PENSION SCHEMES BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Pension Schemes Bill as brought from the House of Commons on 26th November 2014. 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. These explanatory notes 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. In November 2013, the Government published a consultation paper, *Reshaping workplace pensions for future generations*, which outlined broad proposals to enable greater innovation in risk sharing in private pension arrangements. Responses that were received during the consultation period were considered in the Government response paper published in June 2014. Following analysis of these responses, together with additional research and stakeholder engagement, the Pension Schemes Bill sets out a definition of a shared risk (or 'defined ambition') scheme, to encourage pension arrangements with greater risk sharing between parties, and a definition of collective benefits to enable risk pooling among members. These measures form the basis of Parts 1 to 3 of the Bill.

4. The 2014 Budget also announced reforms to private pensions, giving savers greater flexibility in how they access their defined contributions pensions pots. The Government published a consultation on 19th March 2014 entitled "Freedom and Choice in Pensions", which invited interested parties to comment, over a 12-week period, on the policy and implementation issues surrounding the pensions reforms announced at Budget. The Government published its response to this consultation on 21st July. Many of the Budget reforms introducing the pensions flexibilities require changes to tax legislation and are set out in the Taxation of Pensions Bill which was

introduced on 14th October[1]. This Bill contains a number of measures concerning guidance, transfers in public service pension schemes and in relation to certain private sector pension schemes as well as changes to pensions legislation as a consequence of the Taxation of Pensions Bill.

SUMMARY

5. The following paragraphs provide a high-level summary of the main provisions of the Bill.

Shared risk schemes and collective benefits

6. The Bill introduces new definitions to the legislative framework for private pensions based on the type of promise about the retirement benefit that pension schemes provide for members during accumulation. The current legislation is based on a binary structure between money purchase schemes, which traditionally offer no certainty over retirement benefit, and non-money purchase schemes, which have traditionally offered salary related pension benefits. The non-money purchase scheme category can cover a range of different pension benefit designs that offer different types of promises about the retirement benefit. However, the legislation is often perceived as offering two main options, and much existing legislation is written on the basis of a polarity between these options. The Bill will thus define three categories of pension scheme based on the different types of promise offered to members during the accumulation phase about their pension savings when they come to access them (also termed decumulation). A defined benefits scheme is a scheme in which the member has a full pensions promise about the rate of the retirement income they will receive for life from a fixed normal pension age; a shared risk scheme is one in which there is a promise about some of the retirement benefits, whether income or lump sum; a defined contributions scheme is one where there is no promise about what is being saved.

7. The Bill also includes measures to enable the provision of collective benefits. Collective benefits are provided on the basis of allowing the scheme's assets to be used in a way that pools risks across the membership. Examples of collective arrangements which are currently in operation can be found in the Netherlands, Denmark, and parts of Canada, where evidence suggests they can, when governed appropriately, provide a greater degree of stability in pension outcomes than individual defined contributions schemes.

[1] The Taxation of Pensions Bill http://services.parliament.uk/bills/2014-15/taxationofpensions.html

Pension flexibilities

Pensions Guidance

8. The Bill legislates to establish a pensions guidance service. It provides that the Treasury must make arrangements for the provision of pensions guidance and establishes a framework for the Financial Conduct Authority (FCA) to supervise designated guidance providers delivering pensions guidance by arrangement with the Treasury. It establishes a duty on the FCA to make rules to require specified pension providers to "signpost" towards the guidance service. It also provides for the funding of the pensions guidance service by way of a levy raised by the FCA on FCA regulated persons and paid to the Treasury.

Independent advice

9. The Bill provides for the provision of appropriate independent advice in respect of conversions and transfers. People in funded schemes with "safeguarded benefits" (i.e. benefits which are neither money purchase nor cash-balance under the definitions in pensions legislation) will continue to be allowed to transfer their benefits. But the Bill introduces a requirement whereby they must take appropriate independent advice before deciding to transfer or convert such rights into rights which can be accessed flexibly. This safeguard will ensure they have properly considered the implications of a transfer or conversion. At the same time it ensures that the cost of independent advice paid for, or reimbursed by, an employer is exempt from being treated as a taxable benefit in kind for income tax purposes, provided specific conditions are met.

Drawdown, conversion of benefits and lump sums

10. The Taxation of Pensions Bill makes changes to allow new forms of "authorised payments" for tax purposes. The Taxation of Pensions Bill sets out the circumstances under which funds may be designated as drawdown funds can be extended, and the payment of lump sums from uncrystallised benefit rights under a money purchase arrangement will be permitted. This Bill defines the benefits to which the new flexibilities apply as "flexible benefits". These are money purchase benefits, cash balance benefits and any benefit which is calculated by reference to a fund.

11. Cash balance arrangements are like money purchase arrangements, inasmuch as they provide a fund to the member but, unlike a money purchase arrangement, cash balance ones make a promise as to the amount of that fund.

12. The Bill deals with the changes required in pensions legislation consequent on the changes in the Taxation of Pensions Bill, to ensure the new tax flexibilities are not negated by pensions legislation.

Transfers

13. The Bill also extends the current transfer rights for scheme members with 'flexible benefits', giving them a right to transfer up to and beyond their scheme's normal retirement age, and amends existing statutory transfer rights so that they apply in relation to benefit categories, rather than at scheme level.

14. As noted above, the 2014 Budget announcement gives savers greater choice about how and when they access their defined contributions pensions pots. The new flexibilities will also have implications for those with a defined benefits pension pot, and the Treasury have consulted on how these flexibilities, including individuals' rights to a transfer, should be managed. As the majority of public service defined benefits schemes operate on an unfunded basis, allowing transfers out of these schemes would expose the Exchequer to significant risks. Therefore the Bill restricts transfers out of certain public service defined benefits pension schemes.

15. The Bill also introduces a power for Ministers to require the cash equivalent transfer value for transfers from funded public service schemes to schemes from which flexible benefits can be obtained to be reduced, in circumstances where the relevant Minister reasonably expects that such transfers, either singly or in combination with other factors, will significantly increase the risk or level of payments out of public funds to support the pension scheme to meet its liabilities.

Other measures

16. The Bill also legislates on other private pensions matters. It allows the Department for Work and Pensions to fund the Remploy pension scheme directly, where currently Remploy funds the scheme through monies it receives from the Department for Work and Pensions. It also removes a requirement that the Pensions Regulator compile and maintain a register of trustees. This is a response to the Government's 'Red Tape Challenge' to remove regulations deemed unnecessary or over-prescriptive.

17. The Bill also contains minor provisions to:
    - enable the Lord Chancellor to establish a pension scheme for eligible fee-paid judges in the United Kingdom and Northern Ireland, as required by case law.
    - extends to Scotland section 38A of the Pension Schemes Act 1993 that were inserted by the Marriage (Same Sex Couples) Act 2013 