



Department
for Work &
Pensions

Pension Schemes Bill Delegated Powers

Memorandum from DWP to the Delegated Powers
and Regulatory Reform Committee

June 2014

Contents

Introduction..... 3

Background and Summary 4

Analysis of delegated powers by clause..... 7

Annex – Delegated powers in the Pension Schemes Bill 30

Introduction

1. The Pension Schemes Bill was introduced in the House of Commons on 26th June 2014.
2. This memorandum identifies the provisions for delegated legislation in the Bill. 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.
3. The Department has followed the precedent in pensions legislation by setting out the overall legislative framework on the face of the Bill but giving the Secretary of State the power to make detailed provision in secondary legislation. This is due partly to the fact that it is considered inappropriate for Parliamentary time to be spent on every detailed provision during the passage of the Bill, but is also a reflection of the fact that the content of such provisions may change from time to time. It is desired to avoid amending the primary legislation on each such occasion. However, both the initial provisions and any subsequent changes will be subject to what are considered to be appropriate Parliamentary safeguards.

Background and Summary

4. In November 2013, the Government published a consultation paper, *Reshaping workplace pensions for future generations*, which outlined broad proposals for encouraging greater innovation and risk-sharing in private pension arrangements in the UK. The paper set out the possibility of recasting the legislative framework, to move away from the polarity created by existing definitions and carve out a clear risk sharing space, and enabling collective schemes. Once the consultation period had closed and replies were received, the Government published a response paper in June 2014, setting out specific proposals to take forward. These proposals form the basis of the Pension Schemes Bill 2014.
5. The Bill is in four parts:
 - Part 1 – Categories of pension scheme
 - Part 2 – General changes to legislation about pension schemes
 - Part 3 – Collective benefits
 - Part 4 – Miscellaneous and general

Part 1 – Categories of Pension Scheme

6. This Part of the Bill contains provisions to introduce new definitions into the legislative framework for private pensions, establishing three, mutually exclusive categories of scheme type based on type of promise during the accumulation phase about the retirement benefits that schemes offer to members. In the case of a scheme not fitting into one of these definitions, regulations must provide for a scheme to be treated as two or more separate schemes, each falling within a category. Regulations may also be made to provide for any other circumstances in which a scheme is to be treated as two or more separate schemes.

Part 2 – General changes to legislation about pension schemes

7. This Part contains a number of changes to existing pensions legislation as a consequence of the definitions set out in Part 1. It contains new powers to make regulations setting out conditions to be met for a pensions promise to be obtained from a third party, exempting from indexation pensions of a specified description and preventing members of public service defined benefits schemes transferring into certain schemes. It also enables the Secretary of

State to issue statutory guidance on the disclosure of information about schemes.

Part 3 – Collective benefits

8. This Part defines collective benefits that may be provided by pension schemes. It also contains a series of regulation-making powers relating to the governance of schemes providing collective benefits. Requirements may be set out in secondary legislation in relation to scheme reporting, the payment of benefits, benefit targets and valuation.

Part 4 – Miscellaneous and general

9. This Part allows the Secretary of State to make payments into the Remploy Limited Pension and Assurance Scheme directly. This Part contains powers to make consequential amendments to any legislation, whenever made, and to commence provisions by regulations. It also makes general provision in respect of regulations under the Bill.

Schedules 1 to 4

10. Schedule 1 makes consequential amendments to existing pensions legislation to apply the categories introduced in Part 1. Schedules 2 and 3 contain amendments to the Pension Schemes Act 1993 concerning the revaluation of accrued benefits and transfer values for early leavers of pension schemes. Schedule 4 makes consequential amendments to existing pensions legislation to take account of collective benefits, as defined in Part 3. It exempts schemes providing collective benefits, solely in relation to those benefits, from various provisions under existing pensions legislation, including those relating to scheme funding, employer debt and eligibility for the Pension Protection Fund (PPF).

Extent

11. The Bill extends to England and Wales and to Scotland. The provisions in Part 4 also extend to Northern Ireland, except clauses 38 and 39. These clauses and measures in the rest of the Bill relate to devolved matters and legislation relating to such measures is the responsibility of the Northern Ireland Assembly.

Parliamentary Scrutiny

12. The Department for Work and Pensions (DWP) 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.

General

13. All the delegated powers in the Bill are exercisable by statutory instrument. An annex to this memorandum lists all the clauses containing powers to make delegated legislation.

Analysis of delegated powers by clause

Part 1 – Categories of scheme

Clause 5 – Meaning of ‘pensions promise’ etc

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

14. Subsection (6)(b) of clause 5 allows regulations to specify what kind of discretions can be applied by a pension scheme to a benefit without preventing it from meeting the requirements of providing a ‘full pensions promise’.
15. DWP is aware that some scheme rules might provide for certain types of discretion which may mean the benefit does not meet the requirement under subsection (1)(b) – i.e. that although a promise is provided, at all times before the benefit comes into payment, about the level of benefit, the level of the benefit cannot be said to be determined wholly by reference to that promise in all circumstances. Where a discretion is capable of being used only in relation to individual circumstances, subsection (6)(a) provides for it to be disregarded so that this would not affect the categorisation as a defined benefits scheme because there is still a full pensions promise - for example, providing for benefits on grounds of ill health before the normal pension age. However, there are also some wider discretions in some schemes which could potentially affect whether a benefit meets the requirement under subsection (1)(b). Such discretions are not, though, in every example of their existence, commonly used or referred to in calculating or impacting members’ benefits. The regulation-making power enables DWP to further examine and consult on those discretions which should not impact on whether a benefit is considered as having a full pensions promise.
16. This clause will be subject to the negative resolution procedure, as any regulations made under the power will be technical in nature.

