THE PENSION SCHEMES (CONVERSION OF GUARANTEED MINIMUM PENSIONS) BILL

Memorandum from the Department for Work and Pensions to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill ("the Bill"). The Bill had its first reading in the House of Commons on 16 June. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Bill seeks to amend the existing Guaranteed Minimum Pension conversion legislation set out in the Pension Schemes Act 1993, the Pension Schemes (Northern Ireland) Act 1993, the Pensions Act 2007 and the Pensions Act (Northern Ireland) 2008. These changes will help reassure pension schemes that they can use the conversion legislation to equalise overall pensions for the effect of differences between men and women resulting from Guaranteed Minimum Pensions.

3. Guaranteed Minimum Pensions are the minimum pension that an occupational pension scheme, contracted out of the additional State Pension between April 1978 and April 1997 on a salary related basis, has to provide to its members. The amount ensures that members receive at least a broadly similar amount of occupational pension income in retirement as they would otherwise have been entitled to, had they not been contracted-out of the Additional State Pension. However, Guaranteed Minimum Pensions differ for men and women reflecting historical inequalities of treatment by sex in the pension system. This means that people with the same employment history can have different amounts depending whether they are men or women.

4. A woman is entitled to receive her Guaranteed Minimum Pension at an earlier age (age 60) than a man is entitled to receive his (age 65) creating further differences between Guaranteed Minimum Pensions payable to men and women.

5. Pension schemes are required to equalise individual members' overall pension entitlement to take account of inequalities caused by Guaranteed Minimum Pensions; one method by which they can do this is by using the conversion legislation set out in the Pension Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993. However, the pension industry has expressed concern that the provisions in the Pension Schemes Act 1993 Act and the Pension Schemes (Northern Ireland) Act 1993 contain uncertainties which could expose occupational pension schemes to legal risks. This Bill therefore amends and clarifies the provisions.

6. The provisions in the Bill will:
   - Clarify that the Guaranteed Minimum Pension conversion legislation applies to survivors, as well as to earners.
   - Provide for a power to set out in regulations the conditions that must be met in relation to survivors' benefits.
   - Provide for a power to set out in regulations detail about who must consent to the conversion.
   - Remove the requirement to notify HMRC that conversion has been carried out. This is because since the introduction of the new State Pension, HMRC do not need to be informed.

C. DELEGATED POWERS

Clause 1(3)

Power conferred on: the Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative procedure

Context and Purpose

7. Section 24B(5) of the Pension Schemes Act 1993 currently provides that converted schemes must provide survivors' benefits in accordance with section 24D in such circumstances and during such periods as are prescribed. The Bill will remove the detailed requirements in section 24D and replace the current regulation-making powers with a power to prescribe in regulations the conditions that must be met in relation to survivors' benefits.

Justification for taking the power

8. The current provisions for setting out the requirements around schemes' provision of survivor benefits are complicated, and there is uncertainty regarding how they apply in practice to schemes. Clause 1(3) therefore replaces the existing regulation making power with a new power to set out in regulations the appropriate requirements for survivor benefit provision which would enable the schemes to adopt a streamlined benefit structure whilst protecting members' rights.

9. The requirements around schemes' provision of survivor benefits are expected to be technical and specific. It is therefore appropriate for this provision to be set out in regulations. Using regulations will also allow for consultation on the details of the requirements around schemes' provision of survivor benefits.

Justification for the procedure

10. The procedure for the current regulation-making powers in section 24B is the affirmative procedure. This is considered to be an appropriate level of scrutiny for the equivalent procedure in the Bill, due to the impact regulations under this provision may have for members and the survivors of members of pension schemes which are carrying out conversion.

Clause 1(5)

Power conferred on: the Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

11. Occupational pension schemes are pension schemes which when they are established have one or more sponsoring employers who will make financial contributions to the scheme. The Guaranteed Minimum Pension conversion process is an active decision by the trustees and it is important that they seek consent of key sponsoring employers before a pension scheme begins the conversion process. This is in order to agree whether conversion is appropriate for the scheme and its members and the scope, for example which members are included. Section 24E(2) of the Pension Schemes Act 1993 provides that the employer in relation to the scheme must consent in advance to a scheme converting its Guaranteed Minimum Pension benefits.

