Department
for Work &
Pensions

Pensions Bill Delegated Powers

Supplementary memorandum from DWP to the Delegated Powers and Regulatory Reform Committee

December 2013

Introduction

1. This Memorandum is prepared by the Department for Work and Pensions, and is supplementary to the Memoranda dated 31 October and 9 December 2013. It identifies new or amended delegated powers conferred in the Government amendments to the Pensions Bill that have been tabled on 12 December 2013 for consideration at Lords Committee stage. It explains the purpose of the powers, the reasons why they are left to delegated legislation, the Parliamentary procedure selected for the exercise of these powers and why that procedure has been chosen.

2. The Government expects to table some further amendments to the Bill for consideration at Lords Committee and will send a further supplementary Memorandum on the day they are tabled if appropriate.

Background and summary

3. A person can currently pay Class 3 voluntary National Insurance contributions to fill gaps in their contribution record and maximise their basic State Pension entitlement. However, there are restrictions on the contributions as well as limits and penalties for late payment. A person can usually fill gaps in their contribution history in the previous six tax years and will pay Class 3 contributions at a higher rate if payment is made more than two years after the end of the tax year for which the contributions were due. Voluntary Class 3 National Insurance contributions also provide entitlement to bereavement benefits but they do not provide entitlement to the additional State Pension.

4. The amendments to the Pensions Bill introduce a new Class of voluntary National Insurance contributions - Class 3A - for people who reach State Pension age before 6 April 2016. These new contributions would allow people to boost their retirement income by gaining extra additional State Pension. The Government’s proposals for Class 3A were announced by the Chancellor of the Exchequer in the Autumn Statement on 5 December 2013. The legislation relating to Class 3A will be brought into force by way of a Commencement order under clause 51(1) of the Bill. The Government intends to introduce Class 3A in October 2015 but commencing the legislation by way of an order allows the Department for Work and Pensions and HM Revenue and Customs to undertake a feasibility study to ensure that the necessary system changes can be made by the allotted date.

5. The amendments relating to this measure are contained in a new Schedule to the Bill titled “Option to boost old retirement pensions”. The Schedule provides for a new Class of voluntary National Insurance contribution and the benefits, units of additional State Pension, that flow from payment of Class 3A. It will be available to people who reach State Pension age before 6 April 2016 (when the single-tier pension will be

implemented) with entitlement or prospective entitlement during that period to a category A, B or D retirement pension or graduated retirement benefit.

6. Class 3A is aimed primarily at groups such as women, the self-employed, low earners and carers who have had limited opportunity to gain additional State Pension due to the fact that entitlement has historically been linked to the level of a person's earnings as an employee or, in the case of the self employed, where Class 2 National Insurance contributions did not count for additional State Pension purposes.

7. The provisions in Part 1 of the Pensions Bill (single tier) are particularly beneficial to these groups as they allow for the valuation of a person's National Insurance record as at 6 April 2016 under both current scheme and single-tier pension rules with the most beneficial valuation taken forward as their foundation amount.

8. As low additional State Pension outcomes are prevalent among people in these groups the measures in Part 1A will enable existing pensioners to increase their State Pension income by paying Class 3A. It is intended that the increased payments of additional State Pension will be made from the week following that in which Class 3A has been paid.

Extent

9. National Insurance contributions are a reserved matter in England, Wales and Scotland and an excepted matter for Northern Ireland. The provisions relating to National Insurance contributions in the Schedule therefore extend to England and Wales, Scotland and Northern Ireland. Northern Ireland has separate National Insurance legislation equivalent to that made for the rest of the UK. So, where appropriate, the amendment also amends the equivalent Northern Ireland legislation relating to National Insurance contributions.

10. The provisions relating to the additional State Pension entitlement that will arise as a result of payment of Class 3A contributions extend to England and Wales and to Scotland. Social Security is a transferred matter in respect of Northern Ireland and, as such, legislation is the responsibility of the Northern Ireland Assembly.

Parliamentary Scrutiny

11. The Department for Work and Pensions has considered in each case the appropriate parliamentary procedure to be followed in exercising the delegated powers for Class 3A. The commentary below on each power sets out which parliamentary procedure has been proposed and why that procedure is considered appropriate.

Analysis of delegated powers by clause

New clause and Schedule: Option to boost old retirement pensions

Powers conferred on: HM Treasury with the exception of paragraph 7(4) where the power is conferred on the Secretary of State.

Powers exercised by: Regulations or Orders (Statutory Instrument)

Parliamentary procedure: Negative with the exception of regulations under section 14A of the Social Security Contributions and Benefits Act as inserted by paragraphs 3 and 16 of the Schedule and under paragraph 7(4) of the Schedule which are affirmative.

12. The new clause "Option to boost old retirement pensions" gives effect to the new Schedule of the same name, which provides for regulations to be made setting out the details underpinning a new Class of voluntary National Insurance contributions (Class 3A) that will entitle a person to some or extra additional State Pension.

13. The Schedule provides for the finer details of the scheme - the period during which Class 3A will be available, pricing, the cap on the number of units of additional State Pension which can be obtained and the circumstances in which a refund of contributions can be made - to be made in regulations. The reason for taking powers to make these provisions in regulations is to allow for use of the latest life expectancy figures available from the Office for National Statistics and make it easier to repeal and revoke the associated rules once the scheme has closed. In addition, the Government wants to consult with pensioner organisations and other interested parties on the detailed design of the scheme. Setting these rules in regulations will ensure the details can be finalised in light of these discussions.

14. Paragraph 3 of the Schedule inserts new sections 14A, 14B and 14C, which set out the main framework for payment of Class 3A, into the Social Security Contributions and Benefits Act 1992. Paragraph 16 makes corresponding amendments to legislation covering Northern Ireland. The intention is that the powers contained in these new sections will be exercised in the same way for both paragraph 3 and paragraph 16 of the Schedule so a single explanation is provided in this Memorandum.

