These notes refer to the Pensions Bill
as brought from the House of Commons on 30th October 2013 [HL Bill 55]

PENSIONS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Pensions Bill as brought from the House of Commons on 30th October 2013. They have been prepared by the Department for Work and Pensions 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.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require explanation or comment, none is given.

BACKGROUND

3. The Pensions Bill contains significant reforms to both the state pension system and bereavement benefits. It amends the timetable for increasing pensionable age to 67 and introduces a framework for considering future increases in pensionable age. It also contains a number of measures relating to private pensions, including a power to provide for a system of automatic transfers of a person's accrued rights to benefits under a pension scheme to another scheme of which that person is an active member.

4. For ease of reference, please note the following abbreviations for existing pieces of legislation used in these notes:

- SSCBA 1992 – Social Security Contributions and Benefits Act 1992
- SSAA 1992 – Social Security Administration Act 1992
- PSA 1993 – Pension Schemes Act 1993
- PA 1995 – Pensions Act 1995
- SPCA 2002- State Pension Credit Act 2002

- PA 2004 – Pensions Act 2004
- PA 2007 – Pensions Act 2007
- PA 2008 – Pensions Act 2008
- PA 2011 – Pensions Act 2011

State pension reform

5. In April 2011, the Government published a Green Paper, *A state pension for the 21st century (Cm 8053)*, which consulted on two broad options for reforming the state pension system for future pensioners. The White Paper which followed in January 2013, *The single-tier pension: a simple foundation for saving (Cm 8528)*, outlined how the Government intends to reform the state pension. Those proposals form the basis for the measures in Part 1 of the Bill.

Pensionable age

6. The PA 1995 legislated to equalise women's pensionable age with that of men between 2010 and 2020 by gradually increasing women's pensionable age from 60 to 65

7. The PA 2007 then made provision to increase the pensionable age for all to 66 between 2024 and 2026, to 67 between 2034 and 2036 and to 68 between 2044 and 2046.

8. The PA 2011 accelerated the rate at which women's pensionable age equalised with men's, such that this process will complete in 2018. It also brought forward the period in which pensionable age would increase from 65 to 66 to between 2018 and 2020. This reflected increases in life expectancy at pensionable age since the original timetable to increase pensionable age was set in 2007. On 29th November 2011, the Chancellor of the Exchequer announced the Government's intention to legislate to bring forward the increase to 67.

9. In addition to consulting on reform of the state pension, *A state pension for the 21st century* also sought views on options for managing future increases to pensionable age in response to ongoing increases in life expectancy projections. Following this, *The single-tier pension: a simple foundation for saving,* published in January 2013, set out a proposed framework for considering future increases in pensionable age.

Bereavement benefits

10. A separate public consultation was undertaken regarding bereavement benefits with the publication of *Bereavement Benefit for the 21st Century (Cm 8221)* in December 2011. The Government published its response to the consultation in July 2012 and this outlined how the range of benefits paid on bereavement would be reformed.

State pension credit

11. The abolition of the assessed income period (AIP) in state pension credit cases from April 2016 was announced in the 2013 Spending Round. This will apply to new customers and there is a power to apply it to existing customers with a 5-year AIP already in place at April 2016. From this date any change in retirement provision for those customers should be reported when it occurs, triggering an immediate review and change of the benefit award where appropriate.

Automatic transfers

12. On 15th December 2011, the Government published a consultation on options for consolidating small pension pots. It outlined high-level policy proposals in its response, published on 17th July 2012, and published further details of the proposals in *Automatic transfers: consolidating pension savings (Cm 8605)* which was published on 23rd April 2013.

SUMMARY

13. The legislation creates a new state pension for people reaching pensionable age after implementation on 6th April 2016. A person entitled to the full state pension will be paid a single weekly rate to be set out in regulations. This replaces the current state pension, which has two components: a basic state pension and an additional state pension. The amount paid to an individual from each of these components is based on complicated calculations regarding the amount of National Insurance contributions they have paid, been treated as having paid, or with which they have been credited. The Bill contains special provisions for people who have made National Insurance contributions before implementation to ensure that all their National Insurance contributions are taken into account (subject to a minimum qualifying years requirement).

14. The Bill also makes provision for a number of changes resulting from the introduction of the new state pension. These include the abolition of contracting-out for salary-related occupational pension schemes and the abolition of the savings credit element of state pension credit for those who reach pensionable age on or after the introduction of the new scheme.

15. The Bill also amends the timetable for increasing pensionable age from 66 to 67 that was originally set out in the PA 2007, bringing it forward by eight years to begin in 2026 and end in 2028.

16. The Bill includes measures to introduce a framework of periodic reviews to consider whether the pensionable age should be changed. The review will be informed by reports from the Government Actuary's Department about life expectancy and from an appointed panel on wider factors. These wider factors will be specified by the Secretary of State at the time.

17. In addition, the Bill contains measures to reform benefits for bereavement by introducing a new bereavement support payment. This will replace the existing range of

benefits for persons whose spouse or civil partner dies on or after the date it is introduced. The new benefit will provide support for the period immediately following bereavement.

18. The Bill contains provision to abolish the assessed income period (AIP) in state pension credit claims from April 2016. The removal of the AIP will apply to new customers and there is a power to apply it to existing customers with a 5-year AIP already in place at April 2016 (the latter will be gradually phased out in the first few years).

19. The Bill contains a duty for the Secretary of State to provide for a system of automatic transfers of a person's accrued rights to benefits under a pension scheme, to another scheme of which that person is an active member. There is also a separate provision for the withdrawal of the existing power to make refunds of contributions ("short service refunds") to members of money purchase occupational pension schemes who terminate their membership before two years have elapsed since they joined the scheme.

20. There is provision in the Bill to regulate to ban the practice of providing incentives to encourage individuals to transfer a cash equivalent value of their accrued rights from a salary-related occupational pension scheme to an alternative arrangement.

21. The Bill also contains a number of measures relating to private pension legislation, including a power for the Secretary of State to set minimum quality standards for workplace pension schemes and amendments to the PA 2008 relating to automatic enrolment. There are also technical amendments to the PA 1995 and the PA 2004 which are designed to improve operational processes for the Pensions Regulator.

22. Provision is also included for a new statutory objective for the Pensions Regulator which would require it to consider minimising any impact on the sustainable growth of sponsoring employers when exercising its functions relating to scheme funding.

23. The Bill also includes measures to re-structure the Pension Protection Fund's (PPF) compensation cap.

OVERVIEW OF THE STRUCTURE OF THE BILL

24. The Bill is in six parts:

Part 1 – State pension

25. This Part of the Bill contains provisions to reform the state pension system and introduce a new state pension. It replaces the current two-component system with a single-component flat-rate pension. It includes transitional provisions for:

- people who have paid, been treated as having paid or been credited with National Insurance contributions in respect of tax years before the introduction of the new state pension;

- inheriting entitlement from a late spouse or civil partner who had made National Insurance contributions in respect of tax years before the introduction of the new state pension;

- women who, before 1977, elected to pay a reduced rate of National Insurance contributions; and

- sharing a pension with a former spouse or civil partner upon divorce.

26. Provisions are made to allow people to postpone or suspend their entitlement to a state pension. It also contains provisions for a number of changes arising from the introduction of the new state pension, including the abolition of contracting-out for salary-related occupational pension schemes and the abolition of the savings credit element of state pension credit for those people who reach pensionable age on or after the introduction of the new state pension.

Part 2 – Pensionable age

27. This Part contains two measures relating to pensionable age. The first amends the PA 1995 to begin the increase of pensionable age from 66 to 67 eight years earlier. The increase will begin in 2026 and end in 2028.

28. The second measure provides for a periodic review of pensionable age and for this review to be informed by reports in relation to life expectancy from the Government Actuary's Department, and from an appointed panel on other factors specified by the Secretary of State at the time.

Part 3 – State pension credit

29. This Part contains two clauses relating to the assessed income period (AIP) in state pension credit claims. The AIP is a feature of state pension credit that removes the requirement for certain individuals to notify the Department for Work and Pensions of changes to retirement provision (broadly defined as capital, annuities and retirement pension) for a defined period, for the purposes of assessing their entitlement to state pension credit.

30. The first measure provides for the phasing out of the assessed income period in state pension credit cases from April 2016.

31. The second measure repeals existing legislation in the PA 2008 to ensure that indefinite AIPs set before 6th April 2014 will continue beyond that date.

Part 4 – Bereavement support payment

32. This Part of the Bill contains provisions to reform bereavement benefits and introduce a new bereavement support payment.

