



Department
for Work &
Pensions

Pensions Bill Delegated Powers

Memorandum from DWP to the Delegated Powers
and Regulatory Reform Committee

May 2013

Introduction

1. The Pensions Bill was introduced in the House of Commons on 9 May 2013.
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.

Background and summary

3. The Pensions Bill contains significant reforms to both the state pension system and bereavement benefits, introduces a framework to provide for a system of automatic transfers of small pension pots and provides for the withdrawal of the option to issue refunds of contributions to members who leave a pension scheme before completing two years of pensionable service (known as short service refunds). It amends the timetable for increasing State Pension age to 67 and introduces a framework for considering future changes to the State Pension age. It introduces a new statutory objective for the Pensions Regulator and also contains a number of amendments in relation to private pensions legislation, including measures relating to the automatic enrolment of people in to workplace pension schemes.
4. The Bill is in five parts:
 - Part 1 – State pension
 - Part 2 – Pensionable age
 - Part 3 – Bereavement support payment
 - Part 4 – Private pensions
 - Part 5 – Final provisions

Part 1 – State pension

5. This Part of the Bill contains provisions to reform the state pension system and introduce a new single-tier pension for people who reach their State Pension age on or after the date it is implemented, 6 April 2016. The Government's proposals for this reform were outlined in the White Paper *The single-tier pension: a simple foundation for saving*, which was published on 14 January 2013. These reforms will deliver a simple state pension system for future

pensioners that will provide people with clarity and confidence to better support saving for retirement.

6. The single-tier pension scheme will replace the current retirement pension scheme, which has two components (a basic State Pension and an additional State Pension), with a flat-rate pension. The Bill also includes:
 - transitional provisions for people who have paid, been treated as having paid or been credited with National Insurance contributions in respect of tax years before the introduction of the single-tier pension scheme;
 - transitional provisions for inheriting entitlement from a late spouse or civil partner who had made National Insurance contributions in respect of tax years before the introduction of the single-tier pension scheme;
 - transitional provisions for women who, before 1977, elected to pay a reduced rate of National Insurance contributions;
 - transitional provisions for sharing pension with a former spouse or civil partner upon divorce; and
 - provisions to allow people to postpone or suspend their entitlement to a single-tier pension.
7. The Bill also makes provisions for a number of changes that are a corollary of the introduction of the single-tier pension. These include the end of contracting-out for salary-related occupational pension schemes and the end of the Savings Credit element of State Pension Credit for those who reach their State Pension age on or after the introduction of the new scheme.
8. Most of the powers to make delegated legislation in this Part reflect the position of similar provisions for secondary legislation in existing legislation.

Part 2 – Pensionable age

9. On 29 November 2011 the Chancellor of the Exchequer announced the Government's intention to bring forward the increase in the State Pension age to 67. Part 2 of the Bill contains provision to amend the timetable for increasing State Pension age from 66 to 67 (originally set out in the Pensions Act 2007) accordingly, bringing the increase forward by eight years to begin in 2026 and end in 2028.
10. Part 2 of the Bill also includes provides for a framework of periodic reviews to consider whether and how the State Pension age should be changed in the future. This framework was also outlined in the recent White Paper on state pension reform, *The single-tier pension: a simple foundation for saving*. The reviews will be informed by reports from the Government Actuary's Department about life expectancy and from a review panel on wider factors specified by the Secretary of State at the time.
11. Part 2 contains no powers to make delegated legislation.

Part 3 – Bereavement support payment

12. In late 2011 / early 2012 the Government consulted on how the bereavement benefits system could be reformed to make it more effective for the 21st century. The Government published its response in July 2012 outlining proposals to reform the bereavement benefits system by introducing a single benefit to support people after bereavement – the Bereavement Support Payment.
13. Part 3 of the Bill contains measures to introduce the Bereavement Support Payment which will replace the existing suite of bereavement benefits for people whose spouse or civil partner dies on or after the date it is introduced.

Part 4 – Private pensions

14. Part 4 of the Bill contains a number of measures related to private pensions legislation. This includes a framework for automatic transfers of small pension pots so that an individual's pension will follow them to their new pension scheme when they change jobs. The Government set out further details of these proposals in *Automatic transfers: consolidating pension savings* (Cm 8605) which was published on 23 April 2013.
15. It also provides for the abolition of short service refunds for people who leave a money purchase occupational pension scheme within two years. This Part also introduces a new objective for the Pensions Regulator and includes a number of amendments to the Pensions Act 2008 in relation to automatic enrolment. There is a provision to allow regulations to be made to prohibit the offer of incentives to encourage people to transfer a cash equivalent value of their accrued rights from a salary-related occupational pension scheme to an alternative arrangement. Finally, this Part includes a number of smaller measures, most of which strengthen existing legislation relating to private pensions.

Part 5 – Final provisions

16. This Part contains provisions to make consequential amendments, a general provision in respect of regulations and orders under the Bill, the Territorial Extent of the Bill, the commencement of provisions in the Bill and the short title of the Bill.

Extent

17. The Bill extends to England and Wales and to Scotland. The subject matter of the Bill is transferred in respect of Northern Ireland and, as such, is the responsibility of the Northern Ireland Assembly. Accordingly, the Bill only extends to Northern Ireland for purposes of amendment to legislation with UK-wide extent and, with one exception, any such amendments do not deal with transferred matters. The exception is in respect of the reference to Northern Ireland legislation in clause 41. This clause does not contain a delegated power and as such, is not described in this memorandum.

Parliamentary scrutiny

18. The Department for Work and Pensions 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.
19. Where the Secretary of State for Work and Pensions proposes to make regulations under certain social security-related enactments, he must refer the proposals, usually in the form of draft regulations, to the Social Security Advisory Committee for scrutiny and comment. An exception to this is where the regulations are made within six months of the primary provisions coming into force. Amendments under the Bill provide that Parts 1 and 3 of the Bill are relevant enactments for the purposes of the Social Security Advisory Committee, so social security-related regulations under these Parts made more than six months after the Bill provisions have been brought into force will fall within this scrutiny requirement.

General

20. 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 – State pension

Clause 2 – Entitlement to state pension at full or reduced rate

Clause 4 – Entitlement to state pension at transitional rate

Powers conferred on: Secretary of State

Powers exercised by: Regulation (Statutory Instrument)

Parliamentary procedure: Negative

21. Clause 2(2)(b) provides that in order to be entitled to a state pension under the new state pension scheme (a single-tier pension) a person will need to have at least a minimum number of qualifying years of National Insurance. This is to ensure that entitlement is restricted to those who have made a significant social or economic contribution. Clause 2 relates to a person who only has qualifying years of National Insurance referable to the period after the new scheme is introduced. Similar provision is made in clause 4 for a person who has qualifying years of National Insurance for tax years before the introduction of the new scheme and so receives a ‘transitional’ rate of single-tier pension. Clause 4(1)(b) similarly provides that a person must have at least a minimum number of qualifying years to be entitled to a transitional rate of pension. The intention is that the power to set a minimum number of qualifying years will be exercised in the same way for both Clause 2 and Clause 4 so a single explanation is provided in this memorandum.
22. Clause 2(3) and Clause 4(2) provide a power to set the minimum number of qualifying years required to satisfy the condition in regulations, but limit the period to be no more than ten years.
23. As set out in the White Paper, *The single-tier pension: a simple foundation for saving*, the intention is that the minimum qualifying years period will be between seven and ten qualifying years.
24. However, setting the exact figure in regulations provides the flexibility for the number of years required to be set closer to the point of introduction and adjusted to allow pensions expenditure in Great Britain and overseas to be balanced in light of prevailing conditions. This is in line with the previous legislative approach to a minimum qualifying period (which applied to the current retirement pension scheme prior to April 2010) where the level of the minimum qualifying period was set out in regulations.
25. The regulations under clause 2(3) and Clause 4(2) will be subject to the negative resolution procedure, in line with the previous minimum qualifying period rules (section 60(5) of the Social Security Contributions and Benefits Act 1992 and regulation 6(1) and (2) of the Social Security (Widows Benefit and Retirement Pensions) Regulations 1979 (SI 1979/642)).

Clause 3 – Full and reduced rates of state pension

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

26. Clause 3(1) provides for the full rate of the single-tier pension to be set in regulations. The starting level of the single-tier pension is a key part of the long-term state pension settlement and, together with the method of maintaining the value of the pension over time, is fundamental in ensuring the state pension system is affordable and sustainable.
27. Delegating this to secondary legislation provides the flexibility to set the full rate of the new state pension closer to the date of introduction, which is important for two reasons.
28. Firstly, the new state pension scheme will be introduced in April 2016 and for operational purposes the starting level does not need to be confirmed until the autumn of 2015. As the rate of the new pension will determine a significant proportion of government spending for many years to come it is appropriate for it to be confirmed in the Parliament in which the new state pension scheme is introduced.
29. Secondly, setting the starting level closer to the date of introduction allows the Government to have the most up to date economic data and forecasts on which to base their decision. This is particularly important as it will allow two key objectives of the reformed state pension to be taken into account – that the full amount of the single-tier pension must be above the rate of the basic level of the means test (the Pension Credit Standard Minimum Guarantee) and that the new state pension scheme should cost no more overall than the current retirement pension scheme.
30. This power in clause 3(1) is intended purely to set the starting level of the full rate of the single-tier pension. There is provision elsewhere in the Bill to up-rate the level of the pension annually to maintain its value. Clause 3(3) provides that once the full rate of the single-tier pension has been set the power in clause 3(1) cannot be re-exercised to reduce the rate.
31. The regulations under clause 3(1) will be subject to the affirmative resolution procedure. Given the importance of the starting level for the single-tier pension, both in respect of an individual's income level from state pension and the Government's expenditure on pensions, it is felt that this is the appropriate level of Parliamentary scrutiny. This is also in line with the level of Parliamentary scrutiny afforded to the annual order to up-rate the current retirement pension (and other social security benefits).

