# Government Amendments to the Pensions Bill 2013 (Commons Report Stage) – briefing paper

On 21 October, the Government tabled a number of amendments to the Pensions Bill to be considered at Commons Report stage. This paper outlines the effect of these amendments. Many of these are technical and have been identified through ongoing discussions with the pensions industry and their scrutiny of the legislation.

## Charges, Governance and Administration requirements

**Amendments NC1 and NS1** allow for regulations to limit or prohibit charges and to impose governance and administration requirements for pension schemes specified in regulations. This will ensure that Government has the ability to apply these standards to a broad set of schemes, and in particular those that are closed to new members or to new accruals. This follows the Office of Fair Trading's report on the market for Defined Contribution workplace schemes, which raised particular concerns about standards in legacy schemes. The Government will also consult shortly on charges in Qualifying Schemes, including on options for a charge cap.

These amendments provide for regulations to be made with a view to ensuring compliance with the requirements. **Amendment 30** extends the existing approach set out in the Pensions Act 2004 so that if a trustee or manager who received a penalty took monies from scheme funds in order to pay those penalties, this would be a criminal offence. This is applied to both the compliance powers on charges and quality standards and on automatic transfers.

The provisions to set requirements will encompass a wide range of schemes, including some which were not covered by previous provisions relating to Automatic Transfer and automatic enrolment qualifying schemes. For this reason, **Amendments 11, 28 and 29** remove the original clause 35 in the Bill and quality and charge provisions in schedule 16, as they are no longer necessary. Parts of Section 16 of the Pensions Act 2008 are also removed, to ensure that all scheme requirements are made under the same powers, which will reduce complexity for the end user.

**Amendment 12** sets out that regulations made under this power will be subject to the affirmative resolution procedure where they relate to governance or administration requirements, where they amend primary legislation and where they cover compliance issues for the first time.

## Bereavement Support Payment

**Amendment NC2** brings Bereavement Support Payment into line with other social security benefits (including the single-tier pension) by providing a regulation-making power to prevent payment of Bereavement Support Payment to a person who is imprisoned, detained in legal custody, or unlawfully at large. Where someone is on remand, it provides that payment is suspended but would be repaid in full if a sentence is not later imposed.

**Amendments 25, 26 and 27** are consequential amendments so that relevant references in other enactments are to Part 3 of the Bill ('Bereavement Support Payment') rather than the separate section numbers.

## Assessed Income Periods and Pension Credit

The Assessed Income Period (AIP) is a period where customers do not need to notify the Department for Work and Pensions of changes to retirement provision (broadly defined as capital, annuities and retirement pension) for the purposes of assessing their entitlement to

Pension Credit. An AIP normally applies for 5 years, but is set indefinitely where the customer has reached the age of 75.

AIPs were introduced on the basis that pensioners are more likely to have relatively stable incomes and capital, and fewer changes in their circumstances, so less onerous reporting requirements were deemed necessary. However, fixing a claimant's retirement provision for such a period has caused inaccuracies to build up and led to a situation in which claimants can retain their benefit awards despite having obtained significant amounts of capital or new income streams.

**Amendment NC3** therefore amends the State Pension Credit Act 2002 to provide for the abolition of AIPs from April 2016. This has the effect that any change in retirement provision from April 2016 should be reported when it occurs, triggering an immediate review and change of the benefit award, where appropriate, so that it reflects the claimant's current circumstances. The removal of the AIP will apply to new customers and to those existing customers with a 5-year AIP already in place at April 2016 (regulations will be made to gradually phase these out), while indefinite AIPs will remain in place until they end under existing rules (e.g. if a claimant goes into a care home permanently or dies). This measure was announced in the Spending Round 2013 and an impact assessment for this measure has been published here: https://www.gov.uk/government/publications/abolition-of-assessed-income-periods-for-pension-credit-impact-assessment.

**Amendments NC4 and 13** are technical amendments to remove a potentially defective "sunsetting" provision in existing legislation that would otherwise terminate existing indefinite AIPs in place on 6 April 2014. Amendment 2, as drafted, provides contingency should the Bill not have received Royal Assent before this date.

**Amendments 16 and 17** are consequential amendments to reference the new single-tier pension, alongside the old state pension, in the description of 'retirement pension income' in the State Pension Credit Act. This will mean the single-tier pension can be taken into account for the purpose of assessing a customer's entitlement to Pension Credit.