Part 5 – Private pensions

33. This Part contains a number of measures related to private pension legislation, including:

- a power to provide for a system of automatic transfers of a person's accrued rights to benefits under a pension scheme, to another scheme of which that person is an active member;
- a provision for regulations to be made banning the practice of providing incentives which encourage individuals to transfer a cash equivalent value of their accrued rights from a salary-related occupational scheme to an alternative arrangement;
- the removal of the existing power to make refunds of contributions ("short service refunds") to members of money purchase occupational pension schemes who terminate their membership before two years have elapsed since they joined the scheme;
- a provision for regulations to be made to restrict charges in and impose governance and administration requirements on schemes specified in regulations;
- amendments to the PA 2008 relating to automatic enrolment, including a power to specify certain groups that employers will not be required to enrol or re-enrol;
- amendments to the PSA 93 regarding the payment of a limited amount of unpaid pension contributions from the National Insurance Fund where an employer becomes insolvent so that all those who may become members of a pension scheme as a result of the workplace pension reforms are entitled to this protection;
- a power to require pension levies to be paid in respect of past periods;
- various technical amendments to the PA 1995 and the PA 2004 designed to improve operational processes for the Pensions Regulator;
- an amendment to companies legislation to make it clear that the body preparing guidance in relation to pensions illustrations may benefit from the exemption from liability for damages; and
- a new objective for the Pensions Regulator which sets out that the Regulator must consider how it can minimise any adverse impacts on an employer's sustainable growth when exercising its functions under Part 3 of the PA 2004.

Part 6 – Final provisions

34. These clauses relate to the power to make consequential amendments, general provision in respect of regulations and orders under the Bill, the Territorial Extent of the Bill, the commencement of provisions in the Bill and the short title of the Bill.

TERRITORIAL EXTENT

35. The Bill extends to England and Wales and to Scotland. The subject matter of the Bill is transferred in respect of Northern Ireland and, as such, is the responsibility of the Northern Ireland Assembly. Accordingly, the Bill only extends to Northern Ireland for purposes of amendment to legislation with UK-wide extent and, with one exception, any such amendments do not deal with transferred matters.

36. The exception is in respect of the reference to Northern Ireland legislation in Clause 44. A legislative consent motion has been passed by the Northern Ireland Assembly in respect of this clause.

COMMENTARY ON CLAUSES

PART 1 – STATE PENSION

Clause 1: State pension
Clause 2: Entitlement to state pension at full or reduced rate
Clause 3: Full and reduced rates of state pension

37. These clauses create a benefit – referred to in the Bill as "state pension".

38. Although the term "state pension" has been commonly used to refer to Category A to Category D contributory and non-contributory pensions paid since the 1970s (and now payable under the SSCBA 1992) in current legislation these are referred to as "retirement pensions".

39. Those reaching pensionable age on or after the start date for the new state pension will not be eligible for the current retirement pension scheme. This start date is to be 6th April 2016. The current pension arrangements will continue for people who reach pensionable age before 6th April 2016.

40. The full rate of the new state pension which will be applicable for the first year will be set by regulations prior to the commencement of these clauses. Thereafter, it will be up-rated each year (see paragraph 43). The basic conditions of entitlement for the new state pension at the full rate will be:

- that the person has attained pensionable age; and

- that the person has 35 or more 'qualifying years' of National Insurance contributions.

41. Where an individual has fewer than 35 qualifying years, his or her entitlement will be pro-rated and each qualifying year of National Insurance contributions will entitle him or her to one 35th of the full rate (Clause 3).

42. However, Clause 2 also sets out that entitlement will be subject to a minimum number of qualifying years, which will be specified in regulations but will be no more than ten years.

43. The provision for the new state pension to be up-rated (annual increases to the pension in payment) reflects that for basic retirement pension: the Secretary of State must increase the benefit by a percentage not less than the percentage annual increase in the general level of earnings (Schedule 12, paragraph 15).

44. These clauses apply to people who do not have any qualifying years for tax years before the new state pension start date.

45. Transitional arrangements apply to those who have qualifying years for tax years before 6th April 2016 and who attain pensionable age after that date– see commentary on Clauses 4 and 5.

Clause 4: Entitlement to state pension at transitional rate
Clause 5: Transitional rate of state pension
Clause 6: Recalculation and backdating of transitional rate in special cases
Schedule 1: Transitional rate of state pension: calculating the amount
Schedule 2: Transitional rate of state pension: up-rating

46. These clauses make transitional provision for pension entitlement for those who reach pensionable age on or after the date the new state pension is introduced and who have qualifying years attributable to tax years prior to introduction.

47. The provision is transitional because at some point in the future people will only have qualifying years attributable to the period after the new state pension is introduced and their entitlement will be calculated under the rules set out in Clauses 1 to 3. The persons unaffected by the transitional provision will be those who:

- are under the age of 16 when the new state pension is introduced, so they will not have yet entered the National Insurance scheme;

- arrive in the UK for the first time after the new scheme is introduced; or

- for some reason have not paid, or received credit, into the National Insurance scheme or have not made enough contributions to achieve a 'qualifying year' before the new scheme is introduced.

48. The calculation of the rate of state pension for people who have qualifying years attributable to tax years prior to introduction (called "transitional rate" here) is set out in Schedule 1. The calculation takes into account the National Insurance history of the person before the new state pension scheme starts when determining any future pension entitlement.

49. Under the current rules a person may become entitled to different components of retirement pension depending on when and at what level contributions have been made. Provided that sufficient contributions are made at the lower earnings limit for National Insurance in a tax year, that year will be a qualifying year for basic state pension purposes. Earnings-related contributions made between 1961 and 1975 provide entitlement to graduated retirement benefit. Since 1978 contributions that are made on earnings above the annual lower earnings limit in a tax year are relevant for entitlement to the additional pension.

50. The first step in the calculation of the transitional rate involves working out a person's entitlement under current scheme rules, as if he or she had reached pensionable age on the day the new state pension scheme is introduced but had the new state pension scheme not been introduced. This provides a snapshot in time of any basic state pension, additional pension and graduated retirement benefit to which he or she would have been entitled.

51. The second step involves working out entitlement under the new state pension rules had they applied before the start date. This valuation is based on 'pre-commencement' qualifying years, i.e. any years that would have been qualifying years before the start date of the state pension. This includes pre-1978 reckonable years, as defined in the relevant transitional regulations *(Clause 4(4)(b))*. Where a person has 35 or more pre-commencement qualifying years at the start date the valuation would be based on the maximum state pension amount payable at that date. Otherwise it would be based on a reduced rate matching the number of pre-commencement qualifying years accrued at that date.

52. In both of these calculations an amount to reflect contracting-out under the current scheme is deducted. However, where after the start date a person leaves his or her contracted-out pension scheme and under the rules of the scheme is not entitled to a contracted-out pension, his or her transitional rate would be re-calculated as if he or she had never been contracted out (Clause 6).

53. The third step requires a comparison of the two calculations with the more beneficial used as the starting basis of a person's transitional rate (their foundation amount). This foundation amount may exceed the full rate of state pension. This will be the case where the person, but for the introduction of the new state pension, would have been entitled to a significant amount of additional pension.

54. If at the start date the person has a foundation amount lower than the full rate of state pension, he or she can continue to add qualifying years to his or her entitlement – even if he or she already had 35 or more qualifying years before the start date – up to a maximum number that would provide entitlement to the full rate of state pension.

55. A minimum number of qualifying years will also apply to the transitional rate. This number will be specified in regulations, and will not be more than ten years.

56. Schedule 1 also provides for the revaluation of the foundation amount prior to pensionable age. The value of the foundation amount up to the full rate of state pension is to be revalued by earnings or higher (as with the state pension rate – see paragraph 43). Any excess over that rate will be revalued in line with the annual increase in the general level of prices.

57. Schedule 2 provides for the up-rating of the transitional rate (annual increases to the pension in payment). The value of the transitional rate up to the full rate of state pension is to be up-rated by earnings or higher. Any excess will be up-rated in line with the annual increase in the general level of prices.

Clause 7: Survivor's pension based on inheritance of additional old state pension
Schedule 3: Survivor's pension under section 7: inherited amount
Schedule 4: Survivor's pension under section 7: up-rating

58. In the current retirement pension scheme, a person who is, or who has been, married or in a civil partnership may be entitled to a state pension based on the National Insurance record of their spouse or civil partner. This will not be the case for those reaching pensionable age after the start date of the new state pension.

59. There are two exceptions: one set out in this clause and one set out in Clauses 11 and 12 – see paragraphs 70 to 74 below.

60. Clause 7 and Schedules 3 and 4 provide that a person will be entitled to an amount based on the additional pension that his or her late spouse or civil partner was or would have been entitled to in the current retirement pension scheme. Schedule 3 provides for the conditions of entitlement to this inherited state pension.

61. The amount that the survivor will be entitled to depends on whether his or her spouse or civil partner was in the current retirement pension scheme or in the new state pension scheme. That is, whether the spouse or civil partner either reached pensionable age, or died under pensionable age, before or after the new state pension start date.

62. In all cases, entitlement to an inherited amount under Schedule 3 will be conditional on the marriage or civil partnership existing before the new pension scheme is introduced. A person who becomes entitled to an inherited amount on or after reaching pensionable age will

not lose it if he or she subsequently remarries or forms a civil partnership. However, as that marriage or civil partnership will have taken place after the new state pension is introduced, if the new spouse or civil partner dies, the existing inherited amount will not be replaced with an inherited amount from the most recent spouse or civil partner, even if it would have been a higher amount.