Clause 7 – Survivor’s pension based on inheritance of additional old state pension

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

32. Clause 7 provides that a surviving spouse or civil partner may inherit an amount of state pension on the basis of the additional State Pension that their late spouse or civil partner was or would have been entitled to in the current retirement pension scheme, providing they meet certain conditions.
33. Clause 7(4) provides a power to specify in regulations the maximum amount of state pension that a person may receive when they are entitled to an inheritable amount under clause 7 in addition to state pension under other provisions within the Bill.
34. This will broadly mirror the effect of provisions in the current retirement pension scheme that restrict the amount of own plus inherited basic and additional State Pension that a survivor may receive to the maximum amount a single person could achieve on their own National Insurance alone. The current limit on additional State Pension is set in the Social Security (Maximum Additional Pension) Regulations 2010 (SI 2010/426).
35. Under the current scheme the limit for additional State Pension is the maximum amount a hypothetical individual could have become entitled to up to when entitlement to the combined additional State Pension arises (i.e. on the death of the spouse/civil partner or, if the survivor is under State Pension age at that date, the date they reach State Pension age). This calculation is expressed by way of a formula in the regulations.
36. The power in clause 7(4) will be used to achieve essentially the same purpose as the current restrictions on maximum amounts. The cap will be based on the maximum a person could achieve under the current scheme because the inherited amount will be derived from the rules of the current scheme. The intention is that the cap will comprise the sum of the full basic State Pension under the current scheme, plus maximum graduated retirement benefit, plus the maximum additional State Pension that could be accrued up to the point the current retirement pension scheme closes. Given the technical and detailed nature of this provision it is considered appropriate to set this out in regulations as under the current scheme.
37. The regulations under clause 7(4) will be subject to the negative resolution procedure, as is the case for the regulations to set the maximum additional State Pension under the current scheme. As the power will be used to the same effect as the provisions in the current retirement pension scheme it is felt this is an appropriate level of Parliamentary scrutiny.

Clause 8 – Choice of lump sum or survivor’s pension under section 9 in certain cases

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

38. In the current retirement pension scheme, individuals can choose not to claim their state pension at State Pension age and, as a consequence, will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions, including the need to defer claiming for at least 12 months in order to be entitled to a lump-sum payment). This is known as deferral.
39. Clauses 8 and 9 allow an individual who reaches their State Pension age in the single-tier pension scheme to inherit deferred state pension and deferral awards under the current retirement pension scheme rules if their late spouse or civil partner reached their State Pension age before the start date of the single-tier pension scheme and deferred their state pension.
40. Clause 8 (subsections (3), (7) and (8)) provides a power to make regulations to set out the detailed arrangements for a surviving spouse or civil partner to make a choice of deferral payment when their late partner dies before exercising this choice themselves. This may occur where the deferrer dies before making a claim for their State Pension or if they die shortly after making a claim but before choosing between a weekly increase or a lump-sum payment. These regulations will mirror existing provisions for the current scheme set out in regulations under Schedule 5 to the Social Security Contributions and Benefits Act 1992 – currently the Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005 (SI 2005/2677).
41. Clause 8(3) provides for regulations to set out the manner and time limits for the surviving spouse or civil partner to make the choice of deferral payment. The intention is that these will mirror existing arrangements and enable an individual to make their choice by telephone or in writing in certain cases and for them to have a period of up to three months to make their decision once they have claimed their own single-tier pension.
42. Clause 8(7) provides for regulations to permit the surviving spouse or civil partner to change their mind about the form of the deferral payment they have chosen or for the Secretary of State to extend the period in which a choice is to be made where it is reasonable to do so. Again, the intention is that these regulations will mirror existing provisions.
43. Clause 8(8) provides for regulations so that where a person has changed their mind about the form of the deferral payment they have inherited that payment may be recovered from them or a lump-sum reduced in order to prevent

duplication of payment to them. For example if a person originally opts to take a lump-sum payment they may need to re-pay this sum before an increase to their weekly pension can be awarded.

44. Regulations under clause 8 will be subject to the negative resolution procedure, as is the case for the existing regulations in the current scheme. This will ensure that any subsequent amendment to the regulations can be co-ordinated between the current and new schemes.

Clause 10 – Inheritance of graduated retirement benefit

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative on first use

45. As a general principle the Bill provides for the inheritance of old scheme additional State Pension when a person's deceased spouse or civil partner had actual or notional entitlement to additional State Pension under the rules of the current scheme. Clause 10 provides a tightly-defined power to allow regulations to be made specifying what a person will be able to inherit by way of their late spouse's or civil partner's graduated retirement benefit, or deferred graduated retirement benefit, so as to align these provisions with the principal inheritance arrangements set out in the Bill as closely as possible. The preservation of entitlement under the graduated retirement benefit scheme, and the detailed calculation of entitlements including the provision for the inheritance of deferred payments, is already contained in regulations (the Social Security (Graduated Retirement Benefit)(No.2) Regulations 1978 (*SI 1978/393*) and the Social Security (Graduated Retirement Benefit) Regulations 2005 (*SI 2005/454*)). In addition the provisions in respect of graduated retirement benefits now concern very small sums that can only be relevant to the survivors of people who reach State Pension age before April 2023 (the last date that someone entitled to graduated retirement benefit in their own right can reach State Pension age as the scheme stopped in 1978). For these reasons it is felt appropriate to delegate what will be technical detail to regulations.
46. The power to make regulations will apply in respect of people who reach their State Pension age on or after the start date of the single-tier pension scheme whose deceased spouse or civil partner had entitlement to graduated retirement benefit under the rules of the current scheme. It is intended that the regulations will provide that such a person will be entitled to state pension based on the amount of graduated retirement benefit they would inherit under the current scheme subject to the general conditions that will apply to inheritance of current scheme additional State Pension (for example, the requirement for the marriage or civil partnership to have existed before the single-tier pension is introduced).

47. The power at clause 10(2)(a) could be used to specify that an inherited amount under clause 7 (survivor's pension based on inheritance of additional old state pension) may be increased by the amount of inherited graduated retirement benefit so that the individual receives, for all intents and purposes, a single amount of inherited state pension.
48. The power at clause 10(2)(b) is a Henry VIII provision to allow regulations to amend other legislation in relation to the inheritance of graduated retirement benefit if necessary. Regulations made under this clause may be used to modify the provisions of sections 36 and 37 of the National Insurance Act 1965 (which set out the overarching legislation in relation to graduated retirement benefit). This replicates an existing provision under the current scheme. In the past it has been necessary to amend the provisions relating to graduated retirement benefit in that Act to ensure that they continue to fit with changes made to the State Pension scheme and so it is necessary to ensure the power in clause 10 provides for amendments to these provisions in the future.
49. Regulations under clause 10 will be subject to the affirmative resolution procedure the first time the power is used to ensure the appropriate level of Parliamentary scrutiny for the initial regulations. Any subsequent amendments to the regulations will be subject to the negative resolution procedure in line with the existing regulations that set out the detailed provisions for the graduated retirement benefit scheme (*SI 1978/393 and SI 2005/454*).

Clause 13 – Shared state pension on divorce etc

Schedule 8 – Pension sharing: appropriate weekly rate under section 13

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

50. Since December 2000, financial settlements on divorce have been able to provide for one party to a divorce to split their current or prospective entitlement to additional State Pension under the current retirement pension scheme with their former spouse (or, since December 2005, their former civil partner).
51. Where a pension sharing order is made a court will order a percentage split or an amount to be transferred. The apportioned benefits are known as “pension debits” and “pension credits”, created under the Welfare Reform and Pensions Act 1999. Although the single-tier pension will not comprise any additional State Pension, the Bill does allow for pension sharing of the new State Pension in certain limited cases.
52. Clause 13 gives effect to Schedule 8, which provides for regulations to be made setting out the detail of how the notional value of an old state scheme pension credit will be calculated and verified. (An old state scheme pension credit is one

- that arises from a sharing order made before the single-tier pension scheme is introduced. The value is notional as the order was made in relation to additional State Pension, which will no longer exist under the single-tier pension scheme).
53. This mirrors the existing provision for the current scheme in which the details of how to calculate the cash equivalent value of a state pension credit are set out in regulations under section 55A of the Social Security Contributions and Benefits Act 1992 and section 49 of the Welfare Reform and Pensions Act 1999 – currently the Sharing of State Scheme Rights (Provision of Information and Valuation)(No. 2) Regulations 2000 (*SI 2000/2914*).
54. Regulations made under the power in Schedule 8, paragraph 4 will be subject to the negative resolution procedure as is the case with the corresponding regulations under the current scheme.

Clause 14 – Pension sharing: reduction in the sharer’s section 4 pension

Schedule 10 – Pension sharing: appropriate weekly reduction under section 14

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

55. Clause 14 gives effect to Schedule 10, which provides for regulations to be made setting out the detail of how the notional value of an old state scheme pension debit will be calculated and verified. (An old state scheme pension debit is one that arises from a sharing order made before the new single-tier pension scheme is introduced. The value is notional as the order was made in relation to additional State Pension, which will no longer exist under the single-tier pension scheme).
56. This mirrors the existing provision for the current scheme in which the details of how to calculate the cash equivalent value of a state pension debit are set out in regulations under section 55B of the Social Security Contributions and Benefits Act 1992 and section 49 of the Welfare Reform and Pensions Act 1999 – currently the Sharing of State Scheme Rights (Provision of Information and Valuation)(No. 2) Regulations 2000 (*SI 2000/2914*).
57. Regulations made under the power in Schedule 10, paragraph 4 will be subject to the negative resolution procedure as is the case with the corresponding regulations under the current scheme.

