

These notes relate to the Lords Amendments to the Pension Schemes Bill, as brought from the House of Lords on 5 February 2015 [Bill 166]

PENSION SCHEMES BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Pension Schemes Bill, as brought from the House of Lords on 5 February 2015. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 63, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1 to 3 and 6

5. Lords Amendments 1 to 3 and 6 would make minor changes to ensure drafting consistency between clauses 27 and 37 of the Bill.
6. Clause 27 of the Bill makes provision for regulations to require a scheme providing collective benefits to wind up the whole or part of the scheme. Clause 37 of the Bill makes provision for regulations to impose a duty on managers of non-trust based schemes to act in the best interests of the members when taking certain decisions.
7. Both provisions make reference to different types of obligations that may apply in relation to the scheme, including those that are part of the scheme, i.e. provisions of the scheme, and those contained in legislation that applies to the scheme. These amendments would ensure descriptive consistency across the provisions in relation to those different types of obligations.

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Lords Amendments 4 and 5

8. Powers in Part 2 of the Bill may require trustees or managers of schemes providing collective benefits to have policies in relation to a number of matters. These include the factors used to calculate member benefits, the calculation of transfer values, and the steps that may be taken to deal with a ‘deficit or surplus’ because the probability of paying the target benefits falls outside the required range.
9. Clause 32 of the Bill makes provision allowing regulations made under Part 2, which require trustees or managers to prepare or obtain any document, to include requirements about the publication of those documents and the sending of copies to a specified person. The specified person could include members and regulators.
10. With collective benefits there is a less direct relationship, compared to money purchase benefits, between member entitlement and the contributions made. To ensure there is transparency about how collective benefit assets are treated in certain circumstances publication of various policies is a key feature to ensure that it is clear, in advance, how members’ assets and benefits will be managed or calculated by a scheme in various situations.
11. Lords Amendments 4 and 5 are needed to ensure that the power to require publication or the sending of copies to specified persons in regulations made under Part 2, also applies to policies specifically. These amendments ensure where the regulations require a scheme to have a policy, they can also require that the policy be published or sent to a specified person.

Lords Amendment 7

12. The change to section 67A of the Pensions Act 1995 in clause 45 of the Bill makes any modification to an occupational pension scheme that would replace a member’s accrued rights with a right to a collective benefit a “protected modification”. Protected modifications can only be made if the member consents.
13. Lords Amendment 7 would make it clear that the provision only applies where the existing accrued right is not a right to a collective benefit.

Lords Amendments 8, 9, 59 and 60

14. Lords Amendments 8 and 9, 59 and 60 would add amendments that are consequential on the Pensions Act 2014.
15. In the course of checking through the changes made as a result of this Bill, omissions in the Pensions Act 2014 came to light. The amendments needed all relate to overriding legislation. Where legislation overrides conflicting provision in the scheme rules there are circumstances where that legislation needs to be treated as if it were part of the scheme rules.

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16. These amendments would ensure that overriding requirements made under regulations under Schedule 17 and Schedule 18 to the Pensions Act 2014 will be treated as part of the scheme rules for the purposes of the Pensions Act 2004 and subsisting rights provisions in the Pensions Act 1995.

Lords Amendments 10 and 66 to 72

17. Lords Amendment 66 would amend the definition of “pensions guidance” in new section 333A of the Financial Services and Markets Act 2000 to extend pensions guidance to survivors of members who have flexible benefits, rather than just members of pension schemes. This is needed because in some circumstances, pension schemes may provide flexible benefits to survivors of members of the scheme, other than insurance-based products or cash lump sums, without their becoming members of the scheme. Lords Amendments 10 and 67 to 72 are consequential on the change made by Lords Amendment 66.

Lords Amendments 11, 12, 15, 16 and 43

18. Lords Amendments 11 and 15 would ensure consistency with the use of terminology elsewhere in pensions legislation.
19. Lords Amendments 12 and 16 would ensure that the requirement to check that advice has been received applies before a scheme pays the new Uncrystallised Funds Pension Lump Sum or UFPLS, which was created by the Taxation of Pensions Act 2014, but only where an UFPLS is paid from benefits that are safeguarded.
20. These amendments only require that advice be taken before taking an Uncrystallised Funds Pension Lump Sum in respect of safeguarded benefits, and it is expected that the circumstances where this will be possible will be very limited. It does not require that advice be taken on Uncrystallised Funds Pension Lump Sums in any other circumstances.
21. Lords Amendment 43 would define “Uncrystallised Funds Pension Lump Sum” by reference to paragraph 4A of Schedule 29 to the Finance Act 2004.

