

PENSION SCHEMES (CONVERSION OF GUARANTEED MINIMUM PENSIONS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill as brought from the House of Commons on 28 February 2022 (HL Bill 122).

- These Explanatory Notes have been prepared by the Department for Work and Pensions with the consent of Baroness Redfern, the Peer in Charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill will amend provisions in the Pension Schemes Act 1993, the Pension Schemes (Northern Ireland) Act 1993, the Pensions Act 2007 and the Pensions Act (Northern Ireland) 2008 which allow occupational pension schemes to convert Guaranteed Minimum Pension (GMP) benefits into other scheme benefits. The amendments will simplify and clarify how these provisions operate.

Policy background

- 2 The State Pension used to be made up of two parts: the flat rate basic State Pension and the earnings-related additional State Pension. However, many employees were already members of pension schemes provided by their employer. Therefore, between 6 April 1978 and 5 April 1997, employers sponsoring salary-related occupational pension schemes could contract out their employees from the Additional State Pension through membership of the employer's scheme, and both they and the scheme would pay lower National Insurance contributions, provided the scheme took on the responsibility for paying a GMP, from age 60 for a woman or 65 for a man. On reaching this age, members would generally have built up a GMP of at least a broadly similar amount to the Additional State Pension to which they would otherwise have been entitled, had they stayed in the State system. The primary legislation which makes provision for GMPs is the Pension Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993. Although the GMP rules were abolished for contracted-out service after 5 April 1997 past accruals remain subject to them.
- 3 The Pensions Act 2007 amended the Pension Schemes Act 1993 to introduce provisions enabling schemes to convert members' rights to a GMP to other scheme benefits. The intention was to enable a scheme to adopt a unified and streamlined benefit structure, subject to certain safeguards to protect the members' interests. The Pensions Act (Northern Ireland) 2008 made the same amendments to the Pension Schemes (Northern Ireland) Act 1993.
- 4 The Pension Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993 require occupational pension schemes to calculate and pay GMPs differently depending on a person's sex. A woman's GMP accrues at a greater rate than that of a man in recognition that, at the time, a woman's working life for State pension purposes was five years shorter than that of a man. As a result, where a woman and a man have an identical work history, the woman's overall GMP will be greater than that of the man.
- 5 A woman is also entitled to receive her GMP at an earlier age (age 60) than a man is entitled to receive his (age 65) creating further differences between GMPs payable to men and women. This is a result of indexation and revaluation requirements - the requirement that GMPs are increased annually to protect the value of a member's pension from being eroded by the effects of inflation, when in payment (indexation) or if the member has not yet retired but is no longer an active member of the scheme (revaluation). Indexation and revaluation rates are different. Because their GMP ages differ, a woman will be entitled to indexation on a GMP in payment in periods during which a man of the same age is entitled to revaluation on a GMP that has not yet been put into payment. As a result of different rates of indexation or revaluation applying at different times, a woman's GMP will typically start out as higher than that for a comparable man, but the value of the man's GMP may overtake that of the woman's over time.
- 6 These differences create inequalities in the amount of pension income received by both men and women who have GMPs depending on individuals' ages and circumstances. However, as provided in the Equality Act 2010, pension schemes are required to pay equal pensions to men and women for accruals from 17 May 1990.

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- 7 Schemes therefore need to correct for inequalities in peoples' pension income caused by GMPs accrued from this date.
- 8 In November 2016 the then Government consulted on a methodology for equalising pensions for the effect of GMPs by converting these benefits using the conversion legislation in the Pension Schemes Act 1993. GMPs can be equalised and converted into other benefits using a process involving valuation, equalisation and conversion.
- 9 In the responses to the Government consultation concerns were expressed by the pensions industry that the operation of certain provisions of the conversion legislation in the Pension Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993 was unclear and should be amended to make it easier to use. This would make it easier for schemes to equalise for the unequal effect of GMPs using the Government's proposed methodology.
- 10 In particular, the pension industry has expressed concern that the existing conversion legislation:
 - a. Is unclear as to how conversion applies to survivor benefits (the element of a GMP which can be inherited by the member's widow or widower or surviving civil partner)
 - b. Does not provide for circumstances in which the scheme's sponsoring employer no longer exists and therefore cannot consent to a proposed conversion exercise
 - c. Requires schemes to notify HMRC that they have carried out a conversion exercise, even though the introduction of the new State Pension means that HMRC do not need to be informed about changes to GMPs.
- 11 The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill therefore amends the GMP conversion provisions in the Pension Schemes Act 1993, the Pension Schemes (Northern Ireland) Act 1993, the Pensions Act 2007 and the Pensions Act (Northern Ireland) 2008, to clarify the legislation and make it easier to use.
- 12 The measures will:
 - a. Clarify that the legislation applies to survivors as well as earners.
 - b. Provide for a power to set out in regulations the conditions that must be met in relation to survivors' benefits.
 - c. Provide for a power to set out in regulations detail about who must consent to the conversion.
 - d. Remove the requirement to notify HMRC.

