Department
for Work &
Pensions

Pensions Act 2014 Impact Assessment

Annex K – Other measures in the Pensions Act 2014

May 2014

Other measures in the Pensions Act 2014

1. The Pensions Act 2014 contains a number of measures which do not introduce significant costs or benefits to the private sector or civil society organisations, or to the public sector over the cost threshold. Therefore individual Impact Assessments of these measures have not been carried out. These measures are summarised below.
2. Further details of the measures contained in the Act are available in the accompanying explanatory notes.

Option to boost old retirement pensions (section 25 & Schedule 15)

3. As part of the Autumn Statement 2013 the Chancellor announced the Government’s intention to introduce a new scheme to allow pensioners to top-up their additional State Pension by paying a new type of voluntary National Insurance contribution, which will be known as Class 3A.
4. Section 25 of the Act will allow existing pensioners and those reaching State Pension age before 6 April 2016 - ahead of the introduction of the single-tier pension - the opportunity to boost their additional State Pension by paying Class 3A contributions.
5. This legislation does not impact on business, charities or voluntary bodies. This legislation has a relatively low impact on the public sector as the changes are being delivered using existing Pension Service and Her Majesty’s Revenue and Customs computer systems and procedures. The option to pay Class 3A is voluntary and will be time limited to 18 months between October 2015 and April 2017. Therefore, a full Impact Assessment is not needed.

Periodic review of rules about pensionable age (section 27)

6. Section 27 of the Pensions Act 2014 provides for a regular review of the State Pension age, with a report to be published at least every six years. These reviews will take into account analysis provided by the Government Actuary on increases to the State Pension age required to ensure that individuals maintain a specified proportion of adult life in retirement. A report on wider factors

produced by an independently-led review will also be considered as part of the review.

7. The details of any proposal to change the State Pension age as a result of the review will be a matter for the Government of the day. Any changes to the State Pension age will need to be set out in primary legislation and approved by Parliament before becoming law. Therefore, it is not possible to publish an Impact Assessment for potential future changes to the State Pension age at this time.

Power to prohibit offer of incentives to transfer pension rights (sections 34 & 35)

8. A common method for reducing the risk that employers are exposed to by their sponsorship of a pension scheme is to offer an incentive to a defined benefit scheme member to transfer their pension, or a part of it, to a defined contribution scheme. These are referred to as Enhanced Transfer Value (ETV) exercises.

9. ETV exercises can take the form of:

   - an enhanced pensions inducement: an incentive to a transfer which enhances the member's pension benefits – i.e. increases the value of the pension itself;
   - non-pension inducements: incentives that do not enhance the pension value. They are usually in the form of a cash payment but could take other forms (e.g. a car, holiday, shopping voucher, additional annual leave, etc); or
   - a combination of the two.

10. At present a voluntary Code of Practice exists to encourage pension schemes to avoid offering non-pensions inducements.

11. Section 34 of the Pensions Act 2014 confers on the Secretary of State a regulation-making power to prohibit incentives for a defined benefit pension scheme member to transfer out of a salary-related scheme.

12. The use of this power will be dependent on the efficacy of the Code of Practice, with a Monitoring Board established to evaluate its effectiveness. This Board will collect evidence on incentive exercises, evaluate the effectiveness of the Code, and report to the Minister for Pensions within 3 years of the Code's publication. The Board's response will inform the decision on whether the offer of non-pension incentives should be prohibited by Regulations.

13. If no regulations have been made under section 34 seven years after commencement, that section of the Act will be repealed.

14. As the powers are not to be exercised immediately by the Secretary of State, an Impact Assessment has not been carried out. If it is decided that legislation is required, an Impact Assessment will be conducted prior to its introduction.

Automatic re-enrolment: exceptions where automatic enrolment deferred (section 37)

15. Section 37 of the Act corrects an anomaly in sections 3 and 5 of the Pensions Act 2008, which can produce a simultaneous duty to automatically enrol and re-enrol jobholders.

16. Section 3 of the Pensions Act 2008 (as amended by section 5 of the Pensions Act 2011) requires employers to automatically enrol jobholders aged at least 22, under their State Pension age and earning more than £9,440 (in 2013/14) a year into a qualifying automatic enrolment workplace pension scheme.

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

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

19. Section 37 turns off the three-yearly cyclical re-enrolment duty if the re-enrolment date chosen by the employer falls:

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

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

Automatic enrolment: powers to create general exceptions (section 38)

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

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

23. Section 38 of the Pensions Act 2014 grants the Secretary of State a general power to exclude certain prescribed types of workers, or workers in prescribed circumstances, from the scope of automatic enrolment. The power cannot be exercised to exclude workers on grounds related to the size of their employer. It also amends section 10 of the Pensions Act 2008 to allow automatic enrolment information to be more appropriately targeted.

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

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

Alternative quality requirements for UK defined benefits schemes (section 39)

26. Section 39 of the Pensions Act 2014 provides a power to prescribe two alternative quality requirements for Defined Benefits (DB) schemes in order to make it easier to demonstrate that a DB scheme is good enough to be used for automatic enrolment.

27. The design of some DB schemes is closer to money purchase schemes. The Government therefore feel it would be more appropriate for such schemes to be able to meet the money purchase quality requirement and to be able to phase in contributions during the early years of automatic enrolment in the same way as money purchase schemes.

28. For other DB schemes, including from 2016 schemes that were formerly contracted-out, section 39 introduces the option of alternative tests based on the cost to the scheme of the future accrual of benefits for active members.