Lords Amendments 13, 14, 17, 18 and 50

22. These Lords Amendments relate to clauses 48 and 51, which require schemes to check that appropriate independent advice has been received before safeguarded benefits are taken flexibly.
23. Clause 48(3) gives a power to create exceptions from the requirement to check that advice has been received. In the Bill as brought from the Commons, any regulations that create exceptions would be subject to the negative procedure. Lords Amendments 13 and 50 would keep the negative procedure for regulations that create exceptions for those who have safeguarded benefits below an

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amount specified in the regulations. But regulations creating other kinds of exception would be subject to the affirmative procedure. Lords Amendment 17 (read with Lords Amendment 53) would make equivalent provision for Northern Ireland.

24. Lords Amendment 14 would change the meaning of “appropriate independent advice” for the purposes of clause 48. It defines “appropriate independent advice” as advice that is given by an ‘authorised independent adviser’, and sets out that this means someone who has permission under the Financial Services and Markets Act 2000 to carry out a regulated activity specified in regulations. The amendments retain the power to specify in regulations the nature of the advice as well as the characteristics of the advisor who gives it. Lords Amendment 18 would make corresponding provision for Northern Ireland.

Lords Amendments 19 to 21, 23 to 25, 40 and 41

25. Lords Amendments 19 to 21 and 23 to 25 would amend clauses 55, 56, 60 and 61 to ensure that nominees’ drawdown pensions and successors’ drawdown pensions are treated by those clauses in the same way as a dependant’s drawdown pension. Lords Amendments 40 and 41 would add definitions of those expressions to clause 74.

Lords Amendments 22 and 26

26. Lords Amendment 22 would insert a new clause which makes amendments that are consequential on clauses 55 to 57.
27. Lords Amendment 26 would make corresponding provision for Northern Ireland legislation.

Lords Amendments 27, 28, 29, 34, 35 and 36

28. These Lords Amendments relate to clause 66 and clause 69 of the Bill for Great Britain and Northern Ireland respectively. These clauses introduce restrictions on transfers out of unfunded, defined benefit, public service pension schemes to schemes from which it is possible to acquire a right or entitlement to flexible benefits in Great Britain and Northern Ireland.
29. Specifically, Lords Amendment 27 would ensure that the definition of ‘unfunded public service defined benefit scheme’ applies where it is needed. Lords Amendment 28 would allow the Treasury, and not only the Secretary of State, to exercise the power to prescribe circumstances in which new subsection (2A)(d) of section 95 of the Pension Schemes Act 1993 is to apply. Lords Amendment 29 would ensure that certain regulations that are already in force will apply until new regulations are made under certain powers provided for in clause 66. Lords

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Amendments 34, 35 and 36 would make corresponding provision for Northern Ireland.

Lords Amendments 30, 31 and 32

30. These Lords Amendments would ensure that only schemes which are public service pension schemes within the meaning of section 1 of the Pension Schemes Act 1993 fall within the power introduced in clause 67.

Lords Amendments 33 and 37

31. Lords Amendment 33 and 37 would amend clause 67 for Great Britain and clause 70 for Northern Ireland to ensure consistency with the use of terminology elsewhere in pensions legislation.

Lords Amendments 38, 39 and 42

32. These amendments would make changes to clauses 72, 73 and 74 which deal with the definition of terms used in Part 4 of the Bill. Lords Amendments 38 and 39 would ensure the definitions of flexible benefits and cash balance benefits apply to the benefits provided to a member's survivor as well as to those provided to the member. Lords Amendment 42 would ensure that the definition of "survivor" works for pension schemes that are not occupational pension schemes.

Lords Amendments 44 and 56

33. Lords Amendment 44 would make an amendment to Schedule 5 of the Public Service Pensions Act 2013, to ensure that the pension schemes relating to the Security Service and Secret Intelligence Service are not caught within that Act's definition of "existing scheme" and so forced to close on 1 April 2015.