Legal background

- 13 The following notes give a brief overview of significant existing legislation that is referenced by this Bill.
- 14 The Pensions Schemes Act 1993 is a consolidation Act that sets out various provisions in relation to classification of pension schemes, contracting out, early leavers (including preservation, revaluation and the right to take a transfer), the Pensions Ombudsman and other miscellaneous requirements.
- 15 The Pensions Act 2007 makes provision about pensions and other benefits payable to persons in connection with bereavement or by reference to pensionable age.
- 16 The Pension Schemes (Northern Ireland) Act 1993 and the Pension Act (Northern Ireland) 2008 make mirroring provision for Northern Ireland.

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Territorial extent and application

- 17 The provisions of this Act extend to England, Wales, Scotland and Northern Ireland. Although Private Pensions legislation is transferred (i.e. devolved) for Northern Ireland, officials of the Northern Ireland Executive have indicated that they would like the changes to apply to Northern Ireland law. In accordance with the Sewel convention, a legislative consent motion was sought from the Northern Ireland Assembly. The Assembly passed a motion on 24 January 2022.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Conversion of Guaranteed Minimum Pension

- 19 Subsections (1) to (9) of this clause amend the provisions of the Pension Schemes Act 1993 which allow pension schemes to convert GMP benefits into other scheme benefits.
- 20 Subsection (2) amends the definition of “GMP conversion” to clarify that it applies to the conversion of GMP benefits due to either (i) the earner who was alive immediately before the conversion date or (ii) a person who, immediately before the conversion date, was the widow, widower or surviving civil partner of the earner. The amendments in subsection 3(b) and (d) are consequential on this amendment.
- 21 Subsection (3)(a) ensures that any money purchase benefits accrued as a part of the pension benefits are not included in the actuarial calculation to convert GMP benefits into other benefits.
- 22 Subsections 3(c) and (4) remove the detailed requirements in section 24D of the Pension Schemes Act 1993 regarding survivors’ benefits that must be provided by a converted scheme and instead provide a power to prescribe in regulations the conditions which must be met in relation to survivors’ benefits that must be provided by a converted scheme.
- 23 Subsection (5) amends section 24E of the Pension Schemes Act 1993. Section 24E requires that the consent of the employer in relation to a scheme must be obtained before the scheme can undertake the GMP conversion process. The amendment replaces this requirement with a power to prescribe in regulations conditions that must be met by a person, if any, who must consent before conversion can take place. Subsection (5) also removes the requirement in section 24E for HMRC to be notified of a conversion.
- 24 The amendments in subsections (6) to (9) and (11) and (12) are consequential on the amendments referred to above.
- 25 Subsection (10) amends section 14 of the Pensions Act 2007 (conversion of GMPs) in consequence of the amendments referred to above.

Clause 2: Conversion of Guaranteed Minimum Pensions: Northern Ireland

- 26 Clause 2 makes mirroring provision to clause 1 in respect of the Pension Schemes (Northern Ireland) Act 1993 and the Pensions Act (Northern Ireland) 2008.
- 27 Subsections (1) to (9) of this clause amend the provisions of the Pension Schemes (Northern Ireland) Act 1993 which allow pension schemes to convert GMP benefits into other scheme benefits.
- 28 Section (2) amends the definition of “GMP conversion” to clarify that it applies to the conversion of GMP benefits due to either (i) the earner who was alive immediately before the conversion date or (ii) a person who, immediately before the conversion date, was the widow, widower or surviving civil partner of the earner. The amendments in subsection (3)(b) and (d) are consequential on this amendment.
- 29 Subsection (3)(a) ensures that any money purchase benefits accrued as a part of the pension benefits are not included in the actuarial calculation to convert GMP benefits into other benefits.
- 30 Subsections 3(c) and (4) remove the detailed requirements in section 20B of the Pension Schemes (Northern Ireland) Act 1993 regarding survivors’ benefits that must be provided by a converted scheme and instead provide a power to prescribe in regulations the conditions

which must be met in relation to the survivors' benefits that must be provided by a converted scheme.

- 31 Subsection (5) amends section 20E of the Pension Schemes (Northern Ireland) Act 1993. Section 20E requires that the consent of the employer in relation to a scheme must be obtained before the scheme can undertake the GMP conversion process. The amendment replaces this requirement with a power to prescribe in regulations conditions that must be met by a person, if any, who must consent before conversion can take place. Subsection (5) also removes the requirement in section 20E for HMRC to be notified of a conversion.
- 32 The amendments in subsections (6) to (9) are consequential on the amendments referred to above.
- 33 Subsection (10) amends section 12 of the Pensions Act (Northern Ireland) 2008 (conversion of GMPs) in consequence of the amendments referred to above.

