



Department  
for Work &  
Pensions

# Pensions Bill Delegated Powers

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

March 2014

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

## **Introduction**

1. This Memorandum is prepared by the Department for Work and Pensions, and is supplementary to the Memorandum dated 31 October 2013. It identifies new or amended delegated powers conferred in the Government amendment to the Pensions Bill tabled on 10 March 2014 for consideration at Third Reading in the Lords. 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. References to the amendment numbers are as they appear on the list of Government amendments provided to the Committee on 10 March.

## **Extent**

2. Amendments 1 – 3 extend to England and Wales and to Scotland. Pensions are a transferred matter in respect of Northern Ireland and, as such, legislation is the responsibility of the Northern Ireland Assembly.
3. Amendment 4 (the amendment to the Financial Services and Markets Act 2000) will extend to the United Kingdom because, under clause 55(2) of the Pensions Bill, amendments to other enactments have the same extent as the enactment to which they relate. Under paragraph 23(2) of Schedule 3 to the Northern Ireland Act 1998 financial services are a reserved matter and since the rules of the Financial Conduct Authority apply to providers of financial services, this amendment is essentially about regulation of financial services. The amendment would not affect any matters where legislative responsibility has been transferred to the Northern Ireland Assembly.

## **Analysis of delegated powers**

### **Clause 44 – Disclosure of information about transaction costs to members etc**

*Duty conferred on: Secretary of State and Financial Conduct Authority ('FCA')*

*Powers exercised by: Regulations (Statutory Instrument) in the case of the Secretary of State's duty and rules made under the Financial Services and Markets Act 2000, in the case of the FCA's duty.*

*Parliamentary Procedure: Negative in the case of the Secretary of State's duty and none in the case of the FCA's*

Pensions Bill Delegated Powers: Supplementary Memorandum from DWP to the Delegated Powers and Regulatory Reform Committee

4. Amendments 1-3 would amend or insert additional subsections in to the existing disclosure of information provisions in section 113 of the Pension Schemes Act 1993. This section already contains a power to enable the Secretary of State to make regulations to require disclosure of information about pension schemes to scheme members and others. New subsections (5) to (7) were added to section 113 at Report stage. The current amendments build on the effect of those subsections, making explicit the regulatory split between the Pensions Regulator and the Financial Conduct Authority ('FCA') by imposing a duty on the FCA to make rules in relation to the schemes they regulate. In addition, they impose a duty on both the Secretary of State and FCA to require the publication of transaction costs and administration charges.
5. Amendments 1 and 2 amend the new subsection (5) to ensure that the duty relates back to the power in subsection (1) and inserts a reference to 'relevant scheme' (which is defined in new subsection (10)). This has the effect that it provides that the Secretary of State must make regulations to require information about transaction costs to be given to some or all of the people listed in subsection (2).
6. Amendment 3 inserts new subsections (6) – (10) into section 113. Subsection (6) imposes a new duty on the Secretary of State to make regulations to ensure that information about some or all transaction costs and administration charges of relevant schemes are made public.
7. Subsections (7) and (8) ensure that the regulations made under subsection (6) can be done in such a way that comparisons can be made between different pension schemes.
8. Subsection (9) requires the Secretary of State to consult the FCA and the Treasury before making any regulations under subsections (5) and (6). This is in addition to the general consultation duty in the Pension Schemes Act 1993.
9. The definition of 'relevant scheme' in subsection (10) ensures that the duty of the Secretary of State is limited to occupational pension schemes and the definition of 'administration charge' is that provided for in the Pensions Bill (Schedule 18).
10. Regulations made under section 113 of the Pension Schemes Act 1993 are subject to the negative resolution procedure. This procedure means that, should new transaction costs be identified, the regulations can be amended relatively quickly to capture those new costs. Section 185 of the Pension Schemes Act 1993 further provides that the Secretary of State shall consult with such persons as the Secretary of State considers appropriate before making regulations under section 113.
11. Amendment 4 amends the Financial Services and Markets Act 2000 by inserting a new section 137FA into that Act. This would impose a duty on the FCA to make general rules about the disclosure of information in

Pensions Bill Delegated Powers: Supplementary Memorandum from DWP to the Delegated Powers and Regulatory Reform Committee

relation to money purchase personal pension schemes and to require the publication of information about some or all transaction costs or administration charges. This amendment does not extend the existing powers of the FCA – their powers to make general rules under section 137A would already permit the FCA to make rules in this area. However, a duty is being imposed on the FCA to make rules, following consultation with the Secretary of State and the Treasury, and taking into account any regulations made by the Secretary of State, to ensure that there is consistency between FCA rules and regulations made by the Secretary of State.

12. Subsection (1) sets out the duty on the FCA and subsection (2) replicates the relevant parts of section 113(2) which set out the people to whom the information must be provided.
13. Subsection (3) imposes a duty on the FCA which is equivalent to the duty in subsection (6) of s. 113. This requires the FCA to make rules requiring the publication of information about some or all transaction costs or administration charges. Subsections (4) and (5) supplement subsection (3) to ensure that the information given is useful in allowing comparisons to be made.
14. Subsection (6) requires the FCA to consult the Secretary of State and the Treasury before making rules under this provision and subsection (7) requires the FCA to have regard to any regulations made under the Secretary of State's duty.
15. The definitions in subsection (8) ensure that the definition of 'administration charge' is as per the definition in Schedule 18 to the Pensions Bill and that the FCA duty only extends to personal pension schemes where there is a direct payment in place for at least one worker or a stakeholder pension scheme.
16. Rules made by the FCA to comply with this requirement will be subject to the safeguards applying to all FCA rules which are contained in section 138I of the Financial Services and Markets Act 2000. This requires the FCA, before making any general rules, amongst other things to consult the Prudential Regulatory Authority and after that to publish rules in draft. That draft must be accompanied by a cost benefit analysis, amongst other things, and the FCA must seek representations about the draft rules and cannot make rules without having regard to those representations. In addition, as noted above, the FCA is required to consult the Secretary of State and the Treasury before publishing draft rules for consultation. The duty is imposed on the FCA in relation to personal pensions as opposed to the Secretary of State as this reflects the fact that FCA currently regulates providers of personal pension schemes and this new requirement applies to an instance of that existing regulatory structure.