34. Since the Public Service Pensions Act 2013 was enacted, information has come to light that indicates that those schemes might have been created under section 1 of the Superannuation Act 1972 and so be "existing schemes". It was never intended to reform those schemes by 1 April 2015. This amendment would remove any risk of forced closure and enable reform of those schemes to take place after 1 April 2015.

35. Lords Amendment 56 would make a consequential amendment to the commencement provisions, to bring the new clause inserted by Lords Amendment 44 into force on Royal Assent.

Lords Amendments 45 to 48 and 51 to 54

36. Clause 80 gives the Secretary of State or the Treasury a power to make consequential changes to primary or secondary legislation.

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37. Clause 81 makes provision about the regulation-making powers that have been set out in the Bill and the procedure for exercising those powers.
38. Lords Amendments 45 to 48 and 51 to 54 would enable the regulation making powers contained in the two clauses to be used by the Department for Social Development in Northern Ireland and to be used in relation to Northern Ireland legislation. This would enable the Northern Ireland Department to make consequential amendments and maintain parity with the pensions legislation in Great Britain.
39. Any provisions made by the Department for Social Development in Northern Ireland under clause 80 would be subject to the confirmatory procedure in the Northern Ireland Assembly.

Lords Amendment 49

40. Lords Amendment 49 makes changes to the Parliamentary procedure that applies to certain regulations made under Part 2 of the Bill. Part 2 defines the concept of collective benefits and makes provision for regulation-making powers in relation to them.
41. Regulations made under clause 8(3)(b) and clauses 9 to 11 and 21 of the Bill determine important aspects of the arrangements for "collective benefits". These powers cover matters such as the exclusion of benefits from the definition of collective benefits, the setting of targets in relation to benefits, the factors to be used in the determination of benefits, and the policy for dealing with a 'deficit and surplus' in relation to the target.
42. The effect of Lords Amendment 49 would be to make the regulation making powers in clauses 8(3)(b), 9 to 11 and 21 of the Bill subject to the affirmative procedure, the first time they are used, and subject to the negative procedure for subsequent uses.

Lords Amendments 55, 57 and 58

43. Clause 84 sets out when the different provisions in the Bill will come into force. The clause gives the Secretary of State the power to commence the provisions in Parts 1 to 3 and clauses 75 and 78 of the Bill by regulations, and to specify different dates for different measures as necessary.
44. Subject to one exception the remainder of the clauses in the Bill will come into force either on the day the Bill receives Royal Assent or on 6 April 2015 in order that, where applicable under the provisions of the Bill, people will be able to access their pension savings flexibly from April 2015.
45. Lords Amendments 55, 57 and 58 would ensure that the regulation-making powers in Part 4 of the Bill which relate to pensions flexibilities, come into

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force on Royal Assent so that the relevant regulations can be in place by 6 April 2015.

46. These amendments would also ensure that amendments made to include references to the Bill in the definition of “pensions legislation” in the Pensions Act 2004, come into force on 6 April 2015.

Lords Amendments 61 to 65

47. Lords Amendments 61 to 65 would add consequential amendments relating to Parts 1 and 2 of the Bill.

Lords Amendments 73, 92, 94, 96 and 115

48. Lords Amendments 73, 92, 94, 96 and 115 would make consequential amendments to reflect numbering changes made elsewhere in Schedule 4 to the Bill.

Lords Amendments 74 and 97

49. Lords Amendment 74 would make a consequential amendment to section 24F of the Pension Schemes Act 1993 to change a reference from “guaranteed cash equivalent”, to “cash equivalent” to ensure that the wording is consistent with the amendments made by Schedule 4 to the Bill.
50. Lords Amendment 97 would make a parallel amendment to Northern Ireland legislation.

Lords Amendments 75 and 98

51. Lords Amendment 75 would insert a new limb into new section 93(10) of the Pension Schemes Act 1993 to provide a power to disapply the right to transfer in prescribed circumstances in relation to a member of a prescribed scheme or a member of a scheme of a prescribed description.
52. Lords Amendment 98 would make corresponding provision for Northern Ireland.

Lords Amendments 76 and 99

53. Lords Amendment 76 would insert a new subsection (6A) into section 95 of the Pension Schemes Act 1993. This provision would allow regulations to extend the three month period, which the member has to make an application to take the transfer.
54. Lords Amendment 99 would make corresponding provision for Northern Ireland.

