to have taken place, and
  - the manner of proving, for the purposes of legal proceedings, certain matters relating to the use of electronic communications for the purposes of that Act.
95. The intention of clause 26 is that Chapters 2 and 3 of Part 1 and Chapter 1 of Part 3 of the Pensions Act 2008 will also be covered by the service rule, in sections 303 and 305 of the Pensions Act 2004.
96. The parliamentary procedure for this power under the Pensions Act 2004 is negative. It is not thought that extension of this power to these provisions of the Pensions Act 2008 would merit a change in this procedure.

#### **Clause 28 – commencement**

97. This clause provides for certain provisions in the Bill to come into force by commencement order made by the Secretary of State. It also provides that the

Secretary of State may, by order, make transitional, transitory and saving provision in connection with the coming into force of any provision of the Act. As usual, these powers are not subject to any parliamentary procedure.

**Part 1 - State Pension**

<b>Provision</b>	<b>Heading</b>	<b>Parliamentary procedure</b>
Clause 3 and Schedule 3	Consolidation of additional pension	None

**Part 2 - automatic enrolment**

<b>Provision</b>	<b>Heading</b>	<b>Parliamentary procedure</b>
Clause 4	Automatic re-enrolment where employer interrupts scheme membership	Negative
Clause 6	Postponement or disapplication of automatic enrolment	Negative
Clause 7	Timing of automatic re-enrolment	Negative
Clause 8	Review of earnings trigger and qualifying earnings band	Affirmative
Clause 9	Rounded figures for earnings trigger and qualifying earnings band	Negative
Clause 10	Certification that alternative to quality requirement is satisfied	Affirmative
Clause 11	Transitional period for defined benefits and hybrid schemes to be optional	Negative

**Part 3 - occupational pension schemes**

<b>Provision</b>	<b>Heading</b>	<b>Parliamentary procedure</b>
Clause 17 and Schedule 4	Pension Protection Fund	Negative
Clause 18	Financial assistance scheme: amount of payments	Affirmative
Clause 19	Financial assistance scheme: transfer of assets	Affirmative
Clause 21	Contribution notices and financial support directions	Negative

**Part 4 - judicial pensions**

<b>Provision</b>	<b>Heading</b>	<b>Parliamentary procedure</b>
Clause 24 and Schedule 5	Contributions towards cost of judicial pensions etc	Negative

**Part 5 - miscellaneous and general**

<b>Provision</b>	<b>Heading</b>	<b>Parliamentary procedure</b>
Clause 25	Grants by the Secretary of State to advisory bodies etc	Negative
Clause 26	Service of documents and electronic working	Negative
Clause 28	Commencement	None