Clause 6 – Treatment of a scheme as two or more separate schemes

Powers conferred on: Secretary of State

Powers exercised by: Regulation (Statutory Instrument)

Parliamentary procedure: Negative

17. This clause provides two regulation-making powers. One requires regulations to be made to provide for a pension scheme which does not fit into the categories in Part 1 to be treated as if it were two or more separate schemes, each of which fits within one of the categories. The second allows for regulations to provide for other circumstances in which a scheme is to be treated as two or more schemes. Both powers apply for the purposes of Part 1 and any other specified legislation.
18. The regulations required under clause 6(1) will ensure that all schemes fit into the categories set out in Part 1. An example of the intended use of regulations under this power includes where a scheme offers defined benefit type arrangements to some members, and defined contribution type benefits to others. This type of scheme would not be defined as a shared risk pension scheme, since, though there are promises in relation to some retirement benefits, these are not available to all members. Instead, the regulations which are required could provide that the scheme will be treated for the purposes of the categories as two schemes: a defined benefits scheme, in relation to those benefits where there is a full pensions promise, and a defined contributions scheme, in relation to those benefits where there is no promise.
19. Whilst we have extensively tested the definitions against existing and planned models, we intend the market to evolve and develop new pension designs in the shared risk space. These regulation-making powers enable the Government to ensure that, moving forwards, schemes are treated appropriately in terms of categorisation in line with the stated policy intent.
20. This clause will be subject to the negative resolution procedure. As any ensuing regulations are designed to provide additional detail to the clear intent set out in the primary legislation, and will not impact but merely reflect benefit designs within schemes, this was considered to be the most suitable form of Parliamentary scrutiny.

Part 2 – General changes to legislation about pensions schemes

Clause 9 – Pensions promise obtained from third party

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

21. This clause provides that regulations may be made to require that trustees and managers must not obtain a pensions promise from a third party unless conditions specified in the regulations are met. It also allows for regulations to

confer functions on a specified person, which will be the appropriate regulator so as to enable them to enforce any such regulations. The Regulations can provide for section 10 of the Pensions Act 1995 to apply for non-compliance, which allows the Pensions Regulator to impose a financial penalty. The maximum amount of any penalty is £5,000 in the case of an individual or £50,000 in the case of a company, or such lower amount as might otherwise be prescribed.

22. We intend regulations under this provision to enable additional member protections where the scheme itself is not liable for the guarantee, and where there may not be a direct contractual relationship between the member and the provider of the third party guarantee in new styles of shared risk and defined benefits schemes, and where the Pension Protection Fund and the Financial Services Compensation Fund may not apply. The conditions would be intended to ensure that the risk being taken with such an arrangement was proportionate.
23. This level of detail is considered unsuitable for primary legislation. Setting out requirements in secondary legislation will also enable a greater period of consultation during which we hope to take account of all variations of scheme type and also establish whether regulation is in fact needed. Industry may well address this issue via best practice, but legislation will need to be responsive if issues arise in the market.
24. These regulations will be subject to the negative resolution procedure. As they are technical and will need to be responsive, this was considered the most suitable form of parliamentary scrutiny.

Clause 10 – Disclosure of information about schemes

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

25. This clause amends an existing regulation-making power in section 113 of the Pension Schemes Act 1993. Section 113 provides for the Secretary of State to make regulations placing information requirements on pension schemes.
26. This clause removes the non-exhaustive list of those people to be kept informed, allowing such persons to be prescribed in regulations. This is not a new power to prescribe those persons to be kept informed; rather, it is a reframing of the current provision. It also stipulates that trustees or managers should make reference to guidance which may be prepared by the Secretary of State when complying with the requirements.
27. Setting out those persons to be kept informed in secondary legislation will allow the Department to take account of the new categories of scheme and members in terms that are meaningful. The existing power in section 113 can

then be used to specify new types of information to be disclosed that will be appropriate for schemes, particularly in relation to shared risk schemes.

28. Regulations under section 113 are subject to the negative resolution procedure.

Clause 12 – Revaluation of accrued benefits

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

29. Clause 12 and Schedule 2 amend Chapter 2 of Part 4 of the Pension Schemes Act 1993 (Revaluation of Accrued Benefits (Excluding Guaranteed Minimum Pensions)). The amendments introduce a new regulation-making power.
30. Following the changes made by this Bill, personal pension schemes will be encouraged to provide benefits other than money purchase benefits. The power will enable regulations to amend Chapter 2 in order to modify the current revaluation provisions to ensure that the revaluation methods that are currently not available to personal pension schemes are made suitable for those schemes. This will enable those schemes to appropriately revalue deferred benefits for early leavers if new personal pension schemes evolve so that the average salary or final salary method is considered more appropriate. The power is restricted so that the revaluation method used for a benefit to which a right has already accrued may not be changed (see new section 85A(2)(b)). This power will be subject to the negative resolution procedure. Although it is a power to amend primary legislation, any regulations will be limited to technical changes which build on existing requirements, and will be responsive to new benefit structures. The negative procedure was therefore considered appropriate.

Clause 14 – Restriction on transfers out of public service defined benefits schemes

Powers conferred on: HM Treasury

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

31. Under Chapter 4 of Part 4 of the Pension Schemes Act 1993, members of occupational pension schemes whose pensionable service has terminated at least a year before normal pension age are entitled to claim the cash equivalent value of any benefits they have accrued as part of the scheme and thus 'transfer out'. The Act was later amended to insert a regulation-making power to exclude 'persons of a prescribed description' from the provisions contained within this Chapter.

32. The 2014 Budget announcement on ‘Freedom and choice in pensions’, gives savers greater choice about how and when they access their defined contributions pension pot. The new flexibilities will also have implications for those with a defined benefits pension, and HM Treasury have consulted on how these flexibilities, including individuals’ rights to a transfer out, should be managed.
33. As the majority of public service defined benefits schemes operate on an unfunded basis, allowing transfers out of these schemes would expose the Exchequer to significant risks. This clause therefore confers a regulation-making power to allow the Government to bring forward secondary legislation to modify the provisions of the 1993 Act so as to prevent a member of a public service defined benefits pension scheme from the right to ‘transfer out’, except to another defined benefits scheme. This measure is being put into secondary legislation in order to await the outcome of analysis of the aforementioned consultation.
34. This clause will be subject to the negative resolution procedure, which was felt to be the appropriate level of parliamentary scrutiny.

