Department
for Work &
Pensions

Pensions Bill Impact Assessment

Annex G – Other measures in the Pensions Bill

May 2013

Other measures in the Pensions Bill

1. The Pensions Bill contains a number of measures which do not introduce significant costs or benefits to the private sector or civil society organisations, or to the public sector over the cost threshold. Therefore individual Impact Assessments of these measures have not been carried out. These measures are summarised below.
2. Further details of the measures contained in the Bill are available in the accompanying explanatory notes.

Periodic review of rules about pensionable age

3. In his 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.
4. The Bill provides for a system of periodic reviews of the State Pension age, with a report to be published at least every six years. These reviews will take into account analysis provided by the Government Actuary on increases to the State Pension age required to ensure that individuals maintain a specified proportion of adult life after pensionable age. A report on wider factors produced by an independently-led body will also be considered as part of the review.
5. 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 possible to publish an Impact Assessment for potential future changes to the State Pension age at this time.

Power to prohibit offer of incentives to transfer pension rights

6. 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.
7. ETV exercises can take the form of:

- an enhanced pensions inducement: an incentive to a transfer which enhances the member's pension benefits – i.e. increases the value of the pension itself;
- non-pension inducements: incentives that do not enhance 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.

8. At present a voluntary Code of Practice exists to encourage pension schemes to avoid offering non-pensions inducements.
9. The legislation will grant a regulation-making power to prohibit incentives for a Defined Benefit pension scheme member to transfer out of a salary-related scheme.
10. The use of this power 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.
11. If no regulations have been made under clause 30 seven years after commencement, that section of the Act will be repealed.
12. 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.

Automatic re-enrolment: exceptions where automatic enrolment deferred

13. This clause corrects an anomaly in sections 3 and 5 of the Pensions Act 2008, which can produce a simultaneous duty to automatically enrol and re-enrol jobholders.
14. Section 3 of the Pensions Act 2008 (as amended by section 5 of the Pensions Act 2011) requires employers to automatically enrol jobholders aged at least 22, under their State Pension age and earning more than £9,440 (in 2013/14) a year into a qualifying automatic enrolment workplace pension scheme.
15. 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 cancel or opt out of their employer's pension scheme. 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.

16. 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.

17. The amendment in this 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.

18. 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.

Automatic enrolment: powers to create general exceptions

19. Under sections 3, 5, 7 and 9 of the Pensions Act 2008 employers are obliged to automatically enrol (and re-enrol) workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.

20. Automatic enrolment and pension saving can sometimes lead to nugatory work for an employer and in some circumstances could cause an individual to incur a financial penalty.

21. This clause grants the Secretary of State a general power to exclude certain prescribed types of workers, or workers in prescribed circumstances, from the scope of automatic enrolment. It also amends section 10 of the Pensions Act 2008 to allow automatic enrolment information to be more appropriately targeted.

22. It also includes a power to re-instate the automatic enrolment duty if the circumstances that triggered the exclusion change.

23. The clause provides a power to prescribe exclusions from the employer duty but has no impact by itself. An Impact Assessment may be undertaken, if appropriate, when the power is exercised and regulations laid.

Qualifying schemes: administration charges

24. Section 16(3) of the Pensions Act 2008 allows the Secretary of State to stop schemes from being qualifying schemes where administration charges exceed a prescribed amount.
25. This clause grants the Secretary of State a broader power to prescribe, in regulations and statutory guidance, how any limitations imposed on charges in qualifying schemes would apply in practice.
26. As the clause amends an existing power which has not yet been exercised the clause has no impact by itself. An Impact Assessment may be undertaken, if appropriate, when the power is exercised and regulations laid.

Automatic enrolment: transitional period for hybrid schemes

27. This clause corrects an error in the Pensions Act 2008. Section 30 of that Act provides a transitional period for automatic enrolment into a Defined Benefit or a hybrid pension arrangement. It inadvertently covers some members who are entitled to money purchase benefits in a hybrid arrangement.
28. The clause ensures jobholders entitled to be enrolled into a money purchase arrangement are correctly covered by section 29 of the Pensions Act 2008 instead of section 30.
29. As this is a technical correction to current legislation and has no direct impact on business, civil society organisations or the public sector, a full Impact Assessment has not been produced.