## Amendments to the employer override provisions

When the single-tier state pension is introduced on 6 April 2016, the State Second Pension (S2P) will close and consequently, so will the ability to contract out of S2P. This is where an individual gives up entitlement to S2P in return for provision of a broadly similar benefit through their Defined Benefit occupational scheme. The individual and their employer will also pay a reduced rate of National Insurance (known as the NI rebate). Given that sponsoring employers will lose the NI rebate when contracting out ends, the Bill contains a statutory override provision to allow employers to adjust their scheme design to offset the additional National Insurance costs, without trustee consent. These amendments make minor adjustments to the override provisions.

**Amendments 2, 19 and 20** are technical amendments to ensure that the override power can be exercised to allow for scheme changes to apply to all active scheme members.

**Amendments 3 and 4** will ensure that employers can enrol new scheme members into the pension scheme as amended under the override provisions. This will place new members and those who were members of the scheme before the end of contracting out in the same position and help to avoid a situation in which employers close their scheme to new members.

**Amendments 18 and 24** allow for regulations to prescribe how an actuary determines the value of the increase in the employer's National Insurance contributions and scheme amendments, such that only the value of the lost rebate is recouped.

**Amendments 21 and 22** allow regulations to prescribe specific circumstances in which employers and actuaries can exercise discretion when using the override power (for instance, whether they consider remuneration data over a 1 or 3 year period).

**Amendment 23** provides a regulation-making power to ensure that trustees and scheme managers provide information to the employer in connection with the statutory override power (for instance, detailed membership data and the assumptions used to calculate the NI rebate and the value of proposed scheme amendments), and to apply standard penalties under the Pensions Act 1995 to persons who fail to comply.

## Short Service Refunds

**Amendments 5 - 10** are technical amendments to the provisions in the Bill withdrawing the facility to make 'short service refunds' of contributions from money purchase occupational pension schemes.

At present, occupational pension schemes can make 'short service refunds' of contributions when a member leaves the scheme with more than three months' and less than two years' service. The Pensions Bill effectively removes the facility to make such refunds from money purchase occupational pension schemes. This will help to ensure that pension savings remain in pensions, and is in line with the wider move to encourage saving, for instance through automatic enrolment.

At the moment, clause 32 provides for entitlement to a short service benefit from the moment contributions are paid to the scheme The intention behind this amendment is to provide a broad parity of treatment between those people who are contract-joined into an occupational pension scheme and those who are contract-joined into a workplace personal pension scheme (where there is a 30 day cooling off period) and those who are automatically enrolled into a scheme (where they can opt out).

This amendment does not affect the impact assessment for this measure, which is available here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197845/pensions-bill-ia-annex-e-short-service-refunds.pdf.

## Single-tier state pension

**Amendment 14** is a technical amendment to the rebate derived amount (RDA) element of the single-tier calculation. It ensures that the RDA reduction to a person's pension where they have been a member of a scheme that was contracted-out of the additional State Pension (and therefore paid a lower rate of National Insurance contributions) is correct and consistent with the impact assessment (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/197841/single-tier-ia-april-2013.pdf) and other policy documents (https://www.gov.uk/government/publications/the-single-tier-pension-a-simple-foundation-for-saving--2).

Overpayments of the current State Pension are recoverable under the Social Security Administration Act where they arise because a customer has misrepresented their circumstances (for instance by claiming to be married, where in fact they are divorced) or failed to disclose something relevant. **Amendment 15** is a consequential amendment to extend this power to the single-tier state pension.

## Pension Protection Fund

**Amendment 31** relates to the Pension Protection Fund (PPF) compensation cap. Where the sponsoring employer of a defined benefit occupational pension scheme becomes insolvent and is unable to pay benefits of at least PPF levels, it may enter the PPF, which then pays compensation to members. Where someone is below the scheme's retirement age at the date of insolvency, this is based on 90 per cent of the protected pension (the accrued pension, revalued to the date of payment), subject to a cap (currently £34,867.04).

In July, the Government announced its intention to change the structure of the compensation cap by 3 per cent for each full year above 20 years for individuals with more than 20 years' service with one employer. As these individuals may have had little or no opportunity to make up the shortfall from other sources, this change will mitigate the impact on their retirement income. During Commons Committee stage, the Bill was amended to effect this change for people with future entitlement to compensation (clause 44 and Schedule 18 of the Bill as amended in Committee). This amendment provides for the cap to apply to individuals who are already entitled to compensation. Where the long service cap would be applicable, the amendment also allows for an increase to a terminal illness lump sum paid to anyone in the year up to the date the legislation comes into force. Where the member has died before this date, the terminal illness lump sum will be unchanged but their survivor will be able to benefit from the long service cap.

An impact assessment for this measure is available here: [https://www.gov.uk/government/publications/the-pension-protection-fund-compensation-cap-amendments-impact-assessment](https://www.gov.uk/government/publications/the-pension-protection-fund-compensation-cap-amendments-impact-assessment).