Clause 15 – Regulatory own fund schemes exempt from indexation

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

35. Sections 51 to 54 of the Pensions Act 1995 make provision for indexation of pensions under occupational pension schemes (except public service pension schemes which are covered by the Pensions (Increase) Act 1971). ‘Indexation’ is the method by which pensions in payment are increased annually to retain their value against inflation. Indexation requirements originally applied to all benefits accrued from April 1997, but from the 6 April 2004, the requirement does not apply to money purchase benefits, except where they related to a pension already in payment before 6 April 2004.
36. This clause amends the 1995 Act to exclude regulatory own fund schemes from the requirement to index pensions in payment. Regulatory own funds are a type of occupational pension scheme that is required to hold additional reserves because the scheme itself (rather than a sponsoring employer) underwrites risks related to life, death or disability benefits or guarantees a given investment performance or a given level of benefits.
37. The clause inserts a definition of a regulatory own fund which refers directly to the relevant European Council Directive. Also inserted is a regulation-making power to amend the reference to any provision of an EU instrument that may replace it. This is a simple power to allow us to amend this piece of UK legislation if any further EU legislation overrides the current definition.

38. This clause is subject to the negative resolution procedure. As any changes will be purely technical changes to reflect any changes to EU law, this was felt to be appropriate.

Clause 16 – Power to create other exemptions from indexation

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

39. This clause inserts a regulation-making power into the Pensions Act 1995 to create further exemptions from indexation for pensions of a prescribed description. The Government does not intend to interfere either with rights already accrued or with benefits under a defined benefits scheme. The clause, therefore, places restrictions on how the power can be used. A new exemption cannot be made in respect of any pension under a defined benefit scheme, any pension that comes into payment before the regulations come into force or any pension attributable to service before the regulations come into force. This provides assurance that the power cannot be used in a way that affects rights already accrued.
40. This power will allow the Department to consider in detail the indexation requirements appropriate to the different types of pension arrangement made possible in the Bill. For example, where shared risk pension schemes, or collective benefits are concerned, statutory indexation may not be appropriate, as some schemes may offer indexation on a discretionary basis. Setting this out in secondary legislation will enable the Department to make appropriate provision for different pension types as necessary. We anticipate the new legislation will result in a number of different scheme designs where members have a mix of benefits, each of which will have to be considered separately to determine whether they should be subject to indexation.
41. This clause will be subject to the affirmative resolution procedure. Changes in indexation are considered to be fundamental, with important implications for those affected. As such, Parliament should be given the opportunity to actively debate them. The affirmative procedure will also provide a high degree of transparency.

Part 3 – Collective Benefits

Overview of the Approach in this Part

42. This part of the Bill provides for a number of regulation-making powers which are needed to set out the detailed and technical requirements applying to pension schemes offering collective benefits. Collective benefits are provided on the basis of pooling risks across the scheme membership. This means that

when a member retires, they do not select an individual retirement income product; rather, an income is paid from the scheme's asset pool. Evidence suggests that collective schemes may provide a greater degree of stability in pension incomes than traditional defined contributions schemes, because the pooling of risks means demographic and financial risks are smoothed across the membership.

43. In considering the appropriate design of the regulatory regime needed to oversee schemes offering collective benefits, the Department has listened to the views of industry, as well as taking into account the experience of European pension systems where collective arrangements are already enabled. The market can be expected to innovate and new collective models evolve. This changing landscape will be determined by economic circumstance and the specific conditions provided by the UK pensions market. Therefore, it is important that the Government does not lose the flexibility to modify the more detailed operational requirements on schemes offering collective benefits in light of further industry experience after commencement.
44. The Bill defines collective benefits and puts in place the regulation making powers. There will then be a comprehensive set of regulations which govern the day-to-day running and decision-making in collective schemes, such as benefit targeting, investment performance, and communications to members. The alternative – to provide the full level of technical detail on the face of the Bill – would add a level of technical prescription to the primary clauses that is without precedent in UK pensions legislation. It could also prematurely curb market innovation, due to the inflexibility of the provision, and the difficulty in responding to operational experience.
45. Finally, this Part of the Bill seeks to ground a number of the regulation-making provisions for schemes providing collective benefits upon the provisions that already exist for money purchase or occupational trust-based schemes (and, where appropriate, makes specific reference to the relevant legislation). Therefore, another important justification of the general approach to secondary legislation in this Part is its consistency with the Parliamentary procedure that generally applies in relation to regulation-making powers for money purchase and occupational trust-based schemes.

Clause 19 – Introduction

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

46. Clause 19 defines a 'collective benefit'. Where, in all circumstances the rate or amount of the benefit payable to or in respect of a member depends entirely on (a) the assets available to pay that member's and other members' benefits and (b) factors used to determine what proportion of that amount is available

47. Clause 19(3)(b) provides a regulation-making power to allow benefits of a specified description to be excluded from the definition. Its purpose is to exclude certain benefits which would otherwise fall within the definition of “collective benefits” from the regulatory requirements that attach to “collective benefits”. The power would be used in situations where it would be more appropriate for provision of those benefits to be subject to a different regulatory regime. We might, for example, wish to exclude certain “with profits” pension arrangements (which currently exist in the personal pensions space and are already subject to appropriate regulation by the Financial Conduct Authority), from the definition of “collective benefits” to ensure that they are not subject to two separate regulatory regimes (and the additional regulatory burdens that this would entail for those pension arrangements).
48. The power to exclude benefits of a certain description from the definition of “collective benefits” is delegated to secondary legislation to allow the Department to react flexibly and responsively to the potential models of collective benefits which are created.
49. The negative resolution procedure is considered appropriate as the Department does not anticipate that there will be many situations in which benefits will need to be excluded from the definition of “collective benefits”. The Department believes that the exclusion of “with profits” arrangements, for example, from the definition of “collective benefits” should not be controversial since its aim would be to provide clarity to providers in terms of the appropriate regulatory regime for these types of arrangements.

