



Department  
for Work &  
Pensions

# Pensions Bill Delegated Powers

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

February 2014

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# **Pensions Bill Delegated Powers: Supplementary memorandum by the Department for Work and Pensions**

## Introduction

1. This Memorandum is prepared by the Department for Work and Pensions, and is supplementary to the Memorandum dated 31 October 2013. It identifies new or amended delegated powers conferred in the Government amendment to the Pensions Bill tabled on 12 February 2014 for consideration at Lords Report 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.

## Extent

2. The amendment extends to England and Wales and to Scotland. Pensions are a transferred matter in respect of Northern Ireland and, as such, legislation is the responsibility of the Northern Ireland Assembly.

## Analysis of delegated powers

### **Clause 24 – Abolition of contracting-out for salary related schemes etc**

*Powers conferred on: Secretary of State*

*Powers exercised by: Regulations (Statutory Instrument)*

*Parliamentary procedure: Negative*

3. Clause 24(2) enables employers to amend their pension scheme rules so as to offset some or all of the increased National Insurance costs that follow from the ending of contracting-out – this power is referred to as the statutory override in the following paragraphs (to avoid confusion with a power to make secondary legislation). This amendment replaces subsection (4) with new subsections (4) and (5) which restrict further the scheme changes that can be made using the statutory override.
4. Subsection (4) of the Bill as drafted would prohibit employers from using the statutory override to amend a public service pension scheme, or a scheme of a description specified in regulations. Paragraph 152 of the Department's original Delegated Powers Memorandum of 31 October 2013 explained that the power in subsection (4)(b) to prescribe schemes which could not be amended by the employer was partly because the Government was consulting over whether employers in certain

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denationalised industries should be able to make such changes where protected person legislation, made at the time of privatisation, prevented changes to pension schemes in relation to some of their employees.

5. On 12 February 2014 the Government published the outcome of that consultation. The Government has decided that the statutory override provided for by the Bill should not apply in respect of these protected persons. Given the interest expressed in the outcome of the consultation, the Government has decided that it would be best, through the new subsection (4)(a), to make explicit the exclusion of protected persons from the scope of the statutory override under subsection (2).
6. New subsection (5) provides a new power for regulations to specify the detail of who are protected persons in relation to the affected schemes. The legislation covering protected persons defines who these people are in different ways depending on the industry in which these individuals were employed at the time of privatisation. Given the technical and complex nature of the legislation, the Department considers it appropriate to specify this detail in regulations.
7. The existing power in subsection (4)(b) to provide for further exclusions is retained as part of the amended subsection. Whilst the Government has reached a decision on protected persons, and we are not aware of any exclusions which would be appropriate, we continue to work with pension industry experts in developing draft regulations on matters around the statutory override. The power to provide for further exclusions is required because, as we continue this engagement, there may be other situations brought to our attention where it would be inappropriate for the statutory override in subsection (2) to apply.
8. Like other regulations made under the powers in clause 24, regulations will be subject to the negative resolution procedure. As set out in our original memorandum this is felt to be appropriate as they relate to a very technical area of private pensions and the measures will be subject to consultation to ensure they are fit for purpose.

Department for Work and Pensions  
12 February 2014