Penalty notices under sections 40 and 41 of the Pensions Act 2008, etc.

30. 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 regime. The penalties do not apply to 2004 Act compliance activity.
31. The amendment is not expected to involve any costs to business, civil society organisations or the public sector, nor to individuals and so no Impact Assessment is needed.

Unpaid scheme contributions

32. This amendment alters section 124 of the Pension Schemes Act 1993 so that the protection offered within it to employees in respect of, or on behalf of, whom pension contributions remain unpaid at the time of their employer's insolvency is extended to workers and agency workers. Both of these wider categories of people may become pension scheme members as a result of automatic enrolment.

33. The protection consists of the ability of scheme trustees or managers to claim from the Secretary of State a certain amount of the unpaid pension contributions to be payable into the scheme from the National Insurance Fund.

34. The amendment is not expected to involve any costs to business, civil society organisations or individuals. The cost to the National Insurance Fund is estimated to be less than £1 million for the three years 2015/16 to 2017/18 and so an Impact Assessment is not needed.

Power to require pension levies to be paid in respect of past periods

35. This clause will enable the Secretary of State to make regulations to ensure full compliance with a European Commission decision of 11 February 2009 relating to unlawful state aid. The regulations would allow the collection of levies for a past period that are due to the Pension Protection Fund.

36. Any such changes proposed in regulations would not have an impact on the costs of businesses, charities or the voluntary sector unless they were commercial undertakings with a Defined Benefit scheme and a Crown guarantee, and an exemption from the PPF levies gives rise to an incompatible state aid.

37. The clause provides a power but has no impact by itself. An Impact Assessment may be undertaken, if appropriate, should the power be exercised.

Prohibition and suspension orders: directors of corporate trustees

38. 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 deemed not 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).

39. The amendment would automatically prohibit a corporate trustee from acting as a pension scheme trustee if a prohibited individual is a member of the trustee's board.

40. 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).

41. The amendments are not expected to involve any costs to business, civil society organisations or the public sector; nor to individuals and so no Impact Assessment is needed.

Preparation of guidance for pensions illustrations

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

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

44. At present, that guidance is contained within a document entitled Technical Memorandum: TM1: Statutory Money Purchase Illustrations.

45. 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.

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

Pensions Regulator's objectives

47. This clause provides an additional objective for the Pensions Regulator of minimising any impacts on the sustainable growth of sponsoring employers in exercising its functions under Part 3 of the 2004 Act (which sets out the funding regime for Defined Benefit occupational pension schemes).

48. Currently, in undertaking its functions, the Pensions Regulator has five statutory objectives. These include objectives to protect members' benefits and an

objective to reduce the risk of calls on the Pension Protection Fund (PPF), which may protect members where an eligible scheme commences wind up due to employer insolvency.

49. The scheme funding regime overseen by the Pensions Regulator is based in part on the principle that the employer's covenant provides security for the pension fund. Therefore, the existing objectives mean that the Regulator implicitly needs to take account of impacts on the sponsoring employer, given that a strong employer is in the best interests of scheme members. However, the new objective will ensure that the Pensions Regulator must explicitly consider minimising any impact on the sustainable growth of sponsoring employers.

50. The impact of this measure cannot be meaningfully quantified as it will depend on a number of factors, notably how the new objective will affect negotiations between pension scheme trustees and sponsoring employers in the future. The new objective refines the existing regime by making explicit something that is implicit in existing legislation, which also makes the scale of the impacts hard to assess. Other impediments to providing a meaningful Impact Assessment are the difficulties in making assumptions about future economic and pension fund developments and how the independent Pensions Regulator might implement this objective in practice. In addition, it is difficult to plausibly assess a baseline as this would require estimating what the hypothetical outcomes of future employer and trustee negotiations (overseen by the Regulator) would have been in the absence of the new objective. The Government will, however, continue to listen to stakeholder views to ensure that the balance struck between the various statutory objectives of the regulator is appropriate.