Clause 20 – Duty to set targets for collective benefits

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

50. Clause 20 provides that regulations may require the trustees or managers of a scheme to set targets in relation to any collective benefits that are offered by the scheme. The Department intends to require trustees or managers of pension schemes offering collective benefits to set a target about the rate or amount of those benefits.
51. The setting of targets in relation to collective benefits is key to ensuring that schemes providing collective benefits operate in as transparent a manner as possible. Whilst the target is unenforceable, it will provide a clear indication of the level of benefits that the scheme is seeking to provide for its members.

52. When a scheme first starts to offer collective benefits, the Department intends to require the trustees or managers to obtain a certificate from an actuary which confirms that the initial targets set by the scheme have been set at an appropriate level. This level will be measured by reference to a level of probability specified by the Secretary of State in regulations (and this level of probability is also relevant to regulation-making powers in subsequent clauses). In other words, at the point that the scheme begins to offer collective benefits, there should be a tenable link between the contributions paid into the scheme, the investments held by it and the target level of benefit to be provided by those investments.
53. This level of probability will need to be set at a level which takes into account a number of different matters. Concerns about scheme transparency and the importance of ensuring that members understand the rate or amount of benefit that the scheme is aiming to provide will need to be balanced with the need to ensure that there is sufficient flexibility around the link between assets and target levels to allow schemes to take advantage of risk sharing options that are inherent to schemes that offer collective benefits – for example, the ability to smooth investment returns across the membership. The Department intends to canvass industry opinion as to the appropriate level of probability before settling on a definite figure.
54. As well as including a power to require the trustees or managers to obtain an actuarial certificate which confirms that the probability that a target is likely to be met is equal to or greater than the level specified in regulations, this clause also contains powers for the Secretary of State to make provision about the content of the certificate, stipulate that such a certificate can only be provided by an actuary with certain qualifications, and set out matters to which the actuary must have regard.
55. Examples of “matters to which the actuary must have regard” could include the level of contributions payable to the scheme, the investment strategy followed, economic variable, the membership profile of the scheme and longevity assumptions.
56. The negative procedure is considered the appropriate level of Parliamentary scrutiny for all the regulation-making powers in this clause. A number of the provisions – such as powers to impose requirements about the way that targets are expressed, how and when they should be published, and when they should be sent to a specified person (such as the Pensions Regulator) – are largely procedural in nature.
57. Other provisions are more technical in nature – such as the power to set out matters to which the actuary must have regard and the power to make provision about the content of the certificate.
58. In relation to the power to specify a level of probability in regulations that the trustees or managers must have regard to when targeting a rate or amount of a benefit, it is important that this is subject to the negative resolution procedure

to ensure that there is sufficient flexibility for the Secretary of State to be able to respond to situations at short notice. For example, as schemes start operating under the new framework, experience may dictate that certain levels of probability work better in practice.

Clause 21 – Payment schedule

Clause 22 – Overdue contributions and other payments

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

59. Clause 21 provides that regulations may require the trustees or managers of collective schemes to prepare, maintain, and if necessary, revise a payment schedule which shows the rates of contributions payable towards the scheme on behalf of the employer and the active members of the scheme, and the dates when such contributions are to be paid. Regulations may require the payment schedule to include other amounts payable to the scheme and the dates on which they are due, and make further provision about the content of the payment schedule and its revision. “Other amount” could include, for example, scheme expenses payable by the employer.
60. Clause 22(1) includes a regulation-making power to require the notification of a specified person where contributions set out in a payment schedule are overdue, and make further provision for the recovery of those payments.
61. The intention is that the form of the payment schedule will be similar to the “schedules of payments” provisions that exist for money purchase schemes (under sections 87 and 88 of the Pensions Act 1995 and regulations made under those provisions), including enforcement provisions which relate to overdue contributions. Clause 21(4) and 22(3) provide that provisions corresponding or similar to any provision set out in sections 87 and 88 of the Pensions Act 1995 may be applied in the context of collective benefits.
62. Regulations made under the powers under Clauses 21 and 22 will be subject to the negative resolution procedure. This mirrors the Parliamentary procedure for regulations made under sections 87 and 88 of the Pensions Act 1995 and so helps to ensure consistency of approach across pensions legislation.

Clause 23 – Statement of investment strategy

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

63. Clauses 23 to 25 set out a number of powers which allow requirements to be placed on trustees and managers of schemes in relation to the principles governing decisions about investments, and the choice of and review of investments held for the purpose of providing collective benefits.
64. Sections 35 and 36 of the Pensions Act 1995 (and the Occupational Pension Schemes (Investment) Regulations 2005) outline the requirements and principles governing investments for trust-based schemes, including the kinds of investment to be held, the balance between different kinds of investment risk, and the expected return on investments.
65. Clause 23 includes a regulation-making power requiring trustees or managers to produce a statement about their strategy for all investments held in connection with the provision of collective benefits. In practice, it is likely that regulations made under clause 23 will resemble regulations made under section 35 of the Pensions Act 1995. It is envisaged that the regulations will set out the form that the statement of investment strategy must take, together with requirements as to content. For example, regulations might require the trustees or managers to ensure that the statement of investment strategy includes their policies in relation to the kinds of investments to be held, the balance between different kinds of investments and the expected returns on those investments. Clause 23(3) therefore includes a power to make corresponding or similar provision to any provision made by section 35 of the Pensions Act 1995.
66. However, notwithstanding the potential similarities with existing legislation that currently applies to trust-based schemes, it is important that regulation-making powers are included in the Bill in relation to the investment strategy for collective benefits. This is not only so that there is consistency in terms of investment requirements and obligations between trust-based and contract-based schemes that offer collective benefits, but also because, given the different nature of collective benefits to other forms of pension benefits as a result of the opportunities associated with risk-sharing between members, it is appropriate to have separate provisions relating to investment strategy and decisions. For example, it may be appropriate for the investment strategy for collective benefits to be revisited on a more regular basis than an investment strategy which relates to the provision of other types of benefits – a requirement to review the strategy on an annual, rather than a triennial, basis might be appropriate. The Department believes that the level of detail involved in these provisions is most appropriately dealt with in delegated legislation to ensure that the requirements can be readily adapted and remain fit for purpose as schemes providing collective benefits evolve.
67. Regulations made under the powers under clause 23 will be subject to the negative resolution procedure. Regulation-making powers relating to the preparation and content of a statement of investment principles under section 35 of the Pensions Act 1995 are dealt with by way of negative resolution

procedure, so it is appropriate for the same process to apply here to ensure consistency of approach across pensions legislation.