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Lords Amendments 77 and 100

55. The Bill extends the statutory right to transfer. Lords Amendment 77 would make a consequential amendment to section 96 of the Pensions Scheme Act 1993 so that references to “accrued rights” now refer to “transferrable rights” to take account of this change.
56. Lords Amendment 100 would make corresponding provision for Northern Ireland.

Lords Amendments 78 and 101

57. Lords Amendment 78 would insert a new subsection (3B) into section 97 of the Pension Schemes Act 1993. It provides a power for regulations made under section 97(2)(b) to enable a member’s application to take a cash equivalent under section 95 to lapse in circumstances where the cash equivalent has been increased or reduced in accordance with regulations made under section 97(2)(b).
58. Lords Amendment 101 would make corresponding provision for Northern Ireland.

Lords Amendments 79 and 102

59. Lords Amendment 79 would make consequential amendments to section 98(1) of the Pension Schemes Act 1993 to make it clear that a member’s right to take a cash equivalent falls away where the duty of the trustees to carry out the member’s wishes is extinguished because the trustees are not satisfied that the member has taken appropriate independent advice.
60. Lords Amendment 102 would make corresponding provision for Northern Ireland.

Lords Amendments 80 and 103

61. Section 99 of the Pension Schemes Act 1993 specifies that the trustees or managers have six months from the “guarantee date” shown in the statement of entitlement to do what the member applying to take the cash equivalent requires. Lords Amendment 80 would provide that regulations may be made to extend this period in prescribed circumstances.
62. Lords Amendment 103 would make corresponding provision for Northern Ireland.

Lords Amendments 81, 86, 93, 95, 104, 109 and 116

63. Lords Amendments 81, 86, 93 and 95 would ensure that the definitions of “scheme rules” in the Pension Schemes Act 1993 and Pensions Act 2004 work for personal pension schemes.
64. Lords Amendments 104, 109 and 116 would make corresponding provision for Northern Ireland.

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Lords Amendments 82, 83, 105 and 106

65. Paragraph 11 of Schedule 4 to the Bill inserts a new definition of “scheme rules” into the Pension Schemes Act 1993. Lords Amendments 82 and 83 would amend the definition to make it clear that a reference to scheme rules is a reference to those rules except so far as overridden by clause 55 and regulations under clauses 56 and 57.

66. Lords Amendments 105 and 106 would make corresponding provision for Northern Ireland.

Lords Amendments 84, 85, 107 and 108

67. Lords Amendments 84 and 85 would clarify new section 100C of the Pension Schemes Act 1993 by removing any potential overlap between paragraphs (a), (b) and (c) of the definition of “normal pension age”. Lords Amendments 107 and 108 would make corresponding provision for Northern Ireland legislation.

Lords Amendments 87 and 110

68. Lords Amendment 87 would insert a power to allow regulations to disapply the right of pension credit members of prescribed descriptions to transfer their rights to benefit. Lords Amendment 110 would make corresponding provision for Northern Ireland.

Lords Amendments 88 and 111

69. Lords Amendment 88 would permit regulations to be made to extend the three month period which pension credit members have to give a transfer notice under subsection (2)(b) of section 101G of the Pension Schemes Act 1993, in prescribed circumstances. Lords Amendment 111 would make corresponding provision for Northern Ireland.

Lords Amendments 89 and 112

70. Lords Amendment 89 would add a new limb to the regulation-making power in section 101J(1) of the Pension Schemes Act 1993 to provide a power to extend the time that the trustees have to comply with a transfer notice given by a pension credit member. Lords Amendment 112 would make corresponding provision for Northern Ireland.

Lords Amendments 90, 91, 113 and 114

71. Lords Amendments 90 and 91 would make consequential amendments to section 101M of the Pension Schemes Act 1993. These amendments would make it clear that where only a part of a member’s pension credit rights has been transferred, the trustees are discharged from their obligations to provide pension credit

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benefit only in relation to the rights transferred.

72. Lords Amendments 113 and 114 would make corresponding provision for Northern Ireland.

Lords Amendment 117

73. Lords Amendment 117 would make regulations made under new section 18A of the Judicial Pensions and Retirement Act 1993 subject to the affirmative resolution procedure.