63. Where the survivor is in the new state pension scheme and the late spouse or civil partner was in the current retirement pension scheme, the survivor could be entitled to an inherited amount based on the amount of additional pension that person would have been entitled to under the current Category B retirement pension rules.

64. Where the survivor is in the new state pension scheme and the late spouse or civil partner was also in the new state pension scheme, the survivor could be entitled to an inherited amount of half of the amount by which the late spouse's or civil partner's transitional rate of pension exceeds the full state pension rate.

65. Under the current retirement pension scheme, a person bereaved under pensionable age is entitled to a Category B pension if they were previously entitled to bereavement allowance or widowed parent's allowance. This Bill will replace the existing range of bereavement benefits with a bereavement support payment (see 'Part 4 – Bereavement Support Payment'). The Category B pension rules are therefore modified to enable a person who is bereaved while under pensionable age on or after the date the new payment is introduced and whose spouse or civil partner reached pensionable age in the current retirement pension scheme to inherit additional pension if he or she qualified for bereavement support payment and satisfied the other rules for entitlement.

66. Schedule 4 provides for the up-rating (annual increases) of inherited amounts. The basic principle is that, as with the transitional rate, the survivor's pension (including inherited amount) up to the full rate of the state pension should be up-rated by reference to earnings and any excess by prices.

Clause 8: Choice of lump sum or survivor's pension under section 9 in certain cases
Clause 9: Survivor's pension based on inheritance of deferred old state pension
Clause 10: Inheritance of graduated retirement benefit
Schedule 5: Survivor's pension under section 9: inherited deferral amount

67. In the current retirement pension scheme, individuals can choose not to claim their state pension at pensionable age and, as a consequence, will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions). This is known as deferral.

68. These clauses and Schedule relate to the inheritance of deferred state pensions and deferral awards under the current retirement pension scheme (see paragraphs 86 - 88 below for an explanation of how deferral will work under the new state pension scheme). Where a

late spouse or civil partner reached pensionable age before the start date of the new state pension and deferred their state pension, the survivor can inherit the deceased's deferred pension (regardless of whether they reach pensionable age before or after the start date) as under the current rules. Regulations may also provide for the inheritance of deferred graduated retirement benefit. It is not, however, possible for a person who reaches pensionable age on or after the start date to pass on deferral increments to his or her spouse or civil partner.

69. However, unlike the current inheritance arrangements, the provisions in Schedule 5 mean that, for an individual who reaches pensionable age on or after the start date of the new state pension, it will no longer be possible to inherit increments that were accrued by his or her late spouse or civil partner's former spouse or civil partner, except for any increments that the individual's deceased spouse built up on any increments that he or she inherited. For example, B (who reached pensionable age before the start date) is deferring his pension (which includes increments accrued by his late wife, A) and is now married to his second wife, C (who reached pensionable age after the start date). B dies and C inherits increments from him that are paid with her pension. C cannot inherit increments from B that were originally accrued by A's period of deferral. C will however be able to inherit the increments that B may have built up on any increments that he inherited from A.

Clause 11: Reduced rate elections: effect on section 4 pensions
Clause 12: Reduced rate elections: pension for women with no section 4 pension
Schedule 6: Reduced rate elections: effect on rate of section 4 pension
Schedule 7: Reduced rate elections: basic amount of state pension under section 12

70. Until 1977, married women and widows in employment could opt out of any future entitlement to a state pension in their own right by paying National Insurance at a reduced rate. Women who were self-employed could choose not to pay the flat-rate self-employed stamp. This was referred to as a "reduced-rate election". Women who took a reduced-rate election gained entitlement to a state pension by relying on their spouse's National Insurance record.

71. For those reaching pensionable age on or after the start of the new scheme, the Bill removes the option for an individual to rely on his or her spouse's or civil partner's National Insurance record (other than the provision for surviving spouses and civil partners to inherit pension, as described above) but does set out alternative arrangements for certain women who made reduced-rate elections.

72. These arrangements will apply if a reduced-rate election had still been in force at the start of the final 35 tax years before the tax year in which the woman reached pensionable age.

73. Where a woman meets the 35 year condition and has some qualifying years attributable to the period before the new state pension is introduced, Clause 11 and Schedule 6

provide for the state pension to be calculated in an alternative way if this is more beneficial than the transitional rate of pension she would otherwise be entitled to. This alternative calculation provides a transitional rate of state pension at least equivalent to the combination of any additional pension based on her own National Insurance record and the equivalent of the current scheme's basic state pension. This will be either the rate applicable for a spouse or civil partner (currently approximately 60 per cent of the full rate basic state pension) payable when both she and her husband or civil partner have reached pensionable age, or the equivalent of the full basic state pension if she is widowed or divorced. As a simplification measure, the full standard rates will be used so the amounts will not be dependent on the spouse's or civil partner's National Insurance record.

74. Clause 12 and Schedule 7 make comparable provision for a woman with no qualifying years for the period before the new state pension is introduced. In these circumstances, the state pension would comprise an amount equivalent to the appropriate standard rate of the current scheme's basic state pension for a married person, widow or divorcee, or civil partner, surviving civil partner, or person whose civil partnership has been dissolved.

Clause 13: Shared state pension on divorce etc
Clause 14: Pension sharing: reduction in the sharer's section 4 pension
Clause 15 Pension sharing: amendments
Schedule 8: Pension sharing: appropriate weekly rate under section 13
Schedule 9: Pension sharing: up-rating state pension under section 13
Schedule 10: Pension sharing: appropriate weekly reduction under section 14
Schedule 11: Pension sharing: amendments

75. Since December 2000, financial settlements on divorce have been able to provide for one party to a divorce to split his or her current or prospective entitlement to additional pension with his or her former spouse. The rules on pension sharing have applied to civil partners since December 2005.

76. Where a pension sharing order is made, a court will order a percentage split or an amount to be transferred. The apportioned benefits are known as "pension debits" and "pension credits", created under the Welfare Reform and Pensions Act 1999. The former spouse or civil partner ("the transferor") will have his or her prospective additional pension entitlement reduced by the value of a pension debit and the beneficiary ("the transferee") will gain entitlement to a pension credit that is equal to the amount of the debit. Pension sharing can be applied to current or prospective entitlement to additional pension or to shared additional pension from a previous divorce.

77. The Bill does not affect the validity of a pension sharing order made against a person in the new state pension scheme before the Bill comes into force.

78. Although the new state pension will not comprise any additional pension, the Bill does allow for pension sharing of the new state pension in certain limited cases.

79. It will still be possible in the future to make a pension sharing order against a person who has a transitional rate pension under Clause 4 that exceeds the full rate of the state pension. But the pension sharing order can only relate to the amount of that excess.

80. If a pension sharing order has been made against someone in the new state pension scheme, the rate of his or her state pension under Clause 4 may be reduced (see Clause 14).

81. A person in the new state pension scheme may also benefit from a pension sharing order made before the start date of the new state pension scheme, or made against a person in the current retirement pension scheme. In this case the person will be entitled to a state pension under Clause 13 based on the pension sharing credit. This will be paid in addition to any state pension the person is entitled to, based on his or her own National Insurance record. Calculating entitlement in this way means that a person is able to benefit from qualifying years obtained under the new state pension scheme notwithstanding the award of a state pension credit.

82. Schedule 8 sets out the rules for calculating the appropriate weekly rate where a pension sharing order has been made.

83. Schedule 9 provides for increases of shared state pension (state pension credit) once payment has started, as follows:

- if a person's total state pension including the state pension credit is equal to or less than the full rate of state pension the amount of the state pension credit will be uprated in line with earnings in the same way as the full rate of state pension is uprated (see paragraph 36);

- if a person's state pension is less than the full rate of the state pension but exceeds the full rate when the state pension credit is taken into consideration, the amount of the state pension credit up to the full rate of state pension will be increased in line with earnings (in the same way as the full rate of state pension is uprated), and the excess of the state pension credit above the full rate will be increased in line with prices (in the same way as the excess of any transitional rate of pension under Clause 4 is uprated - see paragraph 50); or

- if a person's state pension alone is equal to or higher than the full state pension, then any state pension credit will be increased in line with prices (in the same way as the excess of any transitional rate of pension under Clause 4 is uprated).

84. Schedule 10 explains how a person's appropriate weekly deduction is calculated if a sharing order has been issued.

85. Schedule 11 amends existing legislation to take into account the introduction of the sharing of the new state pension. Among other things, it makes provision for those reaching pensionable age under the current scheme to receive shared additional pension in relation to an order made against someone in the new state pension scheme.

Clause 16: Pensioner's option to suspend state pension
Clause 17: Effect of pensioner postponing or suspending state pension
Clause 18: Section 17 supplementary: calculating weeks, overseas residents, etc

86. Clauses 16 to 18 provide for arrangements to defer the payment of a state pension under the new state pension scheme.

87. In the current retirement pension scheme, individuals can choose not to claim their state pension at pensionable age or to give up their state pension for a period of time after they have started to receive it. As a consequence, they will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions). This is known as deferral.