Clause 15 – Pension sharing: amendments

Schedule 11 – Pension sharing: amendments

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

58. Clause 15 gives effect to Schedule 11.
59. Paragraph 8 of Schedule 11 provides for new state scheme pension debits and credits to be revalued with reference to any increase in the general level of prices until the individual (either the transferor or the transferee) reaches their State Pension age. A new state scheme pension credit or debit is one that arises from a sharing order made on or after the date the single-tier pension scheme is introduced and where the transferor reaches their State Pension age under the single-tier pension scheme. Paragraph 13 of Schedule 11 provides that a sharing order for a new state scheme pension credit or debit can only apply to the ‘protected payment’ (see paragraph 109 below for an explanation of the ‘protected payment’). Paragraph 8 amends the Social Security Administration Act 1992 to include a new power which requires the Secretary of State to annually review the general level of prices and if they have increased to lay a revaluation order in respect of new state scheme pension debits and credits under paragraph 3 of Schedules 8 and 10 to this Bill.
60. This power mirrors the existing power to provide for state scheme pension debits and credits under the current retirement pension scheme to be revalued, with the exception that they are currently revalued by earnings and the new state scheme pension debit and credits will be revalued by prices in line with the revaluation of the ‘protected payment’ (see paragraphs 109 – 112).
61. An order made under this power will be subject to the negative resolution procedure as is the case with an order to revalue state scheme pension debits and credits under the current retirement pension scheme.

Clause 16 – Pensioner’s option to suspend state pension

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

62. Clause 16 provides that a person who has become entitled to a single-tier pension under the new scheme can opt to suspend their entitlement, providing they have not previously given up entitlement to their state pension. This will

- allow them to be treated as deferring their state pension and consequently accrue an increase to their pension.
63. The intention is that the provisions under this clause, including the regulations once made, will mirror existing arrangements for relinquishing a state pension under the current scheme provided by powers in section 54 of the Social Security Contributions and Benefits Act 1992.
 64. Clause 16(1) provides a power for regulations to be made to allow a person who has become entitled to a state pension under the new scheme to opt to suspend their entitlement. For example a person may claim their pension on reaching their State Pension age and then subsequently get a job and no longer need the income from their pension for their day to day costs. They would be able to give up their entitlement until a later date and accrue an increase to the pension under the provisions of clause 17.
 65. Clause 16(5) provides that, as under the current scheme, the regulations may specify other circumstances (in addition to that specified in clause 16(4)) in which a person may not opt to suspend their state pension. This provides flexibility to introduce a new measure if, for example, evidence arose of the need to curb access to the deferral scheme.
 66. Clause 16(6) provides for the regulations to allow for a person who has opted to suspend their single-tier pension to change their mind and cancel their suspension (either in full or part) and claim their state pension from an earlier date. As with regulations under the current scheme, this provides flexibility for the person to change their mind if they face a sudden change in their circumstances. It is intended that regulations will allow them to ask to start their claim from up to 12 months earlier. This will allow them to receive any arrears of their pension. The decision to claim from an earlier date would reduce (or remove) the period they deferred taking their pension and would affect any increase to their pension.
 67. Regulations under clause 16 will be subject to the negative resolution procedure, as is the case for the existing regulations in the current scheme. This will ensure that any subsequent amendment to the regulations can be co-ordinated between the current and new schemes.

Clause 17 – Effect of pensioner postponing or suspending state pension

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

68. Clause 17 provides for arrangements for a person to defer the payment of their single-tier pension in order to accrue an increase to their pension (known as increments).

69. Clause 17(4) provides a power to set in regulations the rate at which an increase to the single-tier pension will accrue by setting an amount based on a percentage of the person's weekly entitlement. Setting this detail in regulations will enable the Government to set a fair rate of return closer to the date of implementation taking account of the prevailing economic and financial circumstances. It will also provide the flexibility to respond to and keep pace with changes over time that may affect the fairness of the rate of return. For example, the rate of an increase to the current retirement pension scheme, which is set in primary legislation, was set when interest rates were far higher than they are at present (the Bank of England Bank rate was around 5% as opposed to the current 0.5%). Consequently the current rate provides a very generous return (10.4%).
70. The intention is that the decision on the rate will be informed by the latest actuarial factors such as life expectancy as advised by the Government Actuary's Department.
71. As the rate will be set, or in the future adjusted, after considering advice from the Government Actuary's Department it is felt that the negative resolution procedure is sufficient for regulations under clause 17.

Clause 18 – Section 17 supplementary: calculating weeks, overseas residents, etc

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative, except regulations under clause 18(5) which are affirmative

72. Clause 18 provides for regulations to be made in respect of a number of areas relating to the deferral of state pension in the new scheme. It is felt appropriate to delegate these provisions to regulations due to the detailed nature of the arrangements.
73. Clause 18(1) provides for regulations to be made to set out the detailed arrangements for the treatment of a part week deferral period as if it were a whole week for the calculation of a deferral payment and to set out the circumstances in which a day will not count towards the calculation of a period of deferral. The intention is that these regulations will mirror existing provision in the current scheme. Setting these details in regulations will ensure that the intended outcome is clearer than the current legislative arrangements where the existing provision for treatment of part weeks comes from the primary legislation for the deferral of state pension and regulations relating to claims and payments in respect of state pension.

74. With regards to the treatment of part weeks, the intention is that the regulations will provide that where a person has deferred taking their state pension but they have not deferred for a whole week at either the start or end of their deferral then that period should be treated as if it were a whole week when calculating the deferral period.
75. Secondly, the regulations will mirror existing regulations that exclude certain days from the period of deferral – for example where the person (or their partner if they are a member of a couple) has received certain specified social security benefits for the same period. This will ensure that people are not able to increase their state pension entitlement for a period for which they have relied on other social security benefits for their day to day costs.
76. Clause 18(2) provides for regulations to be made to set out the detailed arrangements where there is a change in the rate of the pension being deferred that is not as a result of an up-rating increase. There is existing provision for this under the current retirement pension scheme but this is split between provisions in primary legislation for a person who has not claimed their pension and provisions in regulations for a person who has opted to suspend their entitlement to pension having previously claimed it. Under this clause, the provisions in respect of the new state pension scheme will be in regulations for both circumstances which will ensure the legislation is clearer.
77. The power will apply to a person who has deferred taking their single-tier pension and there is a change in their circumstances that would alter the amount of their pension had they been in receipt of it – for example if the person is widowed and would have inherited an increase to their pension entitlement from their late spouse or civil partner. The intention is that regulations will mirror existing provision and provide for the calculation of the deferred pension to take account of these changes to the rate of pension.
78. Clause 18(3) provides for regulations to be made to modify the amount of new state pension to be used to calculate the deferral increase due where a person has been resident overseas during their period of deferral. The intention is that where a person is resident overseas whilst they are deferring their pension regulations will provide for the deferral payment to be calculated based on the rate the person would have been entitled to receive had they claimed their state pension when they reached their State Pension age (or moved overseas if this is a later date). In effect, this will mean that the deferral payment will not take account of any uprating that occurs during the period of deferral if the person is overseas. Clause 18(4) provides that an “overseas resident” will be a person who is not ordinarily resident in Great Britain or any other territory specified in the regulations. The intention is that the regulations will make similar provision to regulations under clause 20 in this regard (see paragraphs 86 – 91 below).
79. Clause 18(5) provides a Henry VIII power to make regulations that amend the minimum qualification requirement for a deferral payment as specified in clause 17(2) of this Bill. (Clause 17(2) provides that for a person to receive a deferral payment the increase to their weekly rate as a result of deferring should be 1%

or more.) This mirrors existing provision in the current scheme and will provide the flexibility to amend the minimum qualifying percentage in a timely manner should it be necessary. For example, the Government may want to take account of a change in the economic situation and increase this minimum percentage. This provides an alternative mechanism to adjust the scheme to react to changing priorities. Should a person who has deferred their state pension not reach the minimum they will receive arrears of the pension they have deferred (for a maximum of a 12-month period).

80. With the exception of regulations under clause 18(5), regulations made under this clause will be subject to the negative resolution procedure which is felt appropriate given the technical nature of the regulations and that in most instances they mirror existing provision.
81. Regulations made under clause 18(5) will be subject to the affirmative resolution procedure. As this power provides for regulations to amend section 17(2) of this Bill it is felt the affirmative procedure will provide the scrutiny required to ensure it is used appropriately.

Clause 19 – Prisoners

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

82. Clause 19 provides a power to make regulations to prohibit the payment of the single-tier pension to a person who is imprisoned, detained in legal custody or unlawfully at large (either in Great Britain or overseas) as a result of having committed a criminal offence. This continues the long standing policy that applies to other current social security benefits, as to provide these benefits where an individual is serving a custodial sentence would be perceived as providing double funding by the tax payer towards the upkeep of the person.
83. Under the current scheme section 113(1)(b) of the Social Security Contributions and Benefits Act 1992 provides that, unless regulations prescribe otherwise, a person is disqualified from receiving benefits under Parts 2 to 5 of that Act (which includes the current retirement pension) if he or she is imprisoned or detained in legal custody. The exceptions are then provided at regulation 2 of the Social Security (General Benefit) Regulations 1982 (*SI 1982/1408*). In their application to the current retirement pension the provisions in question are extremely complex because they define the classes of case in respect of which disqualification does not apply. Thus the precise classes of case in respect of which the disqualification does apply are in effect currently defined by omission.
84. The intention is to use the power provided in clause 19 to prescribe the circumstances in which the disqualification is to apply, which will make the

legislation clearer. It is necessary to do so by means of secondary legislation in order to provide the flexibility required to ensure provisions keep pace with changes in the criminal justice system. In the case of a person who is remanded in custody pending a hearing in connection with a criminal offence, the intention is that the regulations will only provide for disqualification in respect of the remand period if the person is subsequently found guilty of the offence.

85. Regulations made under this clause will be subject to the negative resolution procedure, as is the case for the existing regulations in the current scheme.