15. The power in new section 14A(3) will allow the Treasury to set the rate of Class 3A contributions in regulations, at a fair price based on the average time spent in retirement for each specified age. The price will be based on the person's age when they pay Class 3A. The Government anticipates that adjustments will be made to the price to reflect the reduced life expectancy of older people. However, no account will be taken of

differences between the genders, therefore, men and women of the same age will pay the same price despite the longer life expectancy of women.

16. There will be various rates to cover the different ages of people entitled to pay Class 3A i.e. those who reached or are due to reach State Pension on or before 5 April 2016, at the start of the scheme. The Government considers that setting the range of prices of a Class 3A contribution in regulations to be appropriate as it will allow for the details to be based on the most up to date life expectancy figures. It will also enable the Government to set out both the amount of a Class 3A contribution a person would need to pay to gain a unit of additional pension and the amount of additional State Pension a unit would provide in the same set of regulations. It is anticipated that the rates will be expressed in terms of the amount of additional State Pension per week that each Class 3A contribution will entitle a person to and will remain unchanged for the duration of the scheme The intention is that the Treasury's decision on what a fair price should be would be based on analysis carried out by the Government Actuary's Department, as provided for in section 14A(4).

17. The power in section 14A(6) provides for regulations to restrict the amount of extra pension entitlement that any one individual could gain. The intention is that the cap would be set at around £25 a week. This amount is broadly equivalent to the additional State Pension entitlement a low earner (or person who had been credited with earnings for such purpose) could have gained based on their earnings in the period between 2002/03 and 2015/16 (the State Second Pension which has a boost for low earners, carers and people with long-term ill-health conditions was introduced in 2002/03). However, as noted above, the Government intends to discuss whether this would be an appropriate amount.

18. Regulations made under section 14A will be subject to the affirmative resolution procedure which is consistent with the arrangements for setting existing rates and thresholds for the other Classes of National Insurance contributions and this is considered the appropriate procedure given the fact that actuarially fair values for Class 3A will be significantly higher than the rates set for Class 3 voluntary contributions.

19. The power in new section 14B(1) provides for the Treasury to make regulations to define the circumstances in which a refund of a person's Class 3A contributions would be provided. As Class 3A will be taken up by pensioners it is considered appropriate to allow a person to obtain a refund in limited circumstances. We intend to allow refunds in routine situations such as where payment was made in error, for example, by a person who did not meet the eligibility criteria, but delegating the power to subordinate legislation would allow for the inclusion of currently unanticipated circumstances. This mirrors the approach for repayment of Class 3 contributions where the circumstances are prescribed in regulations.

20. Regulations made under section 14B(1) will be subject to the negative resolution procedure as these will define the circumstances and period

during which refunds will be made and is consistent with corresponding regulations for repayment of Class 3 contributions.

21. The power in new section 14C(1) provides for the Treasury to make regulations to alter the conditions for who can pay Class 3A contributions. Section 14A provides that anyone who is currently, or will be, entitled to a Category A, B or D state pension (that is, anyone who reaches state pension age before 6 April 2016) is eligible to pay class 3A. It is anticipated that the flexibility in section 14C(1) would be required in very limited circumstances, but is provided to mirror the similar power in section 1(6) of the Social Security Contributions and Benefits Act 1992, which provides the Treasury with a power to amend liability or entitlement to pay other classes of National Insurance contribution.

22. Section 14C(2) provides a power to allow the Treasury to remove the option for people to pay Class 3A contributions. The intention is that Class 3A will be available for a limited time period as we anticipate that the majority of people opting to pay Class 3A would do so shortly after the scheme is introduced. Our working assumption is that the scheme would be open for between 18 months and 2 years. We will ensure that the end date is advertised widely.

23. Section 14C confers a Henry VIII power as sub-section (3) provides that regulations under the section may amend primary legislation. This will ensure that any necessary changes can be made to primary legislation relating to Class 3A contributions to effect a change in the eligibility conditions or the closure of the scheme.

24. Regulations made under section 14C will be subject to the negative resolution procedure which is considered the appropriate procedure. The effect of any regulations made under the powers in section 14C will be very similar to those contained in section 1(6) of the Social Security Contributions and Benefits Act 1992. Those powers also enable the Treasury to make regulations governing eligibility to pay various classes of National Insurance contributions, and those regulations are subject to the negative procedure. The powers in section 14C do enable amendment to primary legislation because the provisions governing eligibility have been put on the face of the primary legislation to be helpful and clear. But given that the effect of any regulations made will be similar to those made under section 1(6) Social Security Contributions and Benefits Act 1992 the negative procedure is considered justifiable here too. In relation to the power in section 14C(2), it is intended that this power will be exercised to close the scheme under which people can pay Class 3A contributions. It is considered that regulations made under this power will not be controversial, as it has always been intended that the possibility to pay this class of contribution would be time-limited, and it is intended to widely publicise the intended closure date, so that the regulations effecting that closure will not be in any way unexpected or contain new information.

25. Paragraph 7(4) of the Schedule contains a power to set in regulations the amount of additional State Pension that a Class 3A contribution would provide. The extra additional State Pension gained by paying Class 3A is intrinsically linked to the price of the contribution which in turn will be determined by the age of the contributor. The intention is that a single set of regulations would be provided setting out both the amount of Class 3A contributions, the cap and the amount of additional State Pension this would provide. Regulations made under paragraph 7(4) would be subject to the affirmative resolution procedure which is consistent with analogous powers covering the annual benefit uprating orders and the power under section 14A relating to the price of a Class 3A contribution.

Department for Work and Pensions
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