

PENSION SCHEMES (CONVERSION OF GUARANTEED MINIMUM PENSIONS) BILL

EUROPEAN CONVENTION ON HUMAN RIGHTS MEMORANDUM BY THE DEPARTMENT FOR WORK AND PENSIONS

This memorandum has been prepared by the Department for Work and Pensions to assist the Joint Committee on Human Rights with its scrutiny of any human rights implications of the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill.

As this is a Private Member's Bill the Minister is not required to give a statement of compatibility with the Human Rights Act 1998, in accordance with section 19(1)(a) of that Act. The Department has nevertheless considered the question of compatibility and concluded that the provisions of the Bill are compatible with rights under the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

Description of clauses and discussion of engagement of Convention rights

Clause 1: Conversion of Guaranteed Minimum Pensions

1. Subsections (1) to (9) of this clause amend the provisions of the Pension Schemes Act 1993 which allow pension schemes to convert Guaranteed Minimum Pension (GMP) benefits into other scheme benefits.
2. Subsection (2) amends the definition of "GMP conversion" to clarify that it applies to the conversion of GMP benefits due to either (i) an earner who is 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 intention is not to change the application of these provisions which were held by Mr Justice Morgan in the Lloyds Banking Group Pensions Trustees Ltd case [2018] EWHC 2839 (Ch) to enable conversion of GMP benefits of both an earner and of the survivor of an earner (including where the survivor is in receipt of benefits under the scheme at the time of the conversion). As these amendments do not alter the operation of the legislation they do not engage rights under the Convention.
3. 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. This re-states the current position as provided for in section 24B(4) and so does not engage rights under the Convention.
4. 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. It was apparent from the work DWP carried out with a pensions industry working group that there is confusion as to the operation of the current provisions. The intention is therefore to consult on provisions to be included in regulations. This will ensure the Department fully understands the impacts of the proposed approach, including any equality issues and any issues relating to Convention rights. Therefore whilst subsections 3(c) and (4) do arguably engage rights under Article 1 of Protocol 1 of the Convention (protection of property) the Department does not consider the provisions interfere with these rights for the following reasons.

- i. Section 24B(2) which is not being amended requires that post-conversion benefits must be actuarially at least equivalent to pre-conversion benefits. So conversion cannot result in a decrease in the actuarial value of a member's pension.
 - ii. The current requirement in section 24D, that a converted scheme must provide survivor's benefits, is retained.
 - iii. The Department intends that the draft regulations which will contain the detail of any requirements relating to the survivor's benefits that must be provided will be consulted on to ensure that any equality and property rights issues are taken into account, and that the power will be exercised in a manner which is compatible with its equality and Convention obligations.
5. 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. This is because it is not clear how section 24E is intended to operate in certain cases such as where there is no longer an employer in relation to the scheme or there has been a change of employer in relation to the scheme. The intention is to consult on regulations which will take account of these more complicated scenarios so schemes are clear what they are meant to do by way of obtaining employer's consent in such cases. We do not consider this provision engages Convention rights.
 6. Subsection (5) also removes the requirement in section 24E for HMRC to be notified of a conversion. HMRC no longer require this notification. This provision does not engage Convention rights.
 7. The amendments in subsections (6) to (12) are consequential on the amendments referred to above and do not engage Convention rights.

Clause 2: Conversion of Guaranteed Minimum Pensions: Northern Ireland

8. Clause 2 makes equivalent provision to that described above in relation to Northern Ireland.

Clause 3: Extent, commencement and short title

9. Subsections (7) and (8) of clause 3 contain powers to make transitional or saving provision. The intention is to use these powers to ensure the amendments in the Bill do not affect schemes which have already used the conversion legislation or are in the process of using the conversion legislation. To the extent that this engages Convention rights the intention is that this will protect them.