Clause 20 – Overseas residents

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative on first use

86. Clause 20 provides a power to make regulations to exclude people who are not ordinarily resident in Great Britain or a specified territory from entitlement to the annual ‘up-rates’ of the single-tier pension which will be provided by orders made under sections 150, 150A and 151A (inserted by Schedule 12 to this Bill) of the Social Security Administration Act 1992.
87. The intention is that the regulations made under this power will continue the long standing policy of restricting the availability of up-rates to persons ordinarily resident in Great Britain, in the European Economic Area (EEA) or in a country with which the United Kingdom has a bilateral agreement for reciprocity in social security matters that covers the up-rating of pensions.
88. Under the current scheme section 113(1)(a) of the Social Security Contributions and Benefits Act 1992 provides that, unless regulations specify otherwise, a person is disqualified from receiving benefits under Parts 2 to 5 of that Act (which includes the current retirement pension), if he or she is absent from Great Britain. Regulation 4 of the Social Security (Persons Abroad) Regulations 1975 (*SI 1975/563*) exempts a person receiving, inter alia, retirement pension from the general disqualification under section 113. However, regulation 5 of those Regulations applies a disqualification in relation to annual up-rates of the pension in relation to individuals who are not ordinarily resident in Great Britain. This disqualification does not apply in the case of individuals living in an EEA country or a country with which the UK has a bilateral agreement covering up-rating.
89. The intention is that the regulations made under the power in clause 20 will have the same effect as the current provisions albeit by a more transparent legal mechanism because, unlike the Social Security Contributions and Benefits Act 1992, the Pensions Bill does not include a general disqualification provision in relation to people living outside Great Britain.

90. Clause 20(2) provides that an “overseas resident” is a person who is not ordinarily resident in Great Britain or any other territory specified in the regulations. The intention is that the “specified territory” provision will be applied to individuals receiving a state pension under this Bill in the Channel Islands if the island on which the individual resides is not covered by the terms of a bilateral agreement (principally Sark). This is in line with the current provisions at regulation 12 of the Social Security (Persons Abroad) Regulations 1975.
91. Regulations made under this clause will be subject to the affirmative resolution procedure the first time the power is used, with the negative resolution procedure being used for any subsequent amendments. Although the intention is that regulations made under this power will not change the policy of successive Governments in relation to the availability of pension up-rates overseas, given the high profile of this aspect of pensions policy it is felt that ensuring there is full Parliamentary scrutiny is appropriate.

Clause 23 – Amendments

Schedule 12 – State pension: amendments

Powers conferred on: Secretary of State, with the exception of:

- *paragraph 10 where the power is conferred on the Registrar General for England and Wales and the Registrar General of Births, Deaths and Marriages for Scotland; and*
- *paragraph 20 where the power is conferred on Her Majesty in Council (relates to reciprocal social security agreements with countries outside the United Kingdom).*

Powers exercised by: Regulations or Orders (Statutory Instruments)

Parliamentary procedure: Negative with the exception of:

- *paragraphs 13, 14, 16 which are affirmative; and*
- *paragraph 20 which is not subject to any parliamentary procedure.*

92. Clause 23 gives effect to Schedule 12, Part 1 of which contains consequential amendments to existing legislation to provide for the new single-tier pension. Of those amendments that relate to delegated powers (described in the following paragraphs) most simply extend existing powers relating to social security benefits, including retirement pension under the current scheme, to cover the single-tier pension under the new scheme. However, some of the amendments do make provision for new delegated legislation, either by replicating an existing power or by introducing a new power if this is necessary.
93. Where the Schedule amends an existing power to include the single-tier pension no change is made to the existing Parliamentary procedure which applies in each case. The Department does not believe the amendments justify any changes to the level of Parliamentary oversight because they are

consequential amendments which are simply used to apply existing provisions to the single-tier pension in the same or similar ways as they apply to the current retirement pension scheme.

Paragraph 3

94. Paragraph 3 of Schedule 12 amends the Social Security Contributions and Benefits Act 1992 to include the single-tier pension in an existing power to provide for National Insurance contributions to be credited for certain contingencies to make a tax year qualify for entitlement to the new state pension. In effect this adds the single-tier pension to the existing regime for National Insurance credits.
95. The intention is to replicate existing arrangements that provide flexibility to take into account new benefits that are created or circumstances that may arise. The existing rules are contained in the Social Security (Credits) Regulations 1975 (*SI 1975/556*).
96. The power is cast in substantially the same terms as the existing power, and will enable National Insurance contributions to be credited in respect of the new state pension as may now be credited in respect of the current scheme.
97. Regulations made under this power will be subject to the negative resolution procedure in line with the equivalent pre-existing power.

Paragraph 6

98. Paragraph 6 of Schedule 12 adds the single-tier pension to the list of social security benefits, including retirement pension under the current scheme, covered by the power at section 5 of the Social Security Administration Act 1992 which enables the detailed provisions in relation to claims for and payments of benefits to be prescribed in regulations – currently the Social Security (Claims and Payments) Regulations 1987 (*SI 1987/1968*).
99. The intention is that the power will be used in relation to the single-tier pension in a similar way as it is used in relation to the current retirement pension. For example, the power could be used to specify the manner in which the single-tier pension is to be claimed and the time limit for doing so and to specify when and how entitlements to the single-tier pension are to be paid.
100. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 7

101. Paragraph 7 of Schedule 12 brings the single-tier pension within the scope of the power at section 73 of the Social Security Administration Act 1992 which

enables regulations to prescribe the circumstances in, and the extent to, which social security benefits, including retirement pension under the current scheme, are adjusted where an individual is entitled to two or more such benefits or analogous payments from public funds. The current regulations under this power are the Social Security (Overlapping Benefits) Regulations 1979 (*SI 1979/597*).

102. The intention is that the power will be used in relation to the single-tier pension in a similar way as it is used in relation to the current retirement pension. For example, providing for a non-contributory income maintenance benefit such as carer's allowance to be adjusted on account of any concurrent entitlement to a single-tier pension.
103. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 10

104. Paragraph 10 of Schedule 12 brings the single-tier pension within the scope of the power at section 124 of the Social Security Administration Act 1992 which enables regulations to be made relating to the provision of information relating to births, deaths and marriages by registrars for social security benefit purposes.
105. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 11

106. Paragraph 11 of Schedule 12 brings the single-tier pension within the scope of the power at section 125 of the Social Security Administration Act 1992 which enables regulations to be made to provide a duty on registrars to furnish specified particulars of deaths to the Secretary of State in relation to social security benefits, including retirement pension under the current scheme. The current regulations under this power are the Social Security (Notification of Deaths) Regulations 2012 (*SI 2012/1604*).
107. The intention is that the requirements currently placed on registrars to furnish information to the Secretary of State for the purpose of his or her functions in respect of the current retirement pension scheme will be extended to furnishing information for the purpose of his or her functions in respect of the new state pension scheme.
108. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 12

109. Part 1 of the Bill provides that no-one will receive a single-tier pension that is lower than the valuation of their National Insurance contribution record under rules applicable to the current retirement pension scheme as at the date the single-tier pension is introduced (subject to the minimum qualifying years requirement under the new scheme). If, at the date the new scheme is introduced, they would under the current retirement pension scheme have received a pension in excess of the full rate of the new state pension then the excess amount will, on reaching State Pension age, become an entitlement to a 'protected payment'.
110. Paragraph 12 of Schedule 12 provides for the 'protected payment' to be revalued (i.e. increased on an annual basis until the person reaches their State Pension age to ensure it maintains its value) with reference to any increase in the general level of prices until the individual reaches their State Pension age. It does this by amending the Social Security Administration Act 1992 to include a new power which requires the Secretary of State to annually review the general level of prices and if they have increased to lay a revaluation order in respect of a transitional pension for the purposes of paragraph 6(5) of Schedule 1 to this Bill.
111. This mirrors the existing power to provide for the additional State Pension under the current retirement pension scheme to be revalued, with the exception that the additional State Pension is currently revalued by earnings.
112. An order made under this power will be subject to the negative resolution procedure as is the case with the power to make an order to revalue additional State Pension under the current scheme.

Paragraph 13

113. Paragraph 13 of Schedule 12 brings deferral rewards under the new state pension scheme within the scope of the power at section 150 of the Social Security Administration Act 1992 which requires the Secretary of State to review the general level of prices on an annual basis and if they have increased to lay an order to up-rate certain benefits, including deferral rewards under the current scheme, accordingly.
114. The intention is that the power to up-rate these benefits with reference to any increase in the general level of prices will be extended to include any increase to single-tier pension entitlement earned from a period of deferral.
115. An order made under this power will be subject to the affirmative resolution procedure as it is a pre-existing power that is currently subject to the affirmative procedure.

Paragraph 14

116. Paragraph 14 of Schedule 12 brings the new state pension within the scope of the power at section 150A of the Social Security Administration Act 1992 which requires the Secretary of State to review the general level of earnings on an annual basis and if they have increased to lay an order to up-rate (i.e. increase the amount of benefit in payment) certain benefits, including the basic State Pension under the current scheme, accordingly.
117. The intention is that the power to up-rate these benefits with reference to any increase in the general level of earnings will be extended to include the single-tier pension up to the full rate (i.e. not the 'protected payment'). The provisions to up-rate other elements of the new single-tier pension are covered by paragraphs 13 (deferral rewards) and 16 (various transitional rates of single-tier pension) of Schedule 12.
118. An order made under this power will be subject to the affirmative resolution procedure as it is a pre-existing power that is currently subject to the affirmative procedure.

Paragraph 16

119. Paragraph 16 of Schedule 12 provides for certain elements of the new state pension scheme to be up-rated by reference to any increase in the general level of prices.
120. The provision in this paragraph mirrors the existing provision in section 150 of the Social Security Administration Act 1992 to up-rate certain benefits, including additional State Pension and shared pension under the current retirement pension scheme.
121. The power requires the Secretary of State to undertake an annual review of the general level of prices and if they have increased to lay an order to up-rate the following elements of the single-tier pension by a specified percentage:
- a. any inherited deferral reward (under section 9 of the Bill);
 - b. a 'protected payment' (under paragraph 4(3) of Schedule 2 of the Bill);
 - c. inherited additional old scheme state pension which takes an individual's pension above the level of the full rate of the single-tier pension (under paragraphs 5(3) and 6 of Schedule 4 to the Bill); and
 - d. any shared pension which takes an individual's pension above the level of the full rate of the single-tier pension (under paragraphs 5(3) and 6 of Schedule 9 to the Bill).
122. An order made under this power will be subject to the affirmative resolution procedure in line with the existing practice for up-rating orders.