12. However, there may be situations in which a pension scheme cannot obtain an employer's consent – for example, if the employer has ceased to exist - or there may be multiple employers in circumstances where it is very difficult for trustees to obtain the consent of all of the scheme employers. In these circumstances, there is some uncertainty regarding how the trustees should carry out this requirement.

13. Clause 1(5) therefore amends section 24E to provide for a power to prescribe in regulations which persons if any must consent to the conversion.

Justification for taking the power

14. The requirements regarding who is a 'relevant' person for the purpose of being required to give consent to Guaranteed Minimum Pension conversion are expected to be detailed and technical, containing requirements relating to different circumstances including for example employer insolvency and sale of the employer. It is therefore appropriate for this provision to be contained in regulations.

Justification for the procedure

15. Regulations made under clause 1(5) will be subject to the negative procedure. This is considered appropriate because the provision made in regulations under the clause will be technical in nature and are not likely to be controversial or require a more detailed level of Parliamentary scrutiny. In addition, the Department needs to be able to respond to changes in the relationship between employers and pension schemes as the UK's pension landscape changes; subjecting regulations to the negative procedure will allow the legislation to accommodate any changes in a timely manner.

Clause 2(3)

Power conferred on: the Department for Communities in Northern Ireland

Power exercised by: Regulations made by statutory rule

Assembly Procedure: Confirmatory procedure

Context and Purpose

16. Section 20B(5) of the Pension Schemes (Northern Ireland) Act 1993 currently provides that converted schemes must provide survivors' benefits in accordance with section 20D in such circumstances and during such periods as are prescribed. The Bill will remove the detailed requirements in section 20D and replace the current regulation-making powers with a power to prescribe in regulations the conditions that must be met in relation to survivors' benefits.

Justification for taking the power

17. The current provisions for setting out the requirements around schemes' provision of survivor benefits are complicated, and there is uncertainty regarding how they apply in practice to schemes. Clause 2(3) therefore replaces the existing regulation making power with a new power to set out in regulations the appropriate requirements for survivor benefit provision which would enable the schemes to adopt a streamlined benefit structure whilst protecting members' rights.

18. The requirements around schemes' provision of survivor benefits are expected to be technical and specific. It is therefore appropriate for this provision to be set out in regulations. Using regulations will also allow for consultation on the details of the requirements around schemes' provision of survivor benefits.

Justification for the procedure

19. The procedure for the current regulation-making powers in section 20B is the confirmatory procedure. This is considered to be an appropriate level of scrutiny for the equivalent procedure in the Bill, due to the impact regulations under this provision may have for members and the survivors of members of pension schemes which are carrying out conversion.

Clause 2(5)

Power conferred on: the Department for Communities in Northern Ireland

Power exercised by: Regulations made by statutory rule

Assembly Procedure: Negative

Context and Purpose

20. Occupational pension schemes are pension schemes which when they are established have one or more sponsoring employers who will make financial

contributions to the scheme. The Guaranteed Minimum Pension conversion process is an active decision by the trustees and it is important that they seek consent of key sponsoring employers before a pension scheme begins the conversion process. This is in order to agree whether conversion is appropriate for the scheme and its members and the scope, for example which members are included. Section 20E(2) of the Pension Schemes (Northern Ireland) Act 1993 provides that the employer in relation to the scheme must consent in advance to a scheme converting its Guaranteed Minimum Pension benefits.

21. However, there may be situations in which a pension scheme cannot obtain an employer's consent – for example, if the employer has ceased to exist - or there may be multiple employers in circumstances where it is very difficult for trustees to obtain the consent of all of the scheme employers. In these circumstances, there is some uncertainty regarding how the trustees should carry out this requirement.

22. Clause 2(5) therefore amends section 20E to provide for a power to prescribe in regulations which persons if any must consent to the conversion.

<u>Justification for taking the power</u>

23. The requirements regarding who is a 'relevant' person for the purpose of being required to give consent to Guaranteed Minimum Pension conversion are expected to be detailed and technical, containing requirements relating to different circumstances including for example employer insolvency and sale of the employer. It is therefore appropriate for this provision to be contained in regulations.