Clause 24 – Choosing investments

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

68. Clause 24 includes a power to impose requirements on the trustees or managers of schemes (or on another person) in relation to their choice of investments, which relate to the provision of collective benefits. Examples of how this power might be used in practice include specifying criteria to be applied in choosing investments and requiring diversification of investments. Again, it is likely in practice that regulations made under clause 24 will resemble regulations made under section 36 of the Pensions Act 1995. For this reason, subsection (2)(a) provides that regulations may make provision corresponding or similar to any provision made by this section.
69. It is considered that delegating to secondary legislation is appropriate to ensure that the requirements can be readily adapted and remain fit for purpose as schemes providing collective benefits evolve. The negative procedure is considered appropriate. Regulation-making powers relating to the choice of investments under section 36 of the Pensions Act 1995 are dealt with by way of negative resolution procedure, so it would be appropriate for the same process to apply here to ensure consistency of approach across pensions legislation.

Clause 25 – Investment performance reports

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

70. Clause 25 contains a regulation-making power to require the trustees or managers of a pension scheme that provide collective benefits to obtain reports about the performance of investments that relate to collective benefits.
71. In particular, these regulations may make provision about what must be included in the investment performance report, the frequency with which the reports must be obtained, and the person from whom the reports must be obtained. The power to specify the person from whom the reports must be obtained has been included because it may not always be appropriate for the trustees or managers to draw up an investment performance report – it might be more appropriate, for example, for such a report to be drawn up by a fund manager, since they will be the person best placed to report on investment

performance. This power is necessary to ensure that trustees or managers are actively reviewing the performance of investments so that appropriate steps can be taken as quickly as possible to address any issues with investment choices or strategy. This is important in ensuring that there is transparency in the way that the scheme is run and also for member protection.

72. It is considered that secondary legislation is appropriate given the detailed and technical nature of the report itself and the need to ensure ongoing appropriate management of scheme investments. In addition, having these powers in secondary legislation will enable the investment performance report requirements to be changed quickly if it becomes apparent that provisions about the content of the report are not quite fit for purpose or the frequency with which reports need to be obtained is unduly burdensome for the trustees or managers. Regulations made under the powers provided for in clause 25 will be subject to the negative resolution procedure, as the regulations will be technical in nature and may need to be made quickly if circumstances require it.

Clause 26 – Valuation reports

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

73. Clause 26 contains a regulation-making power which may require those schemes offering collective benefits to obtain a document, prepared by an actuary, and defined in the Bill as a “valuation report”. The intention is that this report will contain assessments of the value of the pool of assets, which the scheme holds and has designated as the source of paying out collective benefits, and of the sufficiency of those assets to meet the targets in respect of the rate or amount of collective benefits, that have previously been set by the trustees or managers.
74. This clause includes regulation-making powers to require trustees or managers in a scheme offering collective benefits to obtain the report from an actuary who has specified qualifications or meets other specified requirements, to make further provision about what should be included in the report, and to make provision about the frequency with which the valuation report should be obtained. The clause also provides that regulations may require the actuary to certify whether, in the actuary’s opinion, the probability of the scheme being able to provide the target level of benefits is equal to, higher or lower than a specified level of probability. This will be key to the steps that the trustees or managers take to respond to the outcome of the valuation (and links with the policy for dealing with a deficit or surplus which is referred to in clause 28).
75. Given the actuarial factors that underlie the calculation of collective benefits, the Department’s view is that it is likely to be necessary to ensure that the

trustees or managers obtain the report from an actuary who has specified qualifications or meets other specified requirements. Again, this comes down to member protection – the actuary will be required to make judgment calls when valuing assets held by the scheme and assessing the likelihood of the scheme meeting any targets in relation to those benefits which potentially impact on the level of benefits the members ultimately receive from the scheme. Although actuaries are also required to exercise their judgement when drawing up actuarial valuations and reports in other pensions contexts (such as when providing an actuarial valuation under section 224 of the Pensions Act 2004), it is particularly important in the context of collective benefits that the actuary has a sufficient and appropriate level of technical expertise, since the risk in relation to collective benefits lies entirely with the members; the consequence of poor actuarial advice could be lower benefits for members. Unlike under a traditional salary-related pension arrangement where the employer stands behind any promise offered by the scheme and is therefore responsible for meeting any funding shortfall, trustees or managers may not have recourse to additional funds from an employer (or from the member) in the context of providing collective benefits. The accuracy of the valuation report and actuarial certification is likely to be of paramount importance.

76. It is anticipated that valuation reports will need to be obtained on an annual basis in order for the trustees or managers to be able to monitor to what extent the assets held by the scheme are likely to be sufficient to provide the target level of benefits – and then to take appropriate steps to address any issues that arise (as set out in their policy for dealing with a deficit or surplus – see clause 28). As well as ensuring greater transparency in relation to the link between target levels of benefits and the investments held by the scheme, regulations are likely to require that the content of the valuation report and the associated actuarial certification must then be taken into account by the trustees when applying their policy for dealing with a deficit or surplus (see clause 28).
77. Regulations made under these provisions will be subject to the negative resolution procedure. This is considered appropriate given the technical nature of the regulations, and given that similar powers elsewhere in pensions legislation are subject to the negative procedure. Regulations will allow the Department to ensure that the content of the valuation report remains relevant and appropriate as new designs of schemes providing collective benefits develop. In addition, and again depending on the types of scheme design that emerge, it is important that safeguards can be quickly put in place in relation to particular qualifications that an actuary preparing a valuation report in this context must hold. It is not anticipated that these safeguarding measures would be contentious.