Paragraph 20

123. Paragraph 20 of Schedule 12 extends the scope of the power at section 179 of the Social Security Administration Act 1992 which enables an order to be made

to modify legislation to reflect bilateral agreements with other countries which provide for reciprocity in matters relating to social security. The amendments add a state pension under Part 1 of the Bill to the list of legislation to which the power in section 179 applies.

124. Existing orders may, for example, need to be amended to provide for up-rating of the new state pension in countries with which the UK has a bilateral agreement for reciprocity in social security matters.
125. The existing power is conferred on Her Majesty to exercise by Order in Council. As the power provides for an Order in Council to give effect in domestic legislation to what has been the subject of an international agreement, it does not introduce a new policy and so it is not subject to any Parliamentary scrutiny procedure.

Paragraphs 29 and 31

126. Paragraphs 29 and 31 of Schedule 12 bring the single-tier pension within the scope of the powers at sections 11 and 28 of the Social Security Administration Act 1992 which enable the detailed provisions in relation to decision making and appeals to be prescribed in regulations – currently the Social Security (Decisions and Appeals) Regulations 1999 (*SI 1999/991*).
127. The intention is that the power will be used in relation to the single-tier pension in the same way as it is used in relation to the current retirement pension with regard to the decision making and appeals processes.
128. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 33

129. Paragraph 33 of Schedule 12 brings the single-tier pension within the scope of the power at section 42 of the Child Support, Pensions and Social Security Act 2000 which enables regulations allowing information relating to state pension entitlement to be disclosed to employers and pension providers for the purposes of producing joint pension forecasts of both state and private pension entitlements. The current regulations under this power are the Social Security (Disclosure of State Pensions Information) Regulations 2000 (*SI 2000/3188*).
130. The intention is that the power will be used in relation to the single-tier pension in the same way as it is used in relation to the current retirement pension with regard to joint pension forecasts.
131. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 36

132. Paragraph 36 of Schedule 12 brings the single-tier pension within the scope of the power at section 10 of the Social Security Fraud Act 2001 which enables regulations to provide that a benefit be treated as a disqualifying benefit but not a sanctionable benefit or neither a sanctionable benefit nor a disqualifying benefit for the purposes of that Act.
133. This power has not been exercised specifically in respect of a retirement pension under the current scheme but it is proper to make provision so that it could be exercised in respect of a pension under the new scheme to the same extent.
134. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 81

135. Part 3 of Schedule 12 makes consequential amendments in respect of State Pension Credit.
136. Paragraph 81 of Schedule 12 inserts a new age criteria into section 3(1) of the State Pension Credit Act 2002 which sets out the entitlement conditions for the Savings Credit element of Pension Credit, linking this to State Pension age prior to the date on which the single-tier pension scheme comes into force.
137. Paragraph 82 of Schedule 12 inserts a new power into the State Pension Credit Act 2002 at section 3ZA to make regulations to limit entitlement to savings credit for certain mixed-age couples.
138. Subsection (1) of the new section 3ZA allows regulations to specify cases where a person who is a member of a mixed-age couple (defined in new section 3ZA(3) as a couple where one member has attained State Pension age before the single-tier pension is introduced and the other has not) will not be entitled to Savings Credit.
139. The intention is to remove entitlement to the Savings Credit for those people who reach State Pension age under the new state pension scheme on the basis that there is no policy rationale for paying Savings Credit to someone with a single-tier pension as this will be set above the basic level of the means test. However, there may be occasions when it is right to retain entitlement for mixed-age couples so the power will allow regulations to be made to specify the situations when this restriction should and should not apply.
140. The example set out in section 3ZA(2) attempts to capture one such situation where the Government may wish to allow existing recipients who are a mixed-age couple to retain entitlement to Savings Credit. A mixed-age couple may be in receipt of Pension Credit including the Savings Credit and when the younger member receives their state pension under the new scheme they would still

qualify for the Savings Credit (even with the younger member's single-tier pension taken into account). Removing entitlement to the Savings Credit could remove benefit entitlement and could also affect the housing support the couple received, therefore the Government may wish to provide that mixed-age couples in these circumstances can continue to receive Savings Credit.

141. As the Department works through the detail of the overall implications of the new state pension scheme and means-tested support in the early years as well as changes to Pension Credit resulting from the Welfare Reform Act 2012, there may be other situations identified where it is appropriate to retain entitlement for mixed-age couples, hence the decision to set the detailed circumstances in regulations. This will ensure the Department has sufficient flexibility to ensure that the correct means-tested support is available to pensioners moving forward.
142. Regulations made under this power will be subject to the negative resolution procedure. The regulations will enable the Department to deliver the commitment given to remove the Savings Credit for those who reach State Pension age under the single-tier pension scheme but in a way that allows protection for certain groups of mixed-age couples (particularly those already in receipt of Savings Credit when the new scheme is implemented). Therefore it is felt that this is the appropriate level of scrutiny.

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

Schedule 13 – Abolition of contracting-out for salary related schemes

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

143. Clause 24 gives effect to Schedule 13 which contains consequential amendments to existing legislation to provide for the end of contracting-out for salary-related pension schemes. This includes some amendments that relate to delegated powers which update the language to reflect the end of contracting-out rather than altering the scope of the power so these are not described here.
144. Paragraph 25 of Schedule 13 inserts new section 37A which replaces the existing power provided by section 12C of the Pension Schemes Act 1993 to make regulations prohibiting or restricting the transfer of liability for the payment of contracted-out rights accrued after April 1997. Section 12C is being repealed by this Bill (paragraph 11 of Schedule 13) and is replaced by the new section 37A. The new section 37A differs from the old section 12C only in that it takes account of the end of contracting-out. The reference to “relevant scheme” now refers to a scheme that was contracted-out by virtue of section 9(2B) of the Pension Schemes Act 1993. Repealing section 12C and replacing it with section 37A is simply tidying up the existing legislation so that when all the

consequential amendments included in Schedule 13 are made to the Pension Schemes Act 1993 it will maintain its structure.

145. Regulations made under this power will be subject to the negative resolution procedure as is currently the case with regulations under section 12C.

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

Schedule 14 – Power to amend schemes to reflect abolition of contracting-out

Powers conferred on: Secretary of State

Powers exercised by: Regulations or Order (Statutory Instrument)

Parliamentary procedure: Negative

146. When contracting-out ends, employers who run a salary-related occupational pension scheme that is contracted out of the additional State Pension will have to pay the same rate of National Insurance as all other employers, meaning an increase in respect of each contracted-out employee of 3.4% of earnings (between the Lower Earnings Level and the Upper Accrual Point).
147. Whilst some employers may be free to make changes to their schemes to take account of this increased expenditure, others may be prevented by their scheme benefit structure or rules from doing so. Clause 24(2) therefore will enable employers to override such requirements in order to make changes to their schemes once contracting-out ends, such as changing the member accrual rate or member contributions. However, changes can be made only to the extent that they offset the additional employer National Insurance contributions. This power is referred to as a statutory override in the following paragraphs (to avoid confusion with a power to make secondary legislation).
148. Clause 24(3) provides that the statutory override may not be used to amend certain schemes, including those specified in regulations made under clause 24(3)(b). The Department has consulted on whether employers in certain denationalised industries, who are limited in their ability to change their scheme rules on account of 'Protected Persons' regulations, should be able use this statutory override. (The 'Protected Persons' regulations provide protection for the accrued and future pension rights of employees who were transferred into the private sector when the nationalised industries they were employed in were denationalised. This applies mainly to schemes in the electricity, rail and coal industries.) The consultation ended on 14 March 2013; the Government is considering the responses and will set out its position in due course. The power to specify excluded schemes in regulations provides the flexibility for the Government to legislate for the outcome of the consultation accordingly.
149. Clause 24(7) creates a Henry VIII power to allow the Secretary of State to make an order to extend the 5 year period in which employers can use the statutory override. The 5 year period (provided for by clause 24(6)) is effective from 6

April 2016. Although the Department considers that this should be sufficient time for employers to make changes to their schemes, they need to allow for the eventuality that a number of schemes may come forward at the end of the 5 year period and advise they have been unable to complete all the necessary changes. The clause therefore includes this power to enable the 5 year period to be extended if necessary as the Government wants to ensure that the implementation of the new state pension scheme does not have a negative effect on employers' ability to maintain salary-related occupational pension provision.

150. Clause 24 also gives effect to Schedule 14 which contains more information about how the statutory override can be used and includes further powers to make regulations to set out the detailed parameters for the statutory override.
151. Schedule 14 paragraph 2 provides that the statutory override may be used to increase the members' contributions or their accrual rate by no more than the increase in employer's National Insurance contributions in respect of the members. It provides a power to make regulations setting out the detail of how the members' contribution level and accrual rate and the employer's National Insurance contributions in respect of the members are to be defined. For example it may be necessary to specify in regulations the calculation employers will be required to make to ascertain the annual increase in an employer's National Insurance contributions in respect of the relevant members. It also provides that the regulations may create exceptions to these limits.
152. Schedule 14 paragraph 4 provides a power for regulations to be made to set out further restrictions on how the statutory override may be used. For example, the Department wants to avoid a situation in which there is significant and deliberate cross-subsidy between different groups of employees (e.g. an employer targeting one group of employees from which to obtain savings whilst leaving another group unaffected). Whilst it is relatively unlikely that employers would choose to make changes that involve significant cross-subsidies, depending on the outcome of the ongoing discussions with industry on the detail of the statutory override the Department may want to explicitly require that changes are applied consistently to all employees. There may also be other issues of detail that emerge during the discussions with industry that will need to be included in regulations under this Schedule.
153. Schedule 14 paragraph 5 provides a power for regulations to be made to exclude certain members in a scheme from the statutory override. This may be necessary if, for example, a scheme has a mix of protected members and non protected members. (If a scheme entirely consists of protected persons as members then the power in clause 24(3)(b) could be used to exclude the whole scheme.)
154. Schedule 14 paragraph 6 provides that the statutory override can only be used if an actuary has certified that the proposed amendments comply with specified requirements imposed either by the Schedule or by regulations made under it. The details of these requirements will be specified in regulations.