Clause 3: Extent, commencement and short title

- 34 Clause 3 sets out the extent of the Bill, and makes provision for the coming into force of the Bill.
- 35 Subsection (1) provides that clause 1 of the Bill extends to England, Wales and Scotland only.
- 36 Subsection (2) provides that clause 2 of the Bill extends to Northern Ireland only.
- 37 Subsection provides that clause 3 of the Bill comes into force on Royal Assent, together with the provisions in clauses 1 and 2 in as far as they make provision for the purposes of making regulations under the Pension Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993.
- 38 Subsection (5) provides a power for the Secretary of State to appoint in regulations the commencement date or dates of clause 1 for all other purposes.
- 39 Subsection (6) provides a power for the Department for Communities in Northern Ireland to appoint by order the commencement date or dates of clause 2 for all other purposes.
- 40 Subsection (7) provides a power for the Secretary of State to prescribe in regulations any savings or transitional provisions in connection with the coming into force of clause 1, for example to provide for schemes which are in the process of carrying out a GMP conversion exercise when clause 1 comes into effect.
- 41 Subsection (8) provides a power for the Department for Communities in Northern Ireland to appoint by order any savings or transitional provisions in connection with the coming into force of clause 2, for example to provide for schemes which are in the process of carrying out a GMP conversion exercise when clause 2 comes into effect.
- 42 Subsection (11) states that the Bill may be cited as the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022.

Commencement

- 43 Clause 3 of the Bill comes into force on Royal Assent.
- 44 Clause 1 comes into effect on Royal Assent in so far as it makes provision for the purposes of making regulations under the Pension Schemes Act 1993.
- 45 Other provisions of clause 1 will come into effect on a date specified in regulations.
- 46 Clause 2 comes into effect on Royal Assent in so far as it makes provision for the purposes of making regulations under the Pension Schemes (Northern Ireland) Act 1993.
- 47 Other provisions of clause 2 will come into effect on a date specified by order.

Financial implications of the Bill

- 48 The Bill does not impose any new costs or requirements on occupational pension schemes or their sponsoring employers. Affected occupational pension schemes have known that they need to equalise pensions for the effect of GMP inequalities for many years, and should have been planning accordingly.

Parliamentary approval for financial costs or for charges imposed

- 49 The Bill does not require a money resolution or a ways or means resolution. A money resolution is required where a bill authorizes new charges on the public revenue – broadly speaking new expenditure – and a ways and means resolution is required where a bill authorizes new charges on the people – broadly speaking, new taxation or other similar charges.

Compatibility with the European Convention on Human Rights

- 50 This is a Private Member's Bill and the Government is not required to give a statement of compatibility with the European Convention on Human Rights (ECHR) in accordance with section 19(1)(a) of the Human Rights Act 1998.
- 51 The Department for Work and Pensions has, nevertheless, considered the question of compatibility and has concluded that the Bill is compatible with the European Convention on Human Rights.

Related documents

52 The following documents are relevant to the Bill and can be read at the stated locations:

- The Government's 2016 proposed methodology for equalising pensions for the effect of GMPs: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/572751/consultation-occupational-pension-schemes-draft-regulations-and-related-issues.pdf
- The Government's 2017 response to consultation on their proposed methodology: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/599457/government-response-to-occupational-pension-schemes-regulations-2017-and-related-issues-consultation.pdf
- The Government's 2019 Guidance on converting GMPs for the purposes of equalising for the effect of unequal GMPs: [Guidance on the use of the Guaranteed Minimum Pensions \(GMP\) conversion legislation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/812211/Guidance_on_the_use_of_the_Guaranteed_Minimum_Pensions_GMP_conversion_legislation_-_GOV.UK.pdf)

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
1 [Part Title]							
Clause 1	Yes	Yes	No	Yes	No	No	N/A
Clause 2	No	No	N/A	No	N/A	Yes	Yes, passed 24 January 2022
Clause 3	In part	In part	No	In part	No	In part	Yes, passed 24 January 2022

Subject matter and legislative competence of devolved legislatures

- 53 Private pensions are a reserved matter as regards Wales and Scotland, but are devolved as regards Northern Ireland. It is usual, though, for Northern Ireland legislation about private pensions to track closely provision made for Great Britain. On this occasion, following discussions between the Department for Work and Pensions and the Department for Communities in Northern Ireland, it is proposed that this bill, which would make changes for Great Britain, should also make similar changes for Northern Ireland. In this way, the changes would have effect in Northern Ireland sooner than they would if the Northern Ireland Assembly had to legislate to make those changes. In accordance with the Sewel convention a legislative consent motion was passed by the Northern Ireland Assembly on 24 January 2022 to indicate that it is content for the UK Parliament to pass a law on what is a devolved matter.

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