Clause 27 – Valuation process

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

78. Clause 27 provides for regulations to make provision about the methods or assumptions to be used by an actuary valuing assets, or assessing the likelihood of a scheme meeting a target in relation to a collective benefit for the purposes of preparing a valuation report under clause 26.
79. In addition, regulations may include requirements in relation to the methods and assumptions to be used by the actuary in the preparation of the report, or the general principles to be used in determining the methods and assumptions in preparing the valuation report. An example of such general principles might be that the mortality tables used and the demographic assumptions made must be based on prudent principles, having regard to certain factors.
80. The Government has taken the power to make this provision by regulations rather than in primary legislation for a number of reasons. The provisions in this clause will involve a detailed and technical process that is most suitably set out in secondary legislation. Its implementation will require further consideration and consultation with interested parties, such as the actuarial profession. It is also felt to be important to retain a significant degree of flexibility in establishing the details of the process, so that the Department can make a quick and effective response to any concerns raised. As schemes that provide collective benefits do not currently exist within the occupational pension sphere in the UK, the Department will need sufficient flexibility to ensure that the valuation process and the methods or assumptions to be used by an actuary valuing target benefits, are fit for purpose.
81. The negative resolution procedure is considered the most appropriate form of parliamentary scrutiny for the provisions in this clause. The potential provision for the methods or assumptions to be used by a scheme's actuary (as set out in 27(1)), will need to take into account the views of the actuarial profession, and may need to be adjusted, at short notice – as an example, this might be to take account of the latest longevity projections or a changed economic climate.
82. The remaining provisions in 27(3) and 27(4) – which may require an actuary to certify that methods or assumptions determined in accordance with regulations have been followed, and may impose other requirements on an actuary when preparing a valuation report, including a need to have regard to guidance issued at intervals by a specified person – are largely procedural requirements for which a negative resolution is most appropriate.

Clause 28 – Policy for dealing with a deficit or surplus

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

83. This clause provides that regulations may require trustees or managers of a pension schemes to set out a policy about how to deal with deficits or surpluses relating to the provision of collective benefits. Where a valuation report shows a deficit or a surplus, then clause 28(1)(b) provides that regulations may require the trustees or managers to follow that policy. There is a deficit in relation to a collection benefit if the probability of the scheme meeting a target is lower than required, and a surplus where the probability is higher.
84. The main objective behind this clause is to ensure that schemes offering collective benefits operate in a transparent and accountable manner, with the policy setting out precisely how benefit levels might change for members under different economic scenarios that a scheme could face. Imposing an obligation for the trustees or managers to then follow this policy where a valuation report shows a “deficit” or a “surplus” would provide members with a measure of reassurance about the way that benefit shapes would change in different scenarios.
85. Regulations under this clause may require the trustees or managers of the scheme to consult about the policy, provide for the content of the policy and provide for review and revision of the policy. It is important to ensure that schemes offering collective benefits operate in an transparent and accountable way. Whilst the intention is to use the powers to make provision about what information the policy should contain (including the types of scenarios that the policy should address), there should also be a degree of flexibility available to trustees and managers as to the way that any deficit or surplus should be dealt with. The appropriate action might, for example, differ depending on scheme design. This is why subsection (4)(b) contains a power to require the policy to contain provision for a deficit or surplus to be dealt with in one or more of a “range of ways”. However, it is important that some safeguards are put in place in relation to acceptable ways or time periods for dealing with a deficit or surplus; this is why a power has been included at subsection (4)(a) to require the policy to be formulated with a view to achieving results described in the regulations within a period or periods described in the regulations.
86. In terms of how the policy might work in practice, a scheme’s policy for dealing with a surplus might specify that where a surplus arises, the target should be increased to reflect this. An alternative option might be for the scheme to leave the target at its current level for another year and then, if appropriate, to increase the target in response to the next valuation report.
87. Subsection (3)(c) contains a power to make provision about the review and revision of the policy. It is likely that this power would be used to require the trustees or managers to review this policy on a regular basis – possibly on an annual basis to tie in with annual valuation reports. It may be appropriate in some circumstances for the policy to be revised, following that review. However, given that a change to the surplus/deficit policy in a collective scheme could potentially involve a redistribution of assets amongst the

membership, clause 28 (3) (a) includes a power to require the trustees or managers to consult with members before changing their policy. This power is essential to transparency and also to member protection.

88. As well as involving a fair amount of technical detail, which is unsuitable for inclusion in primary legislation, some of the requirements in relation to the policy will be largely procedural in nature. Setting out the requirements for the management of deficits and surpluses in secondary legislation will also enable a greater period of engagement with industry during which the Department intends to consider how the policy might operate under a range of possible scheme designs to ensure that the regulations governing the policy for dealing with a deficit or surplus are fit for purpose. It is considered that the negative resolution procedure is the most appropriate form of parliamentary scrutiny for a technical, procedural area such as this.

Clause 29: Deficits attributable to an offence or the imposition of a levy

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

89. Although money purchase schemes are not usually subject to the “employer debt” provisions under section 75 (mentioned above), there are some limited circumstances where it is appropriate for an amount to be treated as a debt due from an employer to the trustees or managers of the scheme. The intention is that where money purchase schemes would be subject to the “employer debt” provisions, the same should apply in respect of schemes that provide collective benefits.
90. Clause 29 includes a power for an amount to be treated as a debt due from an employer to the trustees or managers of a scheme providing collective benefits in cases where there is a deficit attributable to a specified offence or the imposition of a specified levy.
91. Although subsection (2) provides that regulations may correspond to or resemble any provision made by Section 75 of the Pensions Act 1995 (which resembles a similar provision included in section 89(2) of the Pensions Act 1995 in relation to money purchase schemes), there is no intention for this power to be exercised in any circumstances other than those set out in subsection (1).
92. The powers in this clause are intended to apply to situations in which money purchase schemes would be subject to the employer debt provisions in practice, to ensure that money purchase schemes and schemes that provide collective benefits are treated in a consistent manner.