155. Paragraph 6 further provides for the definition of an ‘actuary’ to be specified in regulations (paragraph 6(2)(a)). The intention is for regulations under this provision to specify an appropriately qualified actuary, such as a fellow of the Institute and Faculty of Actuaries. Specifying this in regulations provides the flexibility to reflect any changes to the definition of an appropriately qualified actuary if necessary.
156. Schedule 14 paragraph 10 provides for regulations to be made to modify the details of the statutory override and how it applies to multi-employer schemes or schemes that have different rules for different members. These schemes are generally more complex than single employer schemes as, for example, they may not have a straightforward benefit structure that applies across all employers / member groups. This flexibility is therefore necessary to ensure such schemes can utilise the statutory override in relation to the different employers / member groups if appropriate.
157. Finally, Schedule 14 paragraph 12 enables regulations to be made to set out the details of any procedural requirements in respect of the manner in which the statutory override is used.
158. It is felt appropriate to delegate these provisions to secondary legislation as they relate to technical and complex detail which needs to be considered with experts in the private pensions industry and the Government Actuary’s Department. The Department intends to publish draft regulations as soon as possible after the Pensions Bill is introduced and these will be subject to full and thorough consultation with the industry.
159. Regulations made under the powers in clause 24 and Schedule 14 will be subject to the negative resolution procedure. It is felt this is appropriate as they relate to a very technical area of private pensions and the measures will all be subject to consultation with experts in the pensions industry to ensure they are fit for purpose. Whilst clause 24(7) does invoke a Henry VIII power, it is considered that the negative procedure is appropriate as it is a tightly-defined, simple and uncontroversial measure designed to ensure that employers are not limited in the period to make appropriate changes to their schemes should unforeseen circumstances arise.

Part 3 – Bereavement support payment

Clause 27 – Bereavement support payment

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

160. Clause 27 sets out the framework for the new Bereavement Support Payment and provides a power to make regulations to set out the rate of the benefit and the period that payments will cover. The power allows for different rates of payments over different periods for those with and without dependent children.
161. The intention is to focus on the period immediately after a bereavement to provide some financial support through this period to facilitate the process of readjustment.
162. The Government's response to the consultation on the reform of bereavement benefits provided an indication of the possible rates and periods for payment. It is anticipated that payments will be made for a period of 12 months and the indicative amounts set out in the impact assessment accompanying the Bill are for an initial payment in the region of £2,500 with 12 monthly payments of £150 for recipients without dependent children; and an initial payment in the region of £5,000 with 12 monthly payments of £400 for recipients with dependent children.
163. The Government response also confirmed that individuals already in receipt of current bereavement benefits will not be affected by the reform and will continue to receive their benefits in line with existing rules. In order to ensure that existing recipients are protected, and that those who claim the new benefit get the help that they need when they need it most, the Government intends to target additional resources on bereavement benefits over the coming years. But as the number of ongoing claims to the current bereavement benefits reduce in number over time savings may arise in the future.
164. Setting the details of the payment rates and periods in regulations provides the flexibility for future Governments to consider how to reinvest any such savings that may arise in the system. It also provides the flexibility to respond to any issues that may arise in relation to payment mechanisms and structures as detailed work on delivery is further developed.
165. Regulations made under this clause will be subject to the affirmative resolution procedure, which is felt appropriate given the level of detail left for regulations, which will include setting variable rates and the period of payment for this new benefit.

Clause 28 – Bereavement support payment: contribution condition and amendments

Schedule 15 – Bereavement support payment: amendments

Powers conferred on: Secretary of State, with the exception of:

- *paragraph 28 where the power is conferred on the Registrar General for England and Wales and the Registrar General of Births, Deaths and Marriages for Scotland; and*
- *paragraph 33 where the power is conferred on Her Majesty in Council (relates to reciprocal social security agreements with countries outside the United Kingdom).*

Powers exercised by: Regulations or Orders (Statutory Instrument)

Parliamentary procedure: Negative, with the exception of:

- *paragraph 30 which is affirmative; and*
- *paragraph 33 which is not subject to any parliamentary procedure.*

166. Clause 28 gives effect to Schedule 15 which contains consequential amendments to existing legislation to provide for the new Bereavement Support Payment. Those amendments that relate to delegated powers (described in the following paragraphs) simply extend existing powers relating to social security benefits to cover the Bereavement Support Payment. The Schedule makes no change to the existing Parliamentary procedure which applies in each case. The Department does not believe the amendments justify any changes to the level of Parliamentary oversight because they are consequential amendments which are simply used to apply existing provisions to the new benefit in the same or similar ways to existing bereavement benefits.

Paragraph 24

167. Paragraph 24 of Schedule 15 adds the Bereavement Support Payment to the list of social security benefits covered by the power at section 5 of the Social Security Administration Act 1992 which enables the detailed provisions in relation to claims for and payments of benefits to be prescribed in regulations - currently the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968).

168. The intention is that the power will be used in relation to the Bereavement Support Payment in the same way as it is used in relation to the existing bereavement benefits. For example, specifying the manner in which the Bereavement Support Payment is to be claimed and the time limit for doing so.

169. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 25

170. Paragraph 25 of Schedule 15 adds the Bereavement Support Payment to the list of social security benefits, covered by the power at section 71 of the Social Security Administration Act 1992 which enables the detailed provisions in relation to the recovery of overpayments of benefit to be prescribed in regulations – currently the Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 SI 1988/664.
171. The intention is that the power will be used in relation to the Bereavement Support Payment in a similar way as it is used in relation to other social security benefits covered by the regulations.
172. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 28

173. Paragraph 28 of Schedule 15 brings the Bereavement Support Payment within the scope of the power at section 124 of the Social Security Administration Act 1992 which enables regulations to be made relating to the provision of information relating to births, deaths and marriages by registrars for social security benefit purposes.
174. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 29

175. Paragraph 29 of Schedule 15 brings the Bereavement Support Payment within the scope of the power at section 125 of the Social Security Administration Act 1992 which enables regulations to be made to provide a duty on registrars to furnish specified particulars of deaths to the Secretary of State in relation to social security benefits, including retirement pension under the current scheme. The current regulations under this power are the Social Security (Notification of Deaths) Regulations 2012 (*SI 2012/1604*).
176. The intention is that the requirements currently placed on registrars to furnish information to the Secretary of State for the purpose of his or her functions in respect of the current bereavement benefits will be extended to furnishing information for the purpose of his or her functions in respect of the Bereavement Support Payment.
177. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 30

178. Paragraph 30 of Schedule 15 brings the Bereavement Support Payment within the scope of the power at section 150 of the Social Security Administration Act 1992 which requires the Secretary of State to review the general level of prices on an annual basis and consider whether specified benefit rates have retained their value.
179. As with the existing Bereavement Payment the power provides that, should he consider it appropriate and having regard to the economic situation and any other matters he considers relevant, the Secretary of State may lay an order to up-rate the Bereavement Support Payment by such a percentage as he thinks appropriate.
180. Should an order be made under this power in relation to the Bereavement Support Payment it will be subject to the affirmative resolution procedure as it is a pre-existing power that is currently subject to the affirmative procedure.

Paragraph 33

181. Paragraph 33 of Schedule 15 extends the scope of the power at section 179 of the Social Security Administration Act 1992 which enables an order to be made to modify legislation to reflect bilateral agreements with other countries which provide for reciprocity in matters relating to social security. The amendments add a Bereavement Support Payment under Part 3 of the Bill to the list of legislation to which the power in section 179 applies.
182. Existing orders may, for example, need to be amended to include the Bereavement Support Payment.
183. The existing power is conferred on Her Majesty to exercise by Order in Council. As the power provides for an Order in Council to give effect in domestic legislation to what has been the subject of an international agreement, it does not introduce new policy and so it is not subject to any Parliamentary procedure.

Paragraphs 40 and 42

184. Paragraphs 40 and 42 of Schedule 15 bring the Bereavement Support Payment within the scope of the powers at sections 11 and 28 of the Social Security Administration Act 1992 which enable the detailed provisions in relation to decision making and appeals to be prescribed in regulations – currently the Social Security (Decisions and Appeals) Regulations 1999 (SI 1999/991).
185. The intention is that the power will be used in relation to the Bereavement Support Payment in the same way as it is used in relation to existing bereavement benefits with regard to the decision making and appeals processes.

186. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Paragraph 45

187. Paragraph 45 of Schedule 15 brings the Bereavement Support Payment within the scope of the power at section 10 of the Social Security Fraud Act 2001 which enables regulations to provide that a benefit be treated as a disqualifying benefit but not a sanctionable benefit or neither a sanctionable benefit nor a disqualifying benefit for the purposes of that Act.

188. This power has not been exercised specifically in respect of the existing Bereavement Payment but it is proper to make provision so that it could be exercised in respect of the Bereavement Support Payment to the same extent.

189. Regulations made under this power will be subject to the negative resolution procedure as it is a pre-existing power that is currently subject to the negative procedure.

Part 4 – Private pensions

Clause 29 – Automatic transfer of pension benefits etc

Schedule 16 – Automatic transfer of pension benefits etc

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Affirmative

190. Following a consultation, the Government published *Improving transfers and dealing with small pension pots* in July 2012 stating its aim to introduce a mechanism for automatically transferring small pension pots when individuals move to a new scheme under a new employer. Further detail was then published in April 2013 in *Automatic transfers: consolidating pension savings*. Introducing a system of automatic transfers will help address the problem of individuals losing track of small pension pots as they move between different employments over their working life by enabling the ongoing consolidation of their work-related pension benefits into their current pension scheme.

