

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011 [HL Bill 102]*

## **PENSIONS BILL [HL]**

---

# **EXPLANATORY NOTES ON COMMONS AMENDMENTS**

### **INTRODUCTION**

1. These explanatory notes relate to the Commons Amendments to the Pensions Bill [HL], as brought from the House of Commons on 19th October 2011. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Commons Amendments and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Commons Amendments themselves, refer to Bill 183, the Bill as first printed for the Commons.
3. These notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Commons Amendments.
4. All the Commons Amendments were in the name of the Minister.

### **COMMENTARY ON COMMONS AMENDMENTS**

#### ***Commons Amendments 1 and 2***

5. Commons Amendment 1 would modify the timetable provided at subsection (5) of clause 1 for increasing the state pension age for men and women from 65 to 66.
6. The effect of the amendments would be to limit the increase in state pension age for women, relative to the legislated timetable, to 18 months, and delay completion of the transition to 66 by six months, to October 2020.
7. Commons Amendment 2 is consequential on the revised timetable introduced by Amendment 1 and would provide that people born after 5th October 1954 (but before 6 April 1968) will reach state pension age on their 66th birthday.

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011 [HL Bill 102]*

***Commons Amendment 3***

8. Commons Amendment 3 would ensure that in continuity of scheme membership cases under section 2 of the Pensions Act 2008, automatic re-enrolment must take effect from the day after the day on which a jobholder ceases to be an active member of a qualifying scheme or the scheme ceases to qualify. Alternatively, the amendment would allow for a period of time for re-enrolment to be prescribed if the Secretary of State considered it appropriate to do so.

***Commons Amendments 4 and 8***

9. Commons Amendments 4 and 8 would ensure that there is an automatic re-enrolment obligation in respect of all jobholders who lose pension scheme membership as a result of an act or omission by their employer, or third party such as a pension scheme manager, not just those aged between 22 and state pension age.

***Commons Amendments 5 and 6***

10. Given that re-enrolment of a person aged under 22 would occur before the jobholder's automatic enrolment date, Commons Amendments 5 and 6 would remove the references in sections 5 and 6 of the Pensions Act 2008 to re-enrolment having to occur "after the automatic enrolment date".

11. Commons Amendment 6 would remove an unnecessary reference to a scheme ceasing to be a qualifying one in section 6(4) of the Pensions Act 2008.

***Commons Amendment 7***

12. Commons Amendment 7 would ensure that where an employer induces a jobholder to leave or opt out of a scheme, the employer must arrange for the jobholder to be enrolled in a replacement scheme without leaving a gap, in order to avoid possible compliance action for breach of section 54 of the Pensions Act 2008. In practice this would ensure that the jobholder has continuous pension saving. Alternatively, the amendment would allow for a period of time to be prescribed if the Secretary of State considered it appropriate to do so.

***Commons Amendment 9***

13. Commons Amendment 9 would repeal section 5(5) of the Pensions Act 2008 (the Act) because the postponement provisions in section 4 of the Act are being replaced in the Bill. Clause 6(3)(a) of the Bill omits section 6(6) of the Act. Section 5(5) of the Act contains a reference to section 6(6) of the Act. The repeal of section 6(6) of the Act would mean that section 5(5) of the Act is redundant and is therefore repealed by this amendment.

***Commons Amendment 10***

14. Commons Amendment 10 would correct a cross reference in clause 8 to make clear that the annual review applies to the earnings trigger for automatic re-enrolment not to the minimum age for jobholder status.

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011 [HL Bill 102]*

***Commons Amendment 11***

15. Commons Amendment 11 would extend the existing reserve power in the Pensions Act 2008 to establish a charge cap for qualifying pension schemes used to fulfil an employer's duties under Part 1 of the Pensions Act 2008, so that it would apply to charges made to deferred members as well as to charges made to active members. It would also clarify what charges are subject to the power.

***Commons Amendment 12***

16. Commons Amendment 12 would amend sections 22 and 23 of the Pensions Act 2008 which provide for the Test Scheme Standard. This is the quality requirement for defined benefit schemes with members in employments that are not contracted out of the State Second Pension Scheme. The Test Scheme Standard uses a benchmark known as the Test Scheme.