93. Section 89(2) of the Pensions Act 1995 is subject to the negative resolution procedure; it would therefore be appropriate for this clause also to be subject to the negative resolution procedure, given the technical nature of these provisions and the need for a consistent approach to regulation-making powers across pensions legislation.

Clause 30: Transfer Value: policy for calculating cash equivalent of benefits

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

94. This clause contains a power to require in regulations that trustees or managers of a scheme offering collective benefits have, and follow, a policy for the calculation and verification of cash equivalents of collective benefits. The purpose of this policy is to set out the methodology of assigning 'rights' to members in a collective fund.
95. It is intended that collective benefits will be subject to the existing transfer value provisions in the Pension Schemes Act 1993. Section 97 of the Pension Schemes Act 1993 provides that "cash equivalents" are to be calculated and verified in a prescribed manner. Although the Secretary of State therefore already has the power to provide how cash equivalents should be calculated and verified, clause 30(3)(b) contains a power to ensure that the trustees' or managers' policy for calculating and verifying any cash equivalent for collective benefits is consistent with any requirements imposed by regulations under section 97 of the Pension Schemes Act 1993. Again, the purpose of this power is to ensure transparency in the way the schemes that provide collective benefits operate and to ensure that the policy reflects any requirements imposed by regulations under section 97.
96. This clause also contains powers to make other provision about the content of the policy, the review and revision of the policy, and may require trustees or managers to consult about the policy. This policy will be a key scheme document and it is important that, as schemes providing collective benefits develop, there is an opportunity to adjust the detail as to content of the policy to take account of the way that a variety of schemes operate in practice. Where trustees or managers wish to make substantial changes to their policy for calculating cash equivalent of benefits, it may be appropriate for consultation with members to occur before these changes can be made.
97. The Regulations will need to include a fair amount of technical detail, unsuitable for inclusion in primary legislation. Some of the requirements in relation to the policy will be largely procedural in nature. Delegating to secondary legislation will allow the Department to consult the views of the pensions industry, including, for example, actuaries and investment

professionals and ensure that the provisions set out in regulations will capture potential future varieties of collective benefits. The negative resolution procedure is considered the most appropriate form of Parliamentary scrutiny. Similar powers in pensions legislation are subject to the negative procedure, and for consistency it is thought that these powers should also be subject to that procedure.

Clause 31 – Winding up

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

98. Clause 31 provides that regulations may disapply or modify the application of sections 73, 73A, 73B and 74 of the Pensions Act 1995 in relation to collective benefits and be used to make similar provision for collective benefits.
99. The rules setting out the winding up of a pension scheme are important in providing protection and transparency for members in the event of the scheme being wound-up. Rules governing the winding up of existing occupational pension schemes (other than money purchase schemes and other exempted schemes) are set out in the 1995 Pensions Act. However, the winding up provisions were not drafted with collective benefits in mind, and it is likely that collective benefits will not be compatible with these provisions as currently drafted. We envisage that collective benefits may therefore need to be taken out of the existing wind-up rules and a more appropriate set of rules put in place governing their wind-up. It is likely that the Regulations will need to include a greater degree of technical detail than would be suitable for inclusion in primary legislation.
100. The negative procedure is considered the appropriate level of Parliamentary scrutiny for the regulation-making powers in this clause as the provisions are technical and procedural in nature.

Clause 32 – Requirement to obtain actuarial advice

Clause 34 – Publication etc of documents

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

101. Clause 32 provides for regulations to require trustees or managers to consult the scheme actuary before making specified decisions or taking specified steps. This is an important power to ensure that scheme decision-making incorporates expert advice.

102. In addition, the regulations may provide that the scheme actuary must have regard to guidance issued periodically by a specified person and may impose other requirements on the scheme actuary when advising on those matters. There is precedent within pensions legislation for including provisions which require the actuary to have regard to prescribed guidance, for example under section 230(3) (matters on which advice of actuary must be obtained) of the Pensions Act 2004. The provision in clause 32(2) is a technical requirement to ensure that scheme actuaries can be required to have recourse to the most recent and appropriate professional guidance when advising those with responsibilities in schemes offering collective benefits. Given the detailed nature (and potential variability) of this guidance and additional requirements on actuaries, it is considered most appropriate to delegate these prescriptions to secondary legislation.
103. Clause 34 provides a power to impose requirements in regulations about the publication of the scheme documents described in clauses 21-28, relating to the processes for contributions, investment and valuation in a scheme offering collective benefits. The regulations may also specify the persons to whom copies of each document must be sent. For both powers in clauses 32 and 34, the negative resolution procedure is considered the most suitable and proportionate form of parliamentary scrutiny. The provisions in those clauses are procedural in nature and the Department does not envisage that the exercise of these powers would be controversial.

Clause 35 – Enforcement

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary Procedure: Negative

104. Clause 35 allows regulations made under Part 3 of the Bill to confer functions on a specified person in connection with enforcement of those regulations. In addition, clause 35 allows those regulations to provide for Section 10 of the Pensions Act 1995 to apply where there is non-compliance.
105. The Pensions Regulator has an existing enforcement power under section 10 of the Pensions Act 1995. This prescribes that, where the Regulator is satisfied that by reason of any act or omission this section applies to any person, they may by notice in writing require that person to pay, within a prescribed period, a civil penalty in respect of that act or omission not exceeding the maximum amount. The maximum amount of any penalty under Section 10 of the Pensions Act 1995 is £5,000 in the case of an individual or £50,000 in the case of a company, or such lower amount as might otherwise be prescribed.
106. Setting out these requirements in secondary legislation will allow the Department to take account of the potential range of collective scheme designs enabled by this legislation and provide for appropriate enforcement of

regulations made under Part 3 of the Bill. These regulations will be subject to the negative resolution procedure. As they are largely procedural in nature, this is considered the most suitable form of parliamentary scrutiny.