88. The basic principle of deferral is being retained for the new state pension, but only the ability to accrue a weekly increase. Those who reach pensionable age on or after the new state pension start date will not be able to accrue a lump-sum. The accrual rate of the weekly increase will be set out in regulations (see *Clause 17(4)*). There will be no inheritance of a weekly increase accrued by the deferral of a new state pension.

Clause 19: Prisoners
Clause 20: Overseas residents

89. These clauses provide regulation-making powers to set out the arrangements for prisoners and overseas residents.

90. For prisoners, regulations may provide that a person is not to be paid a state pension whilst they are imprisoned, detained in legal custody or unlawfully at large. This is the same as under the current retirement pension scheme.

91. For overseas residents, regulations may provide that such a person is not entitled to up-rating. This will enable similar provision to be made as under the current retirement pension scheme. Regulations under this clause will be made taking into account provision under relevant treaties, such as those in respect of the European Union, and bi-lateral treaties providing for reciprocity in social security matters and which cover up-rating.

Clause 23: Amendments
Schedule 12: State pension: amendments

92. Schedule 12 provides for a number of amendments to other legislation relating to the introduction of the new state pension.

93. Schedule 12, Part 1 contains amendments that are related to the new state pension scheme. For example, Schedule 12, paragraphs 13 to 18 amend the general revaluation and up-rating provisions in the SSAA 1992.

94. Part 2 contains amendments to do with the current retirement pension scheme.

95. The amendments limit the current retirement pension scheme to those reaching pensionable age before 6th April 2016.

96. The amendments also provide that where such a person is entitled to an old state pension based on the contributions of a spouse or civil partner who is in the new state pension scheme, that retirement pension will be based only on contributions the spouse or civil partner made for the period before the new state pension scheme was introduced.

97. Part 2 also removes several aspects of the current retirement pension scheme for those reaching pensionable age after the state pension start date:

- Category C pension. This category of pension was introduced by the National Insurance (Old Persons' and Widows' Pensions and Attendance Allowance) Act 1970 to provide non-means tested pensions to those who had reached pensionable age before the National Insurance scheme started in 1948 and had not been insured under the pre-1948 provisions. Provision is removed for anyone reaching pensionable age on or after the new state pension start date. The only people who could now be entitled to a Category C pension are widows of individuals who reached pensionable age before 5th July 1948.

- Category D pension. Category D non-contributory pensions for those aged 80 and over were introduced by the National Insurance Act 1971 to help a number of elderly people without access to a pension. Changes made to the retirement pension since then (largely the reduction of the number of qualifying years needed for a state pension and changes to National Insurance credits) mean that the number of recipients is declining and expected to decline further. Provision remains for those reaching pensionable age before the new state pension start date but is not replicated for those reaching pensionable age thereafter.

- The age addition. The age addition to contributory and non-contributory retirement pensions is paid to people aged eighty or over. It was introduced in 1971 but has never been increased from 25 pence. Provision remains for those reaching pensionable age before the new state pension start date but is not replicated for those reaching pensionable age thereafter.

98. Part 3 of Schedule 12 provides that the savings credit element of state pension credit is only payable (from the savings credit qualifying age) to those who have reached pensionable age before the start date of the new state pension scheme.

99. An individual who does not meet these criteria could still qualify if he or she is a member of a mixed age couple where the other member reached pensionable age before the start date of the new state pension scheme. However, a power is given to the Secretary of State to specify the circumstances in which entitlement is restricted for these mixed age couples. For clarity, an example is given of how the power might be used in regulations.

100. Part 4 contains miscellaneous amendments regarding the introduction of the new state pension. These include repealing provisions in the PA 2008 for consolidating the additional pension which are not required as a result of the introduction of the new state pension.

Clause 24: Abolition of contracting-out for salary related schemes etc
Schedule 13: Abolition of contracting-out for salary related schemes
Schedule 14: Power to amend schemes to reflect abolition of contracting-out

101. Since 1961 sponsoring employers of salary-related occupational pension schemes have been allowed to contract their employees out of the additional pension on the condition that they would provide an occupational pension meeting certain statutory requirements (these have changed over the years).

102. In return for the employer providing a pension meeting the statutory minimum, both the employer and employee pay reduced rates of National Insurance (employer contributions are currently reduced by 3.4% and employee contributions by 1.4%).

103. In 1988 it became possible for employers to contract out their employees into a defined contribution occupational pension scheme, and for individuals to contract out into a personal pension scheme. However, the PA 2007 abolished these options from 6th April 2012.

104. Introduction of the new state pension will abolish the additional pension for those reaching pensionable age after the start date. Clause 24 and Schedules 13 and 14 make provision for the ending of the option for sponsoring employers of salary-related occupational pension schemes to contract their employees out of the additional pension. This option will end on the start date of the new state pension.

105. As well as removing redundant provisions, the amendments to the PSA 1993 and other pensions legislation in Clause 24 and Schedules 13 and 14 are intended to serve two main purposes.

106. Firstly, to ensure that all contracted-out rights accrued by employees through salary-related contracted-out schemes before the abolition of contracting-out are fully protected. To

protect accrued rights, Schedule 13, paragraph 13 inserts new section 12E into the PSA 1993. Section 12E requires former salary-related contracted-out schemes to meet the requirements in the PSA 1993 in relation to Guaranteed Minimum Pensions. Section 12E deems scheme rules to comply with all the requirements, overriding the rules if necessary. Schedule 13, paragraphs 16 and 38 amend sections 16 and 87 of the PSA 1993 (the revaluation requirements for Guaranteed Minimum Pensions for early leavers and the anti-franking rules) so that abolition of contracting-out does not trigger either of these requirements. This will ensure that someone who stays in a scheme at abolition will not be treated as having left simply because contracting-out has ended. Schedule 13, paragraph 17 amends Section 17 of the PSA 1993 to reflect the end of the current retirement pension scheme so that inherited Guaranteed Minimum Pensions will be payable in the same circumstances as now.

107. Secondly, to enable sponsoring employers of contracted-out schemes to change the rules of their pension schemes (where they are prevented from doing so) to adjust members' future pension accruals or pension contributions to take into account the loss of the employer's rebated National Insurance contributions. *Clause 24(2)* and Schedule 14 provide a power for sponsoring employers to amend their scheme rules to decrease scheme costs in order to offset the increase in National Insurance contributions - for example, by reducing scheme benefits for future accruals or increasing member contributions. Following the end of contracting-out, employers and members of contracted-out salary-related schemes will have an increase in National Insurance contributions. They will pay the same rate of National Insurance as other employers and employees. This power will be available for five years (*Clause 24(7)*). The power cannot be used to change the rules of public service pension schemes or other types of scheme (which may be prescribed in regulations under *Clause 24(4)(b)*).

PART 2 – PENSIONABLE AGE

Clause 25: Increase in pensionable age to 67

108. Part 1 of Schedule 4 to the PA 1995 stipulates pensionable age for men and women. As amended by the PA 2007 this provides for the increase in pensionable age to 67 to take place between 6th April 2034 and 5th April 2036. This clause amends these rules to bring forward the increase in pensionable age to 67 to take place between 6th April 2026 and 5th March 2028.

109. Under the timetable set by the PA 2011, those born on or after 6th October 1954 but before 6th April 1968 will reach pensionable age on their 66th birthday. Under the proposed timetable, those born between 6th April 1960 and 5th March 1961 will have a pensionable age of between 66 years and 1 month and 66 years and 11 months (*Clause 25(2)*). Those born on or after 6th March 1961 but before 6th April 1977 will reach pensionable age on their 67th birthday (*Clause 25(4)*).

110. The table in *Clause 25(3)* sets out how pensionable age will increase from 66 to 67. Individuals in each one month birth cohort affected by the transitional arrangements will reach pensionable age when they reach age 66 and the specified number of months. For example:

- an individual born on 15th April 1960 reaches pensionable age when they reach age 66 and one month on 15th May 2026;
- an individual born on 10th September 1960 reaches pensionable age when they reach age 66 and 6 months on 10th March 2027; and
- an individual born on 22nd January 1961 reaches pensionable age when they reach age 66 and 10 months on 22nd November 2027.

111. There are three instances during the transition period where an individual may be born in a calendar month which has more days than the relevant month in which he or she would reach pensionable age. Clause 25(3) provides when those individuals will reach pensionable age. For example an individual born on 31st July 1960 cannot reach pensionable age of 66 and 4 months on 31st November 2026 because November only has 30 days. He or she will therefore be treated as reaching pensionable age on 30th November 2026.

Clause 26: Periodic review of rules about pensionable age

112. This clause makes provision for a periodic review by the Secretary of State of the pensionable age in light of changes in life expectancy and other relevant factors. It also requires the Secretary of State to prepare and publish a report in relation to the review. The first report must be published before 7th May 2017. This is two years after the polling day for the next parliamentary general election as provided under the Fixed-term Parliaments Act 2011. Future reports must then be published within six years of the previous report. The Government has announced that it intends to consider whether the rules relating to pensionable age are appropriate every five years (once every parliament). However, the reference to six years allows some flexibility around the report's publication date.