<u>Justification for the procedure</u>

24. Regulations made under clause 2(5) will be subject to the negative procedure. This is considered appropriate because provision made in regulations under the clause will be technical in nature and are not likely to be controversial or require a more detailed level of Parliamentary scrutiny. In addition, the Department needs to be able to respond to changes in the relationship between employers and pension schemes as the UK's pension landscape changes; subjecting regulations to the negative procedure will allow the legislation to accommodate any changes in a timely manner.

Clause 3(5)

Power conferred on: the Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: none

<u>Context and Purpose</u>

25. Clause 3 makes provision for the coming into force of the Bill. Subsection (4) sets out which provisions come into force on the day on which the Act is passed. Subsection (5) then provides that other provisions set out in clause 1 of the Bill

come into force on the day or days appointed by regulations made by the Secretary of State.

Justification for taking the power

26. Bringing those provisions of clause 1 of the Bill which do not come into force on Royal Assent into force on a date appointed by regulations will ensure that the necessary regulations and guidance are in place, and that the timing is appropriate taking account of the interests of the parties affected by the provisions.

Justification for the procedure

27. Regulations made under clause 3(5) are not subject to Parliamentary procedure. This is the usual position for commencement regulations made by the Secretary of State and is considered to be appropriate.

Clause 3(6)

Power conferred on: the Department for Communities in Northern Ireland

Power exercised by: Order made by statutory rule

Assembly Procedure: None

Context and Purpose

28. Clause 3 makes provision for the coming into force of the Bill. Subsection (4) sets out which provisions come into force on the day on which the Act is passed. Subsection (6) then provides that other provisions set out in clause 2 of the Bill come into force on the day or days appointed by order made by the Department for Communities in Northern Ireland.

Justification for taking the power

29. Bringing those provisions of clause 2 of the Bill which do not come into force on Royal Assent into force on a date appointed by order will ensure that the necessary regulations and guidance are in place, and that the timing is appropriate taking account of the interests of the parties affected by the provisions.

Justification for the procedure

30. Orders made under clause 3(6) are not subject to Assembly procedure. This is the usual position for commencement orders made by the Department for Communities in Northern Ireland and is considered to be appropriate.

Clause 3(7)

Power conferred on: the Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

31. Clause 3(7) provides that regulations may make transitional provision or savings in connection with the commencement of any provision in clause 1 of this Bill.

Justification for taking the power

32. By way of an example of where we think this power may be required, pension schemes are legally required to equalise pensions for inequalities resulting from Guaranteed Minimum Pensions, and are already able to do this via the conversion methodology set out in the Pension Schemes Act 1993. It is therefore possible that some pension schemes may be in the process of carrying out a conversion exercise using the provisions of the 1993 Act when the amendments to the 1993 Act made in this Bill come into force. Clause 3(7) will enable regulations to provide for schemes in this position by allowing saving or transitional arrangements to be put into place.

Justification for the procedure

33. In common with the commencement provisions, the regulation-making power in clause 3(7) will not be subject to Parliamentary procedure. This is considered appropriate because the provisions to which it relates will have been fully debated as part of the Bill. Regulations will relate to the implementation of the commencement of provisions in the Bill which have not already been brought into force, and will be therefore largely operational in nature.

Clause 3(8)

Power conferred on: the Department for Communities in Northern Ireland

Power exercised by: Order made by statutory rule

Assembly Procedure: None

Context and Purpose

34. Clause 3(8) provides that transitional provision or savings in connection with the commencement of any provision in clause 2 of this Bill may be made by order.

Justification for taking the power

35. By way of an example of where we think this power may be required, pension schemes are legally required to equalise pensions for inequalities resulting from Guaranteed Minimum Pensions, and are already able to do this via the conversion methodology set out in the Pension Schemes (Northern Ireland) Act 1993. It is therefore possible that some pension schemes may be in the process of carrying out a conversion exercise using the provisions of the 1993 (Northern Ireland) Act when the amendments to that Act made in this Bill come into force.

Clause 3(8) will enable provision to be made by order for schemes in this position by allowing saving or transitional arrangements to be put into place.

Justification for the procedure

36. In common with the commencement provisions, the order-making power in clause 3(8) will not be subject to Assembly procedure. This is considered appropriate because the provisions to which it relates will have been fully debated as part of the Bill. An order will relate to the implementation of the commencement of provisions in the Bill which have not already been brought into force, and will be therefore largely operational in nature.

Department Name: Department for Work and Pensions
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