Part 4 – Miscellaneous and General

Clause 40 – Power to make consequential amendments etc

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative or Negative

107. Many consequential changes to existing legislation are being made by other provisions of this Bill. This clause inserts a regulation-making power to make further consequential changes, i.e. to bring existing legislation into line with the new definitions and types of benefit that are established in this Act. The provision includes a Henry VIII power to allow amendments consequential on this Bill to be made to primary or secondary legislation, whenever passed or made. We have prioritised for inclusion in the Bill certain key consequential amendments that relate to fundamental elements of the current legislative structure. The main provisions in the Bill are to establish a new framework - which of itself does not directly place any new requirements on schemes. The key consequential amendments in the Bill relate to the nature of benefit rights and entitlements of members at key points in the pension saving lifecycle in order to enable proper scrutiny and give sufficient clarity.
108. However, this power has also been taken in order to deal with other amendments which will be needed subsequently for the proper operation of the provisions in the Bill and their interaction with other requirements in private pension and wider legislation, including legislation of other government departments. The changes made by this Bill constitute significant change to the pensions legislative structure, and are therefore likely to take some time to bed in. There will be detailed implications which will need to be worked through during the implementation stages, including consideration of virtually all of the current stock of pensions secondary legislation and the powers under which it is made. Even if an attempt is made in future legislation to take account of the effect of the Bill there is a clear risk that unintended consequences will slip through unnoticed, which could cause implementation problems. The power to amend future legislation therefore acts as a useful safety net.
109. Further, given the wide range of consequential amendments that are needed, it may be best for all of those amendments to future primary or secondary legislation to be made in a single instrument or set of instruments shortly before the Bill is implemented. It would also be possible to draft future provisions to reflect the Pensions Bill and then make transitory provision pending the coming into force of the Bill, but that would be potentially complex

and likely to generate more legislative clutter. The breadth of the Henry VIII power has also been considered necessary in light of the Department's recent experience with other pensions legislation that made fundamental changes, for example the ending of contracting-out for Defined Contribution schemes, which was provided for in the Pensions Act 2008. That Act contained a similar Henry VIII power which was used when certain operational needs came to light late in the delivery process but which could not have been foreseen at the time the 2008 Act was drafted. Parliament has also agreed that a similar power was appropriate in other legislation which made similarly wide changes, for example in the Welfare Reform Act 2012 (see section 32(4) of that Act. For all these reasons, this power is considered necessary and appropriate in this Bill.

110. Because of the complex nature of the private pension market – including the multitude of arrangements running under current legislation, and the volume of regulations made under primary legislation the Department will consult with industry to check the practical impact and need for further and detailed consequential changes. As mentioned, it is likely that some of the necessary amendments will be to primary legislation. The principle of amending primary legislation is considered to be sufficiently serious to warrant scrutiny under the affirmative resolution procedure when this power is exercised so as to amend an Act. However, when the power is exercised so as to make consequential amendments to secondary legislation, the negative procedure is considered appropriate.

Clause 41 – Regulations

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative or negative

111. Clause 41 makes general provision in respect of the regulations that will be made under powers under the Bill. It allows the inclusion of incidental, supplementary, consequential, transitional, transitory or saving provisions. It also allows regulations to apply differently for different purposes and to apply to some or all of the purposes for which it may be used.

Clause 44 – Commencement

Powers conferred on: Secretary of State

Powers exercised by: Order (Statutory Instrument)

Parliamentary procedure: None

112. Clause 44 sets out when the various Parts or sections of the Bill will come into force. Clause 44(2) provides for the provisions in the Bill, with the exception of those in Part 5, to come into force on such day as the Secretary of State may by regulations appoint. Part 5 contains general provisions relating to the extent

of the Bill, its short title and the procedure for regulatory-making powers, and as such, will come into force on Royal Assent.

113. Clause 44(4) contains a standard power for the Secretary of State to make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act.
114. As is usual, regulations made under this commencement power are not subject to parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them and the power enables those provisions to be brought into force at a convenient time and in an orderly manner.

Annex – Delegated powers in the Pension Schemes Bill

Part 1 – Categories of pension scheme

Provision	Heading	Parliamentary Procedure
Clause 6	Treatment of a scheme as two or more separate schemes	Negative

Part 2 – General changes to pensions legislation

Provision	Heading	Parliamentary Procedure
Clause 9	Pensions promise obtained from third party	Negative
Clause 10	Disclosure of information about schemes	Negative
Clause 12	Early leavers: revaluation of accrued benefits	Negative
Clause 14	Restriction on transfers out of public service defined benefits schemes	Negative
Clause 15	Regulatory own fund schemes exempt from indexation	Negative
Clause 16	Power to create exemptions from indexation	Affirmative

Part 3 – Collective benefits

Provision	Heading	Parliamentary Procedure
Clause 19	Introduction	Negative
Clause 20	Duty to set targets for collective benefits	Negative
Clause 21	Payment schedule	Negative
Clause 22	Overdue contributions and other payments	Negative
Clause 23	Statement of investment strategy	Negative

Clause 24	Choosing investments	Negative
Clause 25	Investment performance reports	Negative
Clause 26	Valuation reports	Negative
Clause 27	Valuation process	Negative
Clause 28	Policy for dealing with a deficit or surplus	Negative
Clause 29	Deficits attributable to an offence or the imposition of a levy	Negative
Clause 30	Transfer value: policy for calculating cash equivalent of benefits	Negative
Clause 31	Winding up	Negative
Clause 32	Requirement to obtain actuarial advice	Negative
Clause 34	Publication etc of documents	Negative
Clause 35	Enforcement	Negative

Part 5 – General

Provision	Heading	Parliamentary Procedure
Clause 40	Power to make consequential amendments	Mixed
Clause 41	Regulations	Mixed
Clause 44	Commencement	None