113. To inform the review, the Secretary of State must commission the Government Actuary or Deputy Government Actuary to prepare a report on whether the rules on pensionable age mean that, on average, a person who reaches pensionable age within a specified period can be expected to spend a specified proportion of his or her adult life in retirement (with the proportion of a person's adult life spent in retirement being the proportion of his or her adult life spent after reaching pensionable age). If the rules on pensionable age mean that this is not the case, the report will suggest how the rules might be changed to attain the result. The Secretary of State will specify both the age at which adult life is to be taken as beginning and the proportion of adult life in retirement when commissioning the report from the Government Actuary or Deputy Government Actuary.

114. In addition to the report from the Government Actuary or Deputy Government Actuary, the Secretary of State must also appoint a panel of one or more persons to consider factors relevant to the pensionable age. The panel must prepare a report for the Secretary of State. When appointing the panel, the Secretary of State will specify the relevant factors.

115. The Secretary of State will consider both these reports when reviewing whether pensionable age should change. If any change to pensionable age is decided upon the Government would introduce primary legislation to this end.

PART 3 – STATE PENSION CREDIT

Clause 27: phasing out assessed income periods

116. Clause 27 provides for the assessed income period (AIP) in state pension credit claims to be phased out from 2016. The AIP is a feature of state pension credit that removes the requirement for certain individuals to notify the Department for Work and Pensions of changes to retirement provision (broadly defined as capital, annuities and retirement pension) for a defined period, for the purposes of assessing their entitlement to state pension credit. From 2016, any change in retirement provision must be reported when it occurs, triggering an immediate review and change of the benefit award where appropriate. The removal of the AIP will apply to new customers and there is a power to apply it to those existing customers with a 5-year AIP already in place at April 2016 (the latter will be gradually phased out in the first few years). Customers with an indefinite AIP already in place on 6th April 2016 will be unaffected as their AIP will remain in place until it ends under existing rules.

117. Subsection (1) limits the application of the legislation on AIPs to decisions that take effect before 6th April 2016. This effectively means that, from 6th April 2016, no new AIPs will be set. It also means, however, that AIPs set before 6th April 2016 will remain valid beyond that date (or until such time as the 5-year AIPs are phased out).

118. Subsection (3) is intended to make it clear that regulations under section 9(5) of the SPCA 2002 may be made for the purpose of phasing out, on or after 6th April 2016, any remaining AIP that is 5 years or shorter in length. This could be used to provide for those AIPs to be ended either when they mature, when a change of circumstances is reported, or via reviews carried out on a phased schedule.

Clause 28: preserving indefinite status of certain assessed income periods

119. Section 9(6) of the SPCA 2002 was inserted by section 105 of the PA 2008 to ensure that certain old AIPs were extended indefinitely. This was a transitional provision and was thought to be necessary only until 6th April 2014. It is therefore repealed from that date by section 105(6) of the PA 2008. The repeal leaves some doubt about whether existing AIPs under section 9(6) of the SPCA 2002 will remain in place after 6th April 2014. Clause 28 of the Bill is intended to remove the doubt by ensuring that existing indefinite AIPs governed by section 9(6) of the SPCA 2002 remain in place indefinitely.

120. Clause 28 has been drafted so that it works whether or not the clause comes into force before, on or after 6th April 2014.

PART 4 – BEREAVEMENT SUPPORT PAYMENT

Clause 29: Bereavement support payment
Clause 30: Bereavement support payment: contribution condition and amendments
Clause 31: Bereavement support payment: prisoners
Schedule 15: Bereavement support payment: amendments

121. These clauses describe the entitlement criteria and supporting contribution condition for the bereavement support payment, which will replace the existing range of bereavement benefits for persons whose spouse or civil partner dies on or after the date it is introduced.

122. A person will be entitled to bereavement support payment if he or she is: under pensionable age at the time of his or her spouse or civil partner's death; is ordinarily resident in Great Britain or other territory specified in regulations; and the contribution condition is met.

123. In order to meet the contribution condition the deceased spouse or civil partner must have paid Class 1 or 2 National Insurance contributions at or greater than 25 times the lower earnings limit (as defined in the SSCBA 1992) for any one tax year prior to his or her death.

124. The contribution condition will be considered to have been met if the deceased spouse or civil partner died as a result of an industrial injury or accident, as provided for by the industrial injuries benefit legislation in the SSCBA 1992.

125. The amount of the benefit and period the payments will cover will be prescribed in regulations. Regulations may also allow different rates of payments over different periods. If a person is pregnant or entitled to child benefit, then regulations may provide for him or her to receive a higher rate of payment or a longer payment period.

126. Bereavement support payment will not be payable to anyone over pensionable age; if a person is entitled to bereavement support payment when he or she reaches pensionable age his or her entitlement will cease and he or she will not receive any further payments.

127. Regulations may disqualify prisoners from receiving bereavement support payment. This is the same as under the current bereavement benefit scheme.

128. Schedule 15 details the relevant consequential amendments to existing legislation to reflect the introduction of bereavement support payment.

PART 5 – PRIVATE PENSIONS

Clause 32: Automatic transfer of pension benefits etc
Schedule 16: Automatic transfer of pension benefits etc

129. Clause 32 introduces Schedule 16 which contains a duty for the Secretary of State to make regulations to establish a system of automatic transfers of pension benefits.

130. Paragraph 1 of Schedule 16 outlines this system, setting out that the regulations must provide that where an active member of an 'automatic transfer scheme' has 'transferable benefits' in another pension scheme (the 'transferable benefits scheme'), then the automatic transfer process set out in the Schedule must be followed.

131. The transfer will be from a money purchase scheme or a pension scheme of a prescribed description (sub paragraph 5) that the member is no longer contributing to (sub paragraph 4(c)), into another money purchase scheme or a pension scheme of a prescribed description (sub paragraph 2) of which the individual is an active member. This will only apply if certain criteria are met including that the benefits to be transferred have been accruing since a certain date (sub paragraph (4(e)) and are worth less than a prescribed amount (sub paragraph (4)(f)).

132. The Government has stated its intention that this amount will initially be £10,000. The Schedule provides that the regulations will require the Secretary of State to review the pot size limit at least every 5 years (paragraph 13), taking certain factors into account when conducting the review.

133. In addition, Schedule 16 sets out that regulations will provide that trustees or managers of 'automatic transfer schemes' must find out whether members have transferable benefits in other schemes (paragraph 2). The regulations must make provision about disclosure of information and they may, in particular, permit or require a person to disclose information to another person to help that other person comply with their duties, which will include providing information on an individual's transferable benefits to any central database (sub paragraphs 9(1) and (2)).

134. The regulations must also provide that a prescribed person must give information to the member (paragraph 5) and must provide that the member has a right to opt out of the automatic transfer (paragraph 4) unless there is a requirement for consent by the member before the transfer is made. The information provided to members will include details about the automatic transfer, their right to opt out, or need for consent (as applicable), and may contain other information, for example about the pension scheme.

135. Where 'transferable benefits' are identified and the individual has not opted out, or has provided consent (whichever is applicable), the trustees or managers must notify the 'transferable benefits scheme' (paragraph 3), the 'transferable benefits scheme' must then

transfer those benefits (paragraph 6) and the 'automatic transfer scheme' must give the member rights equivalent to those benefits (paragraph 7). Other functions may be required of the trustees or managers of either scheme (paragraph 12), for example to acknowledge the transfer.

136. Further to these core features, Schedule 16 sets out a number of areas that regulations may cover. For example, regulations may be made to:-

- provide for the manner in which cash equivalents are to be calculated and verified by the 'transferable benefits scheme' (paragraph 8);

- allow for the enforcement of the automatic transfer duties by the Pensions Regulator, including the imposition of compliance notices and penalties for non-compliance (paragraph 10) and record keeping requirements (paragraph 11);

- require the Secretary of State or the Pensions Regulator to establish and operate a database containing information relating to people who have or have had 'transferable benefits' (paragraph 9(3)); or

- allow certain provisions within the regulations to override scheme rules (Part 3 paragraph 17). For example, if scheme rules prevented an automatic transfer scheme from accepting a transfer.

137. Part 2 provides that regulations may be made to consolidate multiple pots belonging to one member in the same scheme, providing for an asset transfer if necessary, for example where an individual has two employments over their working life and the employers both use the same multi-employer scheme (Part 2, paragraph 14).

Clause 33: Power to prohibit offer of incentives to transfer pension rights
Clause 34: Expiry of power in Section 33

138. Clause 33 allows the Secretary of State to make regulations to prohibit a person from offering a financial or similar incentive to another person with the intention of inducing a member of a salary-related occupational pension scheme to transfer their rights out of that pension scheme into another pension scheme or arrangement. Regulations may provide that the prohibition applies to the offer of an incentive by the person who will provide the incentive, or by another person, for example, an agent. It also provides for penalties to be introduced if the prohibition is contravened.

139. Clause 34 provides that Clause 33 will be repealed seven years after the section has come into force if the powers granted have not been exercised.

Clause 35: Short service benefit for scheme member with money purchase benefits

140. This clause provides that where all of the benefits to be provided by a scheme are money purchase benefits, there will be an entitlement to a 'short service benefit' immediately after a member has completed thirty days' qualifying membership of the scheme. (*Clause 35(1), (2) and (3)*).