191. Clause 29 gives effect to Schedule 16 which requires the Secretary of State to lay regulations to establish a system of automatic transfers of pension benefits between pension schemes.

192. The Government has taken a power to make this provision by regulations rather than in primary legislation for a number of reasons. Firstly, this allows the provisions to be future-proofed and retains the flexibility to design an implementation approach which meets the diverse pension arrangements that will fall within scope of these changes. Furthermore there are a number of key aspects relating to eligibility criteria where the Government would want to retain flexibility to ensure that Ministers can modify the details in light of operational experience following implementation and to respond to the changing pensions landscape.
193. Whilst the Government has set out its intention on the key aspects of the automatic transfers system there are some areas, particularly in relation to detailed issues of delivery, that are the subject of ongoing consideration and consultation with interested parties to ensure the approach is both cost effective and delivers the policy intent. The flexibility to set out the detailed requirements in regulations will help ensure that the potential for innovation in relation to the implementation approach is not constrained.
194. Finally, setting out the range of provisions in regulations will make the resulting legislation more coherent and easy to follow, allowing the full narrative of the policy to be specified in a single place and providing greater clarity for those impacted by the changes. It also allows for ongoing engagement and formal consultation with the pensions community to ensure the details of the automatic transfers system are workable and cost effective, and can, where possible, be tailored and modified to meet the needs of the extensive range of schemes affected.
195. However, the Department recognises that this is a broad regulation-making power. Schedule 16 therefore sets out the parameters for the regulations, specifying what regulations must make provision for and indicating what regulations may make provision for.
196. Paragraph 1 of Schedule 16 outlines the automatic transfers system, setting out the overarching framework of a 'pot follows member' system of automatic transfers. It sets out that regulations must provide that where an active member of an 'automatic transfer scheme' has 'transferable benefits' in another pension scheme (the 'transferable benefits scheme'), then the automatic transfers process set out in the Schedule must be followed. This paragraph also provides that the automatic transfer process will only apply to rights accrued after a certain date, to be prescribed in regulations (paragraph 1(4)(e)) and that the regulations will specify the maximum size of a pension pot eligible for an automatic transfer (paragraph 1(4)(f)).
197. Schedule 16 then outlines the core features of the automatic transfers system. It specifies that the regulations will provide that trustees or managers of automatic transfer schemes must find out whether members have transferable benefits in other schemes (paragraph 2). It also provides that the regulations must make provision regarding the disclosure of information and that they may, in particular, permit or require a person to disclose information to another person to help that

other person comply with their duties which will include providing information on an individual's transferable benefits to any central database (paragraph 9(1) and (2)).

198. The regulations must also provide that a prescribed person must give information to the member (paragraph 5) and that the member has a right to opt out of the automatic transfer before a transfer is made unless there is a requirement for consent by the member before the transfer is made (paragraph 4). The information provided to members will include details about the automatic transfer, the individual's right to opt out or need for consent (whichever is applicable), and may contain other information, for example about the pension schemes or where to seek further information about automatic transfers.
199. Where 'transferable benefits' are identified, and the individual has not opted out or has provided consent (as applicable), the trustees or managers must notify the 'transferable benefits scheme' (paragraph 3), that 'transferable benefits scheme' must then transfer those benefits (paragraph 6) and the automatic transfer scheme must give the member rights equivalent to those benefits (paragraph 7). Other functions may be required of the trustees or managers of either scheme, for example, to acknowledge the transfer (paragraph 14).
200. Finally the regulations will also require the Secretary of State to review the pot size limit (specified in paragraph 1(4)(f)) at least every 5 years (paragraph 15).
201. Further to these core features, Schedule 16 sets out a number of areas that regulations may cover. For example, regulations may be made to:
 - prescribe the way in which cash equivalents are to be calculated and verified by the 'transferable benefits scheme', including timescales (paragraph 8);
 - allow for the enforcement of the automatic transfer duties by the Pensions Regulator, including the imposition of compliance notices and penalties for non-compliance, up to a maximum of £5,000 in the case of an individual and £50,000 in any other case (paragraph 10) and record keeping requirements (paragraph 11).
 - require the Secretary of State or the Regulator to establish and operate a database containing information relating to people who have or had 'transferable benefits' (paragraph 9(3));
 - set quality standards that automatic transfer schemes must meet and set limits on or prohibit particular types of administration charges (paragraph 12);
 - limit or prohibit a charge made in connection with the transfer of benefits, for example, an exit charge (paragraph 13); and
 - allow certain provisions within the regulations to override scheme rules, for example, if scheme rules prevented an automatic transfer scheme from accepting a transfer (paragraph 19).

202. Part 2 of Schedule 16 provides that regulations may be made to allow for the consolidation of multiple pots belonging to one member in the same scheme, providing for an asset transfer if necessary. For example, where an individual has two employments over their working life and the employers both use the same multi-employer scheme (paragraph 16).
203. Paragraph 20 of Schedule 16 provides a Henry VIII power to allow amendments or modifications to be made to other legislation through regulations made under this Schedule. This power has been taken in order to deal with any amendments which may be needed subsequently for the proper operation of the automatic transfers system. For example, paragraph 20(2) sets out that the power may be used to amend provisions in the Pension Schemes Act 1993 to allow the Secretary of State to impose a levy on pension schemes for the purposes of meeting expenditure by the Secretary of State in setting up and managing a database established under paragraph 9(3) of Schedule 16. In addition, once the implementation options are decided, it will be necessary to amend existing primary legislation governing the voluntary transfers regime to ensure the two systems are aligned. The Secretary of State will not be exercising this power beyond the scope of what would, in other circumstances, be considered amendments directly related to automatic transfers.
204. Paragraph 21 of Schedule 16 requires the Secretary of State to undertake a consultation before the regulations are made. The Department is already working closely with the pensions community to develop these proposals and will continue to do so. Draft regulations will be published and these will be subject to formal consultation with the pensions industry, employers, consumer groups and any other interested parties.
205. Regulations made under the powers in clause 29 and Schedule 16 will be subject to the affirmative resolution procedure to ensure the appropriate level of Parliamentary scrutiny. In particular, this is felt appropriate as the final implementation approach is the subject of ongoing consideration and consultation with interested parties so the Department is not yet in a position to indicate the final details.

Clause 30 – Power to prohibit offer of incentives to transfer pension rights

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

206. Clause 30 provides a power for regulations to be made to prohibit the offering of incentives with the intention of inducing a member of a salary-related occupational pension scheme to agree to a transfer of their rights to another pension scheme or arrangement.

207. The power to make regulations will only be used if there is evidence that the extant voluntary Code of Good Practice on Incentive Exercises that has been produced by Government and the pensions industry is not being followed and that regulation is necessary to prevent incentives being used to tempt pension scheme members into accepting a transfer. Clause 31 provides that if no regulations have been made under clause 30 seven years after commencement, the clause will be repealed.
208. Clause 30(4) (b) provides that the regulations may create exceptions to the prohibition. As the pensions market is continually evolving it would not be appropriate to set out in clause 30 the specific incentives to transfer that would be prohibited as the Government wants to ensure the power is, as far as possible, 'future-proofed'. The power therefore provides for regulations to set out a ban of incentives generally but with exceptions that could be set out in subsequent regulations if necessary. For example, it is likely that one exception to the prohibition would be an incentive of increasing the pension value itself, either through an increase to a Defined Benefit pension, or the Cash Equivalent Transfer Value, or a top-up to a Defined Contribution fund that the member would be transferred to if they accepted the transfer offer. These types of incentives are considered acceptable. The intention is to prohibit incentives such as cash or other payments in kind that are separate to the pension and help tempt members to transfer to another pension arrangement that would not be in their long term interest.
209. Regulations made under this clause will be subject to the negative resolution procedure, which is felt appropriate as the power provided is specific in what it may be used for and regulations would also be subject to consultation with the pensions industry if need be.

Clause 34 – Automatic enrolment: powers to create general exceptions

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

210. Automatic enrolment is in its early stages, but the Department has already identified situations where the duty on the employer to automatically enrol a worker would result in situations that are counter to the policy intention. For instance, a worker who has enhanced or fixed tax protection for high net wealth pension savings who could suffer punitive tax charges should they be automatically enrolled.
211. Clause 34 inserts a new section into the Pensions Act 2008 which provides a power to enable the Secretary of State, through regulations, to relieve employers of the employer duty provisions in relation to workers of a prescribed

- description and workers in prescribed circumstances. The employer duty provisions are sections 2 to 11 and 54 of the Pensions Act 2008.
212. The clause also enables the Secretary of State to confer the power on employers so that in prescribed circumstances an employer need not automatically enrol a worker but may choose to do so. This could be, for example, in the case of a worker working out their period of notice when the employer would, otherwise, become subject to the employer duty provisions.
213. Where regulations are made giving an employer the power to choose whether to automatically enrol a worker, a further regulation making power has been taken to modify provisions relating to employer duties. The Department will use this power to ensure provisions, including those relating to compliance powers, apply appropriately where the employer is enrolling a worker as a result of a power rather than a duty.
214. The clause also has a power to enable the Secretary of State to turn the employer duties back on in whole or in part, from a prescribed date, if the circumstances that caused the exception to apply come to an end.
215. So in the case of a worker who is serving a period of notice, the regulations would also provide that if the worker subsequently withdrew their notice, and the employer had chosen not to enrol them then the employer duty provisions would apply, with modifications, as if notice had not been given.
216. Whilst the Department has already identified some particular situations where the employer duty should be dis-applied, we would expect further situations to emerge as automatic enrolment matures, so a power to prescribe the specific situations in regulations provides the flexibility to respond to these situations as they arise.
217. Regulations made under this clause will be subject to the negative resolution procedure, which is felt appropriate as the Department does not anticipate that there will be very many situations where the employer duty provisions will need to be dis-applied. The situations that have been anticipated are not controversial and the Department believes any new situations identified will similarly be uncontroversial. Draft regulations would be subject to consultation with the pensions industry and employers if need be.