17. Commons Amendment 12 would enable provision to be made in regulations for the detail of the Test Scheme. This is to accommodate a type of defined benefits scheme in which a member accrues a sum of money which is to be used to purchase an annuity from a provider or to secure a pension within the scheme.

***Commons Amendments 13 and 14***

18. The new clause inserted after clause 10 would introduce further regulation-making powers into section 28 of the Pensions Act 2008, as amended by clause 10, so that the certification requirements can be applied to schemes with their main administration in a Member State of the European Economic Area (EEA) other than the United Kingdom.

19. Under section 28 of the Pensions Act 2008, as amended by clause 10, employers will be able to certify that their money purchase or personal pension scheme, or the money purchase element of their hybrid scheme, meets the relevant quality requirement or a prescribed alternative requirement.

20. Commons Amendment 13 would make a consequential amendment to the title of section 28 of the Pensions Act 2008 to reflect that certification now applies also to EEA schemes.

***Commons Amendments 15 and 16***

21. Commons Amendments 15 and 16 would amend section 30(6)(b) of the Pensions Act 2008 to ensure that where, under section 30(5) of that Act, an employer makes arrangements to enrol a jobholder into a personal pension scheme, the jobholder is not required to make a back-payment of contributions.

***Commons Amendment 17***

22. Commons Amendment 17 would insert section 292A into the Pensions Act 2004 which would provide for a power to make regulations in connection with the duties imposed on employers by Part 1 of the Pensions Act 2008.

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011 [HL Bill 102]*

23. The regulations may provide that those duties do not apply to a person's employment of an individual in relation to whom the person is a European employer, as defined in the Occupational Pension Schemes (Cross-border Activities) Regulations 2005 (S.I. 2005/3381), or of someone whom the person reasonably believes is such an individual.

***Commons Amendments 18 to 23***

24. Commons Amendment 18 would amend clause 15 to provide for a new method of calculating revaluation additions by inserting a new paragraph 2A into Schedule 3 to the Pension Schemes Act 1993. The new method is the same as the existing statutory method for final salary schemes, but allows schemes to continue to calculate the revaluation addition as if the annual revaluation order was still calculated by reference to the Retail Prices Index (RPI). This means schemes that continue to mirror the statutory revaluation method but use RPI as the inflation measure would not also have to consider the statutory revaluation addition calculated using the Consumer Prices Index (CPI). This new method is only available where the scheme rules require revaluation in this way.

25. Commons Amendments 19 to 23 would amend clause 15 to:

- a. provide for the exception to section 51(2) of the Pensions Act 1995 to apply where the scheme has paid RPI based increases continuously from the start of 2011 rather than where the scheme rules require such increases; this means that schemes continuing to use RPI as the inflation measure for increases to pensions in payment will not have to use the statutory indexation (which uses CPI) in any year when it is higher (that would be a CPI underpin); and
- b. extend section 51 to cover situations where members transfer from a scheme to which the exception to section 51(2) applies to another scheme that pays RPI based increases.

***Commons Amendment 24***

26. Commons Amendment 24 would clarify the operation of clause 17 in relation to cash balance schemes which include periods before 6th April 1997 during which the scheme was contracted out of the state additional pension scheme in relation to an earner's employment. By contracting out, instead of building up entitlement to the state additional pension (previously known as the State Earnings-Related Pension Scheme (SERPS) and now known as the State Second Pension), an individual transfers that pension liability to a private pension arrangement.

27. This is a technical amendment which would ensure that the relaxed indexation requirement introduced by clause 17 does apply to schemes which were contracted out on a guaranteed minimum pension basis prior to 6th April 1997. It is not necessary to exclude such schemes from this relaxed requirement, because there are separate indexation requirements for guaranteed minimum pensions.

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011 [HL Bill 102]*

28. The indexation requirements will continue to apply to schemes which are, or were, contracted out on a defined benefit basis after 6th April 1997.