141. The effect of the clause is that, in such cases, the ability to make a refund of contributions ("short service refund") to members who give up their membership within two years will no longer be available under section 101AB of the PSA 1993, because the member will have accrued rights to benefit under the scheme. Such a person will however still have the right to ask the occupational pension scheme to transfer the value of his pension to another pension provider under Chapter 4 of Part 4 of that Act.

142. This will only apply to those who first become active members of a scheme after this section comes into force, and those members who re-joined the scheme after that date having had a previous period of pensionable service under the scheme and who received a contribution refund or a cash transfer sum (clause 35(3)).

Clause 36: Automatic re-enrolment: exceptions where automatic enrolment deferred

143. Employers must automatically enrol workers who satisfy age and earnings criteria into a qualifying workplace pension scheme. However, they are allowed to postpone automatic enrolment by up to three months.

144. Where an employer has an open defined benefit or hybrid scheme which they intend to use for automatic enrolment, they may instead, and subject to certain conditions, defer automatic enrolment for jobholders who satisfy those conditions until the end of a transitional period in September 2017. At the end of that transitional period the individual must be automatically enrolled, provided that he or she satisfies the age and earnings conditions. However, an employer deferring automatic enrolment until the end of the transitional period may use the waiting period afterwards if they choose, which would postpone auto-enrolment by up to a further three months.

145. Automatic enrolment by the employer is compulsory: pension saving by the worker is not. An individual who decides not to continue saving into the scheme they have been automatically enrolled into may opt out within a specified window. This window is one month from the later of the date that the individual becomes an active member of the scheme and the date he or she is given the enrolment information by the employer. If, however, he or she continues to save into the scheme but subsequently decides to withdraw, he or she may cancel his or her active membership at any time.

146. The employer must carry out an automatic re-enrolment exercise approximately every three years to re-enrol those who opted out or cancelled their membership. The cyclical automatic re-enrolment dates are employer specific. Deferral dates and immediate re-enrolment dates are specific to the worker.

147. Under the PA 2008, the employer's re-enrolment duty could result in the permitted deferral or postponement period being curtailed as an employer's cyclical re-enrolment date could fall within a period where an individual's automatic enrolment date has legitimately been deferred or postponed. Clause 36 removes the duty of the employer to automatically re-enrol an eligible individual if automatic enrolment has been postponed for a period of up to three months (*Clause 36(2)*) or deferred to the end of the transitional period in the case of a defined benefit or hybrid scheme (*Clause 36(3)*).

Clause 37: Automatic enrolment: powers to create general exceptions

148. Under sections 3, 5, 7 and 9 of the PA 2008, employers are obliged to automatically enrol (and re-enrol) workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.

149. Automatic enrolment and pension saving is not always appropriate. It may impose nugatory work on the employer and in some circumstances could cause an individual to incur a financial penalty.

150. There are some limited exceptions to the enrolment duty but there is no general power to exclude prescribed types of workers, or workers in prescribed circumstances from the scope of automatic enrolment. However, a prescribed exclusion may carry an increased employer monitoring burden. This clause inserts a new section in to the PA 2008 to provide a general power to create exceptions to the employer duties which includes the power to prescribe that a duty is turned into a power. Where such a power was conferred on an employer, it would mean that in prescribed circumstances an employer need not automatically enrol a worker but may choose to do so. The clause subsumes the existing power to exclude in section 5(4) of the PA 2008 and section 292A of the PA 2004 (both of which are repealed) and amends section 10 of the PA 2008 to allow automatic enrolment information to be more appropriately targeted.

151. It also includes a power to re-instate the automatic enrolment duty if the circumstances that triggered the exclusion change.

Clause 38: Automatic enrolment: transitional period for hybrid schemes

152. On 19th December 2012 the Government announced its intention to introduce retrospective legislation to clarify the law which sets out transitional arrangements for implementing automatic enrolment into workplace pension arrangements.

153. The transitional provisions differ depending on whether the jobholder is enrolled into a money purchase pension arrangement or is offered membership of a defined benefit pension arrangement. If the former is the case, then both employer and employee minimum contributions are phased in over a transitional period. If the latter, the employer can defer automatic enrolment until the end of a transitional period.

154. Under the current legislation, where a pension scheme offers both money purchase and defined benefit pensions under a single scheme (known as a hybrid scheme) an employer can postpone automatic enrolment for a jobholder who is eligible only to accrue money purchase benefits under a hybrid scheme.

155. The amendments in *Clause 38(1) to (5)* state that postponement under section 30 of the PA 2008 only applies where a defined benefit pension is offered to a jobholder (whether offered under a hybrid scheme or a defined benefit scheme). Employers offering money purchase benefits under a hybrid scheme will still be able to use the transitional arrangements under section 29, which permit a gradual phasing in of the contribution requirements over a transitional period.

156. The legislation has retrospective effect. *Clause 38(6) and (7)* set out that any employer who has deferred automatic enrolment under section 30 for a jobholder who is entitled only to membership of a money purchase arrangement under a hybrid scheme will need to automatically enrol that jobholder. They will also need to backdate employer contributions to 19th December 2012 (or their staging date if that is later). The jobholder will be able to choose whether they wish to pay their own contributions for the same period.

Clause 39: Penalty notices under sections 40 and 41 of the Pensions Act 2008 etc
157. Under the PA 2008, the Pensions Regulator has the power to issue a penalty notice for failure to comply with information notices (which are issued when the Pensions Regulator requires specific information). Currently, the Regulator could issue a penalty notice under that power for non-compliance with a notice that sought information in connection with the Regulator's general compliance functions, as set out in the PA 2004.

158. Under this clause, penalty notices can only be used for non-compliance with information notices issued in relation to the Regulator's compliance function concerning employer duties, as set out in part 1 of the PA 2008.

159. In exercising its power to issue information notices under section 72 of the PA 2004, the Regulator can ask for an explanation of the relevant information or require the recipient to explain in person at the Regulator's offices. This power was previously available for information notices issued relating only to some of the Regulator's new employer compliance functions. Clause 39 extends this to include all of the Regulator's employer compliance functions as set out in part 1 of the PA 2008.

Clause 40: Unpaid scheme contributions
160. In the event that an employer becomes insolvent, the PSA 1993 enables scheme trustees or managers to claim an amount of any unpaid pension contributions from the Secretary of State, payable out of the National Insurance Fund. The contributions comprise those due from the employer either on his or her own account to fund benefits for, or in respect of, one or more employees, or on behalf of an employee, if a contribution has been deducted from wages.

161. Workers and agency workers are currently excluded from this protection, so if their employer became insolvent certain jobholders entering pension scheme membership as a result of the workplace pension reforms would not receive the protection detailed above.

162. This clause amends the definitions in the PSA 1993, and the references to employees in the PSA 1993, to include workers and agency workers and so extend this protection for relevant scheme contributions to be paid from the National Insurance Fund in the event of an employer becoming insolvent.

Clause 41: Work-based schemes: power to restrict charges or impose requirements
Schedule 17: Work-based schemes: power to restrict charges or impose requirements

163. Clause 41 and Schedule 17 allow the Secretary of State to make regulations to restrict charges or impose requirements on certain work-based pension schemes. Schedule 17 allows for the making of regulations which set limits on or prohibit particular types of administration charges, or set requirements relating to the administration or governance of the scheme.

164. The regulations will apply to work-based pension schemes of a type specified in the regulations. Different provision could be made for different types of scheme. For example, different charges may be allowed depending on the type or use of scheme. They will also allow for the inclusion of schemes that are closed to new members or to new accruals. The duty to meet these standards would fall on the manager or trustee of each applicable scheme.

165. The provision allows the regulations to say that a scheme which does not comply cannot be a qualifying scheme for automatic enrolment purposes. Provisions about standards that must be complied with in order for a scheme to be used as a qualifying scheme will continue to be enforced via the employer compliance regime under the PA 2008.

166. Schedule 17 also allows regulations to cover the enforcement of the quality standards by the Pensions Regulator (paragraph 3), including the imposition of compliance notices and penalties for non-compliance. As with other civil penalties, it will be a criminal offence to pay these penalties from scheme funds (paragraph 10). The compliance regime may also include the Financial Conduct Authority regulating compliance in contract-based schemes under the powers in the Financial Services and Markets Act 2000. The Schedule also provides that the regulations may allow certain provisions of the regulations to override scheme rules (paragraph 6). For example, if scheme rules currently prescribe a type or level of charge which is prohibited.

Clause 42: Power to require pension levies to be paid in respect of past periods

167. The Pension Protection Fund (PPF) pays compensation to members of pension schemes where the employer becomes insolvent leaving the scheme under-funded. There are two levies which eligible schemes must pay: the risk-based pension protection levy, which goes towards PPF compensation, and the administration levy, which goes towards the PPF's running costs. A limited number of schemes have the benefit of a Crown guarantee, meaning that if a scheme has an insolvent employer and becomes under-funded the Government will

meet the liabilities of the scheme or the employer in respect of the whole or part of the scheme.