Clause 35 – Qualifying schemes: administration charges

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

218. Section 16 of the Pensions Act 2008 contains a power to stop pension schemes from being qualifying schemes for the purposes of the employers' duties if administration charges exceed a prescribed amount. This ensures that

jobholders can be protected from being enrolled into schemes with excessive charges.

219. Clause 35 amends this section to broaden the power and allow more flexibility on how it can be exercised. The definition of administration charges in section 16 is already very broad, but the scope to prescribe how any limitations on charges apply is narrower. This clause broadens the power to allow more detail to be prescribed in regulations and also allows the Secretary of State to restrict the kinds of charges which may be made in qualifying schemes. This will ensure the 'charge cap' is more flexible and can be used to deal effectively with the range of different charges and charging structures that exist in the industry. This will allow Ministers to respond quickly to developments in the market to ensure consumers are protected.
220. Whilst the existing power in section 16 in relation to administration charges has not yet been exercised, the Government continues to monitor the market closely and consider whether pension scheme members (particularly those automatically enrolled) are adequately protected.
221. Regulations made under section 16 of the Pensions Act 2008 will continue to be subject to the negative resolution procedure. It is not considered necessary to alter the existing agreed scrutiny procedure for this power as this amendment simply provides more flexibility and does not alter the fundamental purpose or intent.

Clause 39 – Power to require pension levies to be paid in respect of past periods

Powers conferred on: Secretary of State

Powers exercised by: Regulations (Statutory Instrument)

Parliamentary procedure: Negative

222. Most defined benefit occupational pension schemes are eligible for the Pension Protection Fund (PPF), which pays compensation to members of those schemes where the employer becomes insolvent, leaving the scheme underfunded. Certain levies are payable by these eligible schemes which in part pay for the compensation the PPF pays to scheme members and the administration of the PPF.
223. A limited number of schemes have the benefit of a Crown guarantee which means that, where a scheme has an insolvent employer and becomes underfunded, the Government will meet the liabilities of the scheme or the employer in respect of the whole or part of the scheme. Previously it had been the case that where such a guarantee has been given the scheme would not be an eligible scheme for PPF purposes and no levy was payable (for schemes with a partial guarantee in respect of a particular part of the scheme, certain members or

- certain benefits, the scheme was only liable to pay levies in respect of the liabilities not covered by the guarantee).
224. However, in 2009 the European Commission ruled, in respect of the BT Pension Scheme, that the exemption of payment of the levy to PPF arising from the Crown guarantee constituted an incompatible State aid. In order to comply with the Commission's decision, Regulations were laid in 2010 to provide that where a Crown guarantee gives rise to incompatible State aid, the scheme is eligible for the PPF and must pay the appropriate pension levy. The relevant regulations are the Pension Protection Fund and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 2010 (SI 2010/196) and the Occupational Pension Schemes (Levies) (Amendment) Regulations 2010 (SI 2010/1930) – hereafter referred to as the '2010 Regulations'.
225. However, in order to fully comply with the Commission's decision it is necessary to make provision to allow levies to be recovered for the tax years 2005/06 (the first year PPF was in existence) to 2009/10.
226. Clause 39 therefore provides a power to allow regulations to be made to provide that those sections of the Pensions Act 2004 relevant to payment of pension levy to have effect as if the '2010 Regulations' had always had effect. The regulations will allow the Government to recover payment of levies due in respect of 2005/06 to 2009/10. This will apply to those schemes covered by a Crown guarantee where an exemption from payment of the levies would give rise to incompatible State aid.
227. Given the technical nature of this issue, it is felt appropriate to set this detail in regulations and this is consistent with the approach to legislating for the payment of pension levies for relevant schemes on a prospective basis (provided for by the '2010 Regulations').
228. Regulations made under this clause will be subject to the negative resolution procedure in line with the '2010 regulations'. This is felt appropriate given the narrow application of the power.

Part 5 – Final provisions

Clause 44 – Power to make consequential amendments etc

Powers conferred on: Secretary of State or the Treasury

Powers exercised by: Order (Statutory Instrument)

Parliamentary procedure: Affirmative if the order amends or repeals primary legislation, negative for other uses of the power

229. Clause 44 provides for a power to make, by order, provisions which are consequential, supplementary, incidental or transitional in relation to any provision in the Bill. The provision includes a Henry VIII power to allow amendments in relation to this Bill to be made to primary or secondary legislation whenever passed or made.
230. Although every effort was made to identify all consequential amendments for inclusion in the Bill, this power has been taken in order to deal with any amendments which may be needed subsequently for the proper operation of the provisions in the Bill and their interaction with other requirements in both social security legislation and the legislation of other government departments.
231. The power has been included in light of the Department's experience with 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.
232. An order under this clause will be subject to the negative resolution procedure, unless it amends primary legislation, in which case it will be subject to the affirmative resolution procedure. When subject to the negative resolution procedure this level of Parliamentary scrutiny is felt appropriate given that any amendments will be of a consequential nature and will be made for the purposes of ensuring that legislation takes proper account of the provisions within the Bill.

Clause 45 - Regulations and orders

Powers conferred on: Secretary of State

Powers exercised by: Regulations or Orders (Statutory Instrument)

Parliamentary procedure: Affirmative or negative depending on the S.I.

233. Clause 45 makes a general provision in respect of the regulations and orders 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 and orders to apply differently for different purposes and to apply to some or all of the purposes for which it may be used.
234. These are standard provisions of a type common to social security and pensions legislation. They can be used to make technical amendments and transitional provisions.

Clause 47 – Commencement

Powers conferred on: Secretary of State

Powers exercised by: Order (Statutory Instrument)

Parliamentary procedure: None with the exception of an order made under Clause 47(6) which is negative

235. Clause 47 sets out when the various Parts or sections of the Bill will come in to force. Clause 47(1) provides for the provisions in the Bill, with the exception of those sections listed in subsections 47(3), (4) and (5), to come in to force by commencement order made by the Secretary of State.
236. The sections listed in clause 47(3) come into force on Royal Assent, whilst those listed in clause 47(4) come in to force after two months. Clause 47(5) sets out that Part 1 of the Bill will come in to force on 6 April 2016, but provides that any or all clauses under this Part can be brought in to force earlier than this by way of a commencement order made under clause 47(1).
237. Clause 47(6) provides a power to allow an order to be made to amend clause 47(5) to specify a new date for Part 1 of the Bill to come in to force and to make corresponding amendments to Part 1 of the Bill and any other enactments amended by it.
238. The Government has provided a clear commitment to implement the single-tier pension in April 2016, and this is reflected by the provisions in the Bill. Whilst it is not usual practice to include the commencement date for such significant reform of pensions and social security legislation, it has been specific in the Bill for single tier in order to provide as much certainty as possible to individuals and the pensions industry. However, it is considered prudent to take this power to provide the flexibility to amend the commencement date should there be an unavoidable delay to implementation.
239. In common with other Acts relating to social security, clause 47(7) also provides that the Secretary of State may, by order, make transitional, transitory or saving provision in connection with the coming into force of any provision of the Act.
240. Orders made under clauses 47(1) and (7) are not subject to any parliamentary procedure as is usual for commencement orders. An order made under clause 47(6) is subject to the negative resolution procedure, which is felt appropriate because the power only provides for a change in implementation date and does not amend the policy in any way.

Annex

Delegated powers in the Pensions Bill

Part 1 – State pension

Provision	Heading	Parliamentary Procedure
Clause 2	Entitlement to state pension at full or reduced rate	Negative
Clause 3	Full and reduced rates of state pension	Affirmative
Clause 4	Entitlement to state pension at transitional rate	Negative
Clause 7	Survivor's pension based on inheritance of additional old state pension	Negative
Clause 8	Choice of lump sum or survivor's pension under section 9 in certain cases	Negative
Clause 10	Inheritance of graduated retirement benefit	Affirmative on first use
Clause 13 and Schedule 8	Shared state pension on divorce etc. Pension sharing: appropriate weekly rate under section 13	Negative
Clause 14 and Schedule 10	Pension sharing: reduction in the sharer's section 4 pension Pension sharing: appropriate weekly reduction under section 14	Negative
Clause 15 and Schedule 11	Pension sharing: amendments	Negative
Clause 16	Pensioner's option to suspend state pension	Negative
Clause 17	Effect of pensioner postponing or suspending state pension	Negative
Clause 18	Section 17 supplementary: calculating weeks, overseas residents etc	Mixed
Clause 19	Prisoners	Negative
Clause 20	Overseas residents	Affirmative on first use
Clause 23 and Schedule 12	Amendments State pension: amendments	Mixed
Clause 24 and Schedule 13	Abolition of contracting-out for salary related schemes etc	Negative
Clause 24 and Schedule 14	Abolition of contracting-out for salary related schemes etc Power to amend schemes to reflect abolition of contracting-out	Negative

Part 3 – Bereavement support payment

Provision	Heading	Parliamentary Procedure
Clause 27	Bereavement support payment	Affirmative
Clause 28 and Schedule 15	Bereavement support payment: contribution condition and amendments Bereavement support payment: amendments	Mixed

Part 4 – Private pensions

Provision	Heading	Parliamentary Procedure
Clause 29 and Schedule 16	Automatic transfer of pension benefits etc	Affirmative
Clause 30	Power to prohibit offer of incentives to transfer pension rights	Negative
Clause 34	Automatic enrolment: powers to create general exceptions	Negative
Clause 35	Qualifying schemes: administration charges	Negative
Clause 39	Power to require pension levies to be paid in respect of past periods	Negative

Part 5 – Final provisions

Provision	Heading	Parliamentary Procedure
Clause 44	Power to make consequential amendments etc	Mixed
Clause 45	Regulations and orders	Mixed
Clause 47	Commencement	Mixed