Draft Pensions Bill – Impact Assessment Summary

1. Further details of the measures contained in the draft Pensions Bill are available in the explanatory notes accompanying the draft Bill. These can be found at **www.dwp.gov.uk/draft-pensions-bill**

Introduction of a framework for the periodic review of future changes to the State Pension age (clause 26)

2. In the 2012 Budget, the Chancellor confirmed that there would be an automatic review of the State Pension age in future to take into account increases in longevity.
3. The draft Bill provides for a system of periodic reviews of the State Pension age, at least every six years. These reviews will take into account analysis provided by the Government Actuary on increases required to the State Pension age in order to ensure individuals maintain a specified proportion of adult life in retirement. A report on wider factors produced by an independently-led body will also be considered as part of the review.
4. The details of any proposal to change the State Pension age as a result of the proposed regular review will be a matter for the Government of the day. Any changes to the State Pension age will need to be set out in primary legislation and approved by Parliament before becoming law. Therefore, it is not appropriate to publish an impact assessment for potential future changes to the State Pension age at this time.

Prohibition of incentives to transfer pension scheme benefits (clauses 29 and 30)

5. A common method for reducing the risk that employers are exposed to by their sponsorship of a pension scheme is to offer an incentive to a Defined Benefit scheme member to transfer their pension, or a part of it, to a Defined Contribution scheme. These are referred to as Enhanced Transfer Value (ETV) exercises.
6. ETV exercises can take the form of:
   - an enhanced pensions inducement: an incentive to transfer enhance the member's pension benefits – i.e. increasing the value of the pension itself;
   - non-pension inducements: incentives that don't take the form of an enhancement to the pension value. They are usually in the form of a cash payment but could take other forms (e.g. a car, holiday, shopping voucher, additional annual leave, etc); or
   - a combination of the two.
7. At present a voluntary Code of Practice exists to encourage pension schemes to avoid offering non-pensions inducements.
8. The legislation will grant powers to draft secondary legislation to prohibit a non-pension inducement as an incentive for a Defined Benefit pension scheme member to transfer out of a salary-related scheme.

9. The granting of powers will be dependent on the efficacy of the Code of Practice, with a Monitoring Board established to evaluate its effectiveness. If at any time the Board feels that the Code is not working, it will recommend the introduction of the reserve power.

10. If no regulations have been made under clause 29 seven years after commencement, that section of the Act will be repealed.

11. As the powers are not to be immediately granted to the Secretary of State, an Impact Assessment has not been carried out. If the Monitoring Board recommends granting of the reserve power, an Impact Assessment will be conducted prior to doing so.

Amendment to legislation to ensure that prohibited trustees are not able to be directors of corporate trustees (clause 31)

12. Since the Pensions Act 1995, the Pensions Regulator and its predecessor organisation OPRA have had the power to suspend trustees and prohibit persons from acting as trustees in the future if they are not deemed to be a fit and proper person to be a trustee of the scheme. The 1995 powers (Sections 3 and 4) were amended in the Pensions Act 2004 (Sections 33 and 34).

13. The amendment proposed in the draft Bill would automatically prohibit a corporate trustee if a prohibited individual is a member of the corporate trustee's board.

14. The amendment also corrects an omission in earlier legislation. This is in relation to provision for proceedings to be instituted for dishonesty or deception against an individual director of a corporate trustee and for the corporate trustee to be suspended (Section 4(f) of the 1995 Act). Currently this provision does not extend to circumstances where the institution of proceedings for dishonesty or deception is being considered. This would be covered by Section 4(a) of the 1995 Act. In order to address this, the amendment alters Section 4(f) to refer also to Section 4(a).

15. The amendments are not expected to involve any costs to business, civil society organisations and the public sector; nor to individuals.

Amendment to Companies Act to indemnify certain bodies from liability where published guidance leads to financial loss (clause 32)

16. Money purchase pension schemes are required annually to provide their members with a Statutory Money Purchase Illustration (SMPI), which gives an indication of fund value and possible future accumulation.

17. In producing SMPIs, schemes must comply with "relevant guidance" issued by the Financial Reporting Council (FRC).

18. At present, that guidance is contained within a document entitled *Technical Memorandum: TM1: Statutory Money Purchase Illustrations*[1].

[1] Financial Reporting Council, 2011, *Technical Memorandum: TM1: Statutory Money Illustrations Version 2.0*, FRC

19. This measure amends Section 16 of the Companies (Audits, Investigations and Community Enterprises) Act 2004 to include the production of TM1 and subsequent guidance by FRC as an activity that qualifies them for indemnity from pursuance of damages under Section 18 of that Act.

20. As this measure refines current legislation and has no direct impact on business, civil society organisations or the public sector, a full Impact Assessment has not been produced.

Amendments to legislation concerning automatic re-enrolment duties (clause 34)

21. This clause corrects an anomaly in Sections 3 and 5 of the Pensions Act 2008, which can produce a simultaneous duty to auto-enrol and re-enrol jobholders.

22. Section 3 of the Pensions Act 2008 (as amended by Section 5 of the Pensions Act 2011) requires employers automatically to enrol jobholders aged at least 22, under their State Pension age and earning more than £8,105 (in 2012/13 terms) a year into a qualifying automatic enrolment workplace pension scheme.

23. Section 5 of the Pensions Act 2008 (also as amended by Section 5 of the Pensions Act 2011) places a periodic ongoing obligation on the employer to re-enrol all eligible jobholders who opt out or cancel. Every three years, on the anniversary of the staging date, the employer must carry out an automatic re-enrolment exercise and enrol non-members into a qualifying scheme.

24. The Pensions Act 2011 requires that automatic re-enrolment may not occur more frequently than every two years nine months. This paves the way to amend regulation 12 (of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010) to allow the employer to move the re-enrolment date forwards or backwards from the anniversary of the staging date by up to three months.

25. The amendment in the draft Pensions Bill turns off the three-yearly cyclical re-enrolment duty if the re-enrolment date chosen by the employer falls:

    - during the postponement period and before the deferral date in section 4 of the 2008 Act;
    - during the joining window for automatic enrolment under section 3 of that Act; or
    - during the joining window for immediate automatic re-enrolment under section 5(4) of that Act.

26. There are no employer cost implications. These are technical amendments to existing primary legislation to remove inconsistencies between the automatic enrolment, automatic re-enrolment and waiting period interfaces. The core employer duties stand unchanged.

Amendments to legislation to clarify how civil sanctions apply to section 72 of the Pensions Act 2004 (clause 35)

27. This amendment alters Sections 40(1)(d) and 41(1)(d) of the Pensions Act 2008 to make it clear that penalties in those sections are only available to the

Employer Compliance Regime. The penalties apply only for failure to comply with a Section 72 notice where it requires the recipient to provide information or documents in relation to the Pensions Act 2008 compliance. The penalties do not apply to 2004 Act compliance activity.

28. The amendment is not expected to involve any costs to business, civil society organisations and the public sector, nor to individuals.