168. On 11th February 2009 the European Commission ruled that the BT Pension Scheme's exemption from payment of the levies to the PPF, arising from the Crown guarantee, constituted unlawful State aid and must stop. Following this, in 2010 regulations were laid to ensure future compliance in payment of these two levies.

169. This clause provides for regulations to be made allowing the sections of the PA 2004 relevant to payment of pension levies and associated regulations to have effect as if the Regulations made in 2010 had always had effect. Regulations made under the clause will allow the Government to recover payment of levies due in respect of the tax years 2005/06 to 2009/10. This will apply to those schemes covered by a Crown guarantee where an exemption from payment of the levies would give rise to incompatible State aid.

Clause 43: Prohibition and suspension orders: directors of corporate trustees
Schedule 18: Prohibition orders: consequential amendments

170. The Pensions Regulator has the power to suspend and prohibit trustees from acting as trustees in the future if they are not deemed to be a fit and proper person to be a trustee of a scheme. Under the current rules, if a prohibited trustee becomes the director of a company which acts as a trustee of a scheme (a corporate trustee) there is no restriction on the ability of that company to operate as a corporate trustee.

171. This Clause inserts a new section into the PA 1995 to forbid a company from being a trustee if one or more of its directors have been prohibited by the Regulator. If the director(s) who has/have been prohibited subsequently leave(s) the board of the company, the prohibition will be immediately lifted. In addition, the company is allowed to apply to the Regulator for the prohibition to be waived.

172. The Regulator has the power to suspend a trustee "pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception" (section 4(1)(aa) Pensions Act 1995).

173. *Clause 43(3) to (5)* allows the Pensions Regulator to suspend a corporate trustee where it or one of its directors could be suspended under section 4(1)(aa).

Clause 44: Preparation of guidance for pensions illustrations

174. Occupational, personal and stakeholder pension schemes are required by regulations to provide a Statutory Money Purchase Illustration (SMPI) to members on an annual basis.

175. In producing the SMPI, relevant pension schemes must comply with guidance currently contained in the "Technical Memorandum TM1: Statutory Money Purchase Illustrations", issued at present by the Financial Reporting Council Ltd (FRC).

176. Section 18 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 exempts a body given a grant by the Secretary of State from liability in damages that arise from certain activities. These activities are set out in section 16(2) of that Act.

177. The measure amends the Companies (Audit, Investigations and Community Enterprise) Act 2004 to provide that a relevant body shall be exempt from liability for damages arising from the production of a statutory money purchase illustration based on the relevant body's technical memorandum.

Clause 45: Pensions Regulator's objectives

178. This clause sets out an additional objective for the Pensions Regulator, which states that when carrying out its functions in relation to scheme funding the Pensions Regulator should minimise any adverse impact on the sustainable growth of sponsoring employers. This objective is in addition to the Regulator's existing five objectives, set out in section 5(1) of the PA 2004.

Clause 46: Maximum period between scheme returns to be 5 years for micro schemes

179. All occupational pension schemes are required to complete a scheme return at least once every three years. This is sent to the Pensions Regulator and provides up to date information about the scheme.

180. The clause increases the maximum period between scheme returns to five years for schemes that have no more than four members (the number of members is determined either by the information sent to register the scheme or the last scheme return).

Clause 47: Pension Protection Fund: increased compensation cap for long service
Schedule 19: Pension Protection Fund: increased compensation cap for long service

181. The Pension Protection Fund (PPF) pays compensation to members of non-money purchase, occupational pension schemes where the employer becomes insolvent, leaving the scheme underfunded. Anyone under the scheme's normal pensionable age when the employer becomes insolvent is paid compensation based on 90 per cent of their expected scheme pension subject to a maximum cap- 'the compensation cap'.

182. Clause 47 and Schedule 19 provide for a revised compensation cap dependent on a person's age and length of pensionable service when the person first becomes entitled to compensation.

183. Paragraphs 1 to 3 of Schedule 19 amend Schedule 7 of the PA 2004 to insert new paragraph 26A. The new paragraph 26A sets out how the compensation cap will be calculated for future compensation calculations. There will be a standard amount (which is expected to be calculated in the same way as the current compensation cap amount) for anyone with pensionable service of 20 years or less. For anyone with 21 years or more pensionable service,

the cap will be increased by 3 per cent for each full year, to a maximum of double the standard amount.

184. Paragraphs 4 to 6 make consequential amendments to the PA 2004.

185. Paragraphs 7 to 13 of Schedule 19 make transitional provision for members who are entitled to PPF compensation when the increased compensation cap for long service is introduced. Under paragraph 9(2) the PPF will be required to recalculate the protected pension rate as if the increased compensation cap for long service had been in force when the member first became entitled to compensation. Once the protected pension rate has been recalculated the compensation is no longer correct and the Board must redetermine the compensation and change the payment. This applies to both members of the original scheme and any of their survivors and dependants who are in receipt of compensation when the long service cap legislation comes into force. Any increase will be effective from the date the legislation is commenced except that members who have postponed payment of their compensation will have the increase applied when they take their postponed compensation.

186. Any indexation that had been awarded before the legislation comes into force will be maintained by adding the amount of indexation on to the revised compensation amount (see paragraph 9(5) of the Schedule).

187. There will be no backdating of compensation for any increase due to the long service compensation cap and all other elements in calculating compensation payable will be unaffected by this change:

a) where a person commuted part of their original compensation as a lump sum, the commuted amount will be deducted as part of the redetermination;
b) where a person had their compensation actuarially reduced because they took their compensation early, the same reduction will be applied in the redetermination;
c) where a person had been awarded a postponement addition, that addition will not be recalculated or increased.

188. Paragraph 13 deals with those who received a terminal illness lump sum in the year prior to the long service cap legislation being commenced. Where the recipient is still alive when the legislation is commenced, the lump sum will be re-calculated as if the long service cap legislation had been in force at the date of entitlement and arrears paid.

PART 6 – FINAL PROVISIONS

Clause 50: Extent

189. The Bill extends to England and Wales and to Scotland. The subject matter of the Bill is transferred in respect of Northern Ireland and, as such, is the responsibility of the Northern Ireland Assembly. Accordingly, the Bill only extends to Northern Ireland for purposes of amendment to legislation with UK-wide extent and, with one exception, any such amendments do not deal with transferred matters.

FINANCIAL EFFECTS OF THE BILL

190. A summary of the financial effects of the different measures of the Bill is provided below. Further detail is contained in the Impact Assessment.

State pension

191. The state pension reforms have been designed to cost no more than the current system expenditure. In the long-term, savings to the Exchequer will be delivered as spending on pensioner benefits will increase at a slightly slower rate than under the current system. The end of contracting-out for salary-related occupational pension schemes means that the Exchequer accrues additional National Insurance contributions.

Bringing forward the increase in pensionable age to 67

192. Bringing forward the increase in pensionable age to 67 to between 2026 and 2028 delivers approximately £73.5 billion net savings in Annually Managed Expenditure when compared to the existing timetable set by the PA 2007.

Periodic review of pensionable age

193. There will be a comparatively small administrative cost to undertake the review. However, any decision to change pensionable age as a result of a review will have a significant financial effect; the Government will need to bring forward primary legislation to change pensionable age, and an estimate of the financial impacts will be produced at that time.

Phasing out of assessed income period in state pension credit

194. Phasing out assessed income periods and taking changes into account as they happen will stop significant inaccuracies in the benefit building up. This change is estimated to generate Annually Managed Expenditure savings of £17m in 2016-17, rising to approximately £82m per annum from 2020-21.

Bereavement support payment

195. The indicative cost under the reform, calculated between 2016/17 and 2019/20, to the Exchequer has a value of £1.76 billion which includes an additional cash terms investment in

the region of £110 million over the period. These figures include tax foregone, the costs of new and legacy systems and the impact on Universal Credit.

Automatic transfers

196. The cost of implementing an automatic transfers system will depend on the final delivery model developed between the Department for Work and Pensions and the pensions industry. The model will also determine whether any Government expenditure is required.

SUMMARY OF THE IMPACT ASSESSMENT

197. The impact of the provisions in this Bill has been fully considered during the development of this legislation. In line with the requirements of the Regulatory Policy Committee (RPC), where a measure has a significant cost or benefit to the private sector or civil society organisations; or to the public sector over the cost threshold, an Impact Assessment has been produced. There are eight such Impact Assessments for measures contained in this Bill. These are:

The single-tier pension (Part 1 of this Bill)

198. As above, the overall cost to the Exchequer of the single-tier state pension system will remain broadly in line with the forecast cost of the current system as a proportion of GDP.

199. The end of contracting-out will mean the loss of the National Insurance rebate for employers sponsoring salary-related occupational schemes with contracted-out members. However for the purposes of the Impact Assessment it is assumed that employers will change the terms of those schemes in order to offset this cost (the Bill provides a power to make this easier for employers). Employers will incur some costs associated with making changes to the schemes (e.g. actuarial and legal costs).

Increasing pensionable age to 67 (Clause 25)

200. Bringing forward the increase in pensionable age to 67 to between 2026 and 2028 delivers approximately £73.5 billion net savings in Annually Managed Expenditure when compared to the existing timetable set by the PA 2007.