29. Regulations will prescribe the kinds of DB scheme that may, as an alternative, satisfy the money purchase quality requirement. And the minimum level of the cost of future accrual which must be at least 8% of members' relevant earnings to be consistent with the money purchase quality requirement.

30. Alternative requirements prescribed under this measure will be reviewed in 2017, and then no later than 2020, to check the legislation is working as intended.

31. This measure provides for a power which has not yet been exercised and so the provisions themselves carry no impact. An Impact Assessment may be undertaken, if appropriate, when the power is exercised and regulations laid.

Automatic enrolment: transitional period for hybrid schemes (section 40)

32. Section 40 of the Pensions Act 2014 corrects an error in the Pensions Act 2008. Section 30 of that Act provides a transitional period for automatic enrolment into a defined benefit or a hybrid pension arrangement. It inadvertently covers some members who are entitled to money purchase benefits in a hybrid arrangement.

33. This section ensures jobholders entitled to be enrolled into a money purchase arrangement are correctly covered by section 29 of the Pensions Act 2008 instead of section 30.

34. As this is a technical correction to current legislation and has no direct impact on business, civil society organisations or the public sector, an Impact Assessment has not been produced.

Penalty notices under sections 40 and 41 of the Pensions Act 2008 etc (section 41)

35. This measure alters sections 40(1)(d) and 41(1)(d) of the Pensions Act 2008 to make it clear that penalties in those sections are only available to the Employer Compliance Regime. The penalties apply only for failure to comply with a section 72 notice where it requires the recipient to provide information or documents in relation to the Pensions Act 2008 compliance regime. The penalties do not apply to 2004 Act compliance activity.

36. This measure is not expected to involve any costs to business, civil society organisations or the public sector, nor to individuals and so no Impact Assessment is needed.

Unpaid scheme contributions (section 42)

37. Section 42 alters section 124 of the Pension Schemes Act 1993 so that the protection offered within it to employees in respect of, or on behalf of, whom pension contributions remain unpaid at the time of their employer’s insolvency is extended to workers and agency workers. Both of these wider categories of

people may become pension scheme members as a result of automatic enrolment.

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

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

Power to require pension levies to be paid in respect of past periods (section 45)

40. Section 45 enables the Secretary of State to make regulations to ensure full compliance with a European Commission decision of 11 February 2009, upheld by the General Court's judgment of 16 September 2013, relating to unlawful state aid. The General Court's judgment has been appealed to the European Court of Justice. The regulations would allow the collection of levies for a past period that are due to the Pension Protection Fund.

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

42. This section provides a power but has no impact by itself. An Impact Assessment may be undertaken, if appropriate, should the power be exercised.

Prohibition and suspension orders: directors of corporate trustees (section 46 & Schedule 19)

43. Under the Pensions Act 1995 (amended by the Pensions Act 2004), the Pensions Regulator has had the power to suspend and prohibit individuals from acting as trustees to pension schemes if they are not deemed to be a fit and proper person to act in that capacity.

44. However, if a prohibited trustee was subsequently found to be, or became, the director of a company which acted as a trustee of a scheme (a corporate trustee) there was no restriction on that company acting as a corporate trustee.

45. Section 46 of the Pensions Act 2014 corrects that by inserting a new section into the Pensions Act 1995 forbidding a company from being a trustee if one or more of its directors have been prohibited by the Regulator.

46. Section 46 also corrects the anomaly by which corporate trustees cannot be suspended pending consideration being given to the institution of proceedings against one of their directors/partners for an offence involving dishonesty or deception, whereas if that director/partner were an individual trustee they could be suspended.

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

Preparation of guidance for pensions illustrations (section 47)

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

49. In producing SMPIs, schemes must comply with "relevant guidance" issued by the Financial Reporting Council (FRC). At present, that guidance is contained within a document entitled *"AS TM1: Statutory Money Purchase Illustrations*" (known as "TM1").

50. Section 47 of the Act amends section 16 of the Companies (Audits, Investigations and Community Enterprises) Act 2004 to include the production of TM1 and subsequent guidance by FRC as an activity that qualifies them for indemnity from pursuance of damages under section 18 of that Act.

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

Pensions Regulator's objectives (section 48)

52. Section 48 provides an additional objective for the Pensions Regulator to minimise any adverse impact on the sustainable growth of an employer when exercising its functions under Part 3 of the Pensions Act 2004, which deals with the funding of defined benefit pension schemes.

53. The new objective supplements the Pensions Regulator's five existing statutory objectives, which include an objective to protect members' benefits and an objective to reduce the risk of calls on the Pension Protection Fund (PPF), which may protect members where an eligible scheme commences wind up due to employer insolvency.

54. The scheme funding regime overseen by the Pensions Regulator is based in part on the principle that the employer's covenant provides security for the pension fund. Therefore, the Regulator's existing objectives mean that it

implicitly needs to take account of impacts on the sponsoring employer, given that a strong employer is in the best interests of scheme members. However, the new objective will ensure that the Pensions Regulator must explicitly consider minimising any impact on the sustainable growth of sponsoring employers.

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

Public service pension schemes: transitional arrangements (section 52)

56. Section 52 amends the Public Service Pensions Act 2013 to enable Government to realise greater administrative savings during the consolidation of public service pension schemes into fewer, larger schemes.

57. It will allow members of the smaller public body schemes transferring their accrued rights into one of the eight larger new public service pension schemes to continue to benefit from the promise that those less than 10 years from their normal pension age will not be affected by the Government's public service pension reform programme. This avoids the need to keep these members in their old schemes, with all the administrative savings that follow.

58. As such this policy will impose no additional costs but simply allows the more efficient delivery of the policy intention for these members, as set out during the course of the Public Service Pensions Act 2013.