***Commons Amendments 25 to 28***

29. Commons Amendments 25 to 27 would ensure that the indexation requirements are not relaxed for career average schemes or schemes which promise a guaranteed rate of conversion of the accrued ‘pot’ to a rate of pension. But Commons Amendment 28 would ensure that pension commencement lump sums and schemes allowing for survivors’ benefits of a set percentage of the member’s benefit are not excluded from the definition of cash balance schemes for this easement.

***Commons Amendments 29 to 34***

30. Commons Amendments 29 to 33 would insert a series of new clauses, which will form a separate Part in the Bill. They relate to the definition of “money purchase benefits” in legislation relating to pensions. These amendments have become necessary as a consequence of the judgment of the Supreme Court in *Houldsworth and another v Bridge Trustees & Secretary of State for Work and Pensions*.

31. The new clause inserted by Commons Amendment 29 would amend the definition of “money purchase benefits” in the Pension Schemes Act 1993 and equivalent definitions in the Pensions Act 2008 and the Building Societies Act 1986. The effect in each case would be that, in order for a benefit to qualify as a money purchase benefit, the amount or rate of the benefit must be calculated only by reference to assets which must necessarily suffice to provide the benefit. If any other factor such as a guaranteed investment return or other guarantee of the amount were used at any time to calculate the benefit, it is not a money purchase benefit. The aim is to secure that money purchase benefits cannot develop a funding deficit. In the case of a scheme pension in payment, the pension must be backed by an annuity contract or insurance policy to be a money purchase benefit. Deductions permitted by statute, such as a lien in respect of loss resulting from a criminal or negligent act, would not affect the classification of the benefit.

32. Subsections (7) and (8) of the new clause would give retrospective effect to the new definitions in the Pension Schemes Act 1993 and the Pensions Act 2008.

33. Commons Amendment 30 would provide a power to make transitional provision. This would include power to disapply the new definition, and power to modify the application of other legislation in cases where the amended definition does apply.

34. Commons Amendment 31 would provide a power to make consequential or supplementary provision (including provision amending other legislation). Subsection (2) of the clause would extend the power in section 307 of the Pensions Act 2004 so as to allow the provisions of that Act relating to scheme funding to be modified in relation to hybrid schemes, multi-employer schemes or partnerships. This power would allow provision to be

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011 [HL Bill 102]*

made for hybrid schemes which may provide both money purchase and defined benefits, so that regulatory requirements could be separately applied to the different parts of the scheme.

35. Commons Amendment 32 would provide for a power to make further amendments to the definition of money purchase benefits if it should be necessary to do so in the future.

36. The new clause inserted by Commons Amendment 33 would require affirmative procedure for regulations made under the new Part which amend primary legislation and negative resolution procedure for the rest. Regulations made under the new Part would also be able to make retrospective provision (including retrospective amendments to other legislation).

37. The new clause inserted by Commons Amendment 29 would come into force by order under clause 32 of the Bill. The other new clauses would come into force on Royal Assent by virtue of Commons Amendment 34.

## **FINANCIAL EFFECTS OF THE COMMONS AMENDMENTS**

38. The modification of the timetable for increasing state pension age to 66 (Amendments 1 and 2) is expected to reduce the net total savings to Government in expenditure on pensions-related and working age benefits of £31.7 billion by £1.1 billion (in 2011/12 price terms) over the period 2019/20 to 2020/21.

**PENSIONS BILL [HL]**

**EXPLANATORY NOTES**

**ON COMMONS AMENDMENTS**

*These notes relate to the Commons Amendments to the Pensions Bill [HL]  
as brought from the House of Commons on 19th October 2011  
[HL Bill 102]*

---

*Ordered to be Printed,  
19th October 2011*

---

© Parliamentary copyright House of Lords 2011

*Applications for reproduction should be made in writing to the Information Policy Team,  
Office of Public Sector Information, Kew, Richmond, Surrey, TW9 4DU*

LONDON: THE STATIONERY OFFICE

Printed in the United Kingdom by  
The Stationery Office Limited

£x.00