Phasing out of the assessed income period in state pension credit (Clauses 27 and 28)

201. Phasing out the assessed income period in state pension credit claims from April 2016 will generate estimated savings in state pension credit expenditure of up to £82m a year by 2020. There will be an increased administrative cost from processing reported changes of circumstance and carrying out case reviews on a more regular basis, estimated at £17 million a year.

Bereavement support payment (Clauses 29, 30 and 31)

202. The main fiscal impact of the proposal is the incurring of net benefit- related costs of £110 million in cash terms over the four years of the impact assessment.

Automatic transfer of small pension pots (Clause 32)
203. Implementing a mechanism to identify and transfer small, dormant pension pots is expected to increase costs for the pensions industry in the short term. By 2050 the reforms are expected to halve the number of dormant pots that the industry would have had to administer - this will generate £6.4 billion in savings for the industry. It is expected that some of the benefits of more efficient administration will be passed on to individuals.

Short service refunds (Clause 35)
204. This Bill removes the facility for employers to refund the member contributions to employees who leave that employment before completing two years of pensionable service. Abolition in 2014 is expected to generate up to £130 million per annum in additional pension savings for individuals. It is expected to generate a cost to employers of up to £40 million per annum as employers will no longer receive a refund of their contributions- however, it is understood that these contributions are often left in the schemes and used for general maintenance.

Maximum period between scheme returns to be 5 years for micro schemes (Clause 46)
205. Reducing the frequency of returns to the Pensions Regulator required of 'micro-schemes' will result in a saving to business of approximately £292,000 per annum.

Pension Protection Fund: increased compensation cap for long service (Clause 47)
206. Increased payments under the higher cap to reflect long service will give rise to an increase in PPF liabilities which may lead to an increase in the PPF's risk-based levy. The estimated amount of increased levy payments over the period to 2030 is £139.3 million.

207. These Impact Assessments are contained in the Pensions Bill Impact Assessment - available at www.gov.uk/government/collections/pensions-bill. This document also describes those measures without an individual Impact Assessment and the reasons why, in line with RPC requirements, no assessment has been produced.

EUROPEAN CONVENTION ON HUMAN RIGHTS

208. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act). The statement has to be made before Second Reading. The Minister for Welfare Reform, Lord Freud, has made the following statement:

"In my view the provisions of the Pensions Bill are compatible with the Convention rights."

Part 1: State pension
209. Part 1 of the Bill introduces a new state pension scheme for persons reaching pensionable age on or after 6th April 2016. As a social security benefit, a state pension is a

possession for the purposes of Article 1 of Protocol 1 (protection of property) to the European Convention on Human Rights for those persons who satisfy the conditions for entitlement to the benefit.

210. Once claimed, the terms and conditions applicable to the claimant will not change, so there will be no interference with a possession for the purposes of A1P1. Existing benefit entitlements, i.e. those under the current retirement pension scheme, will not be affected by the Bill.

211. A person reaching pensionable age the day of, or after, the new state pension is introduced will need to satisfy different conditions of entitlement, and may receive a different amount of benefit, compared to a person in the same position as them but who reached pensionable age before the introduction of the new state pension. This involves a difference of treatment based on age and as such Article 14 (prohibition of discrimination) is engaged.

212. In introducing the new state pension scheme, the aim is to establish a system whereby a flat rate of benefit is applicable to take as many as possible out of means testing and to bring forward the date for equal benefit outcomes as between men and women. It is considered that the policy aims are legitimate and proportionate such as to justify any difference in treatment on grounds of age.

213. Also, the new state pension scheme is being introduced at a time before the date for equalisation of pensionable age as between men and women. This could be viewed as a difference in treatment on grounds of sex for the purposes of Article 14, although it is not Part 1 of the Bill that has this effect but rather the legislation dealing with pensionable age, so it is not considered that this Bill creates a difference in treatment on grounds of sex.

214. In addition, the abolition of contracting-out will mean that occupational pension schemes will be affected. The need to take account of the loss of the National Insurance rebate may mean that scheme rules will change. Accrued pension rights in occupational pension schemes are possessions for the purposes of A1P1. However, the changes to occupational pension schemes by the Bill will not affect rights already accrued in a scheme, so even if A1P1 is engaged there will be no interference with a possession in this respect.

Part 2: Pensionable age

215. Clause 25 brings forward the date on which pensionable age begins to increase from age 66 to age 67. Those affected by this provision will not start receiving their state pension until a later date than they may have been expecting according to the currently-legislated timetable.

216. For those becoming entitled to state pension in accordance with the revised timetable, A1P1 will be engaged because social security benefits are possessions for those who satisfy the conditions for entitlement. In the Government’s view, there has been no interference for

the purposes of A1P1 because the conditions for entitlement will have been changed before a person becomes entitled to benefit; also, A1P1 does not confer a right to payment of a benefit at a particular time.

Part 4: Bereavement support payment

217. Clauses 29 to 31 introduce a new social security benefit, bereavement support payment, which is applicable when a death occurs on or after the introduction of the new benefit. Under the current suite of bereavement benefits, no new entitlement may occur after this date, although pre-existing entitlement will not be affected by the provisions of the Bill.

218. As a social security benefit, A1P1 will be engaged in respect of those persons satisfying the conditions for entitlement. However, the Government does not consider that there will be any interference with a possession for the purposes of A1P1, because unless or until the benefit is claimed there is no possession for the purposes of A1P1; once claimed, the terms and conditions applicable to the claimant will not change.

219. There is no link between a date of death and the age of the bereaved, so the same considerations in respect of Article 14 do not apply in respect of the new bereavement support payment as in respect of the new state pension.

Part 5: Private pensions

Automatic transfer of pension benefits

220. Clause 32 and Schedule 16 introduce a regime which provides, where a person's accrued pension benefits in a workbased pension scheme are below a specified value, for the automatic transfer of the value of those benefits from the scheme in which they are held to the scheme where the person is currently an active member. The policy aim is for a person's benefits to be consolidated into one, or a small number of, pension schemes, so the person receives a better return when the pension benefits are converted into an annuity. A smaller number of larger sized pension accounts will reduce administrative costs for schemes. The policy also aims to help a person keep track of their pension benefits and increase engagement with their savings.

221. The provisions will regulate the manner in which funds in a pension scheme may be dealt with. These funds are a possession for the purposes of A1P1 from the point of view of the scheme member and the scheme trustees and regulating how they may be dealt with may be an interference with that possession.

222. However, the Government does not consider A1P1 to have been breached. From the point of view of the scheme member, paragraph 7 of Schedule 16 provides that regulations must ensure that a scheme member may opt out of a transfer of benefits; a transfer is not mandatory. From the point of view of the scheme trustees, the restriction on how these small value scheme funds may be used can be beneficial in the medium and long term in respect of the costs of scheme administration; schemes may benefit from the measures. In respect of both members and trustees, the Government therefore considers that any interference is

justified by the policy aims referred to above, which are legitimate and achieved in a proportionate manner.

Power to prohibit offer of incentives to transfer pension rights

223. Clauses 33 and 34 enable the Secretary of State to make regulations prohibiting an employer or another person from offering an incentive to a person which would result in a member transferring his or her rights from a salary-related occupational pension scheme. The policy aims to prevent a member's pension rights being transferred or diminished to the detriment of the member. Such a prohibition may result in an interference with the use of an employer's property; A1P1 would be engaged.

224. However, the Government does not consider there to have been a breach of A1P1 because any interference with property rights here is minor and because the aim of the policy to ensure that a member's pension rights are not negatively affected is legitimate and achieved in a proportionate manner.

COMMENCEMENT DATES

225. The provisions set out in Part 1 of the Bill come into force on 6th April 2016, although some or all the provisions may be commenced earlier by means of an order. This will enable those clauses which provide regulation-making powers to be commenced in advance of the implementation of the new state pension scheme so appropriate regulations can be made. Provision is also made to allow the Secretary of State to make an order to amend the date that Part 1 is to come into force and to make corresponding amendments to Part 1 of the Bill and any other enactment amended by it.

226. The provisions in Part 6 (Final provisions) and clause 28 (State pension credit: preserving indefinite status of certain existing assessed income periods) come into force on the day the Bill receives Royal Assent.

227. The provisions in Part 2: Pensionable age, Clauses 33 and 34 (Power to prohibit offer of incentives to transfer pension rights), Clause 39 (Penalty notices under sections 40 and 41 of the Pensions Act 2008), Clause 44 (Preparation of guidance for pensions illustrations), Clause 45 (Pensions Regulator's objectives) and paragraph 30(2) of Schedule 13 (removing the duty for the Secretary of State to review and publish a report on the need for an alteration to rebate rates as these will be irrelevant following the abolition of contracting-out) will commence two months after Royal Assent.

228. The remainder of the Bill will be brought into force by means of commencement orders made by the Secretary of State or the Treasury. An order may appoint different days for different purposes or make transitional provision and savings.

PENSIONS BILL

EXPLANATORY NOTES

These notes refer to the Pensions Bill
as brought from the House of Commons on 30th October 2013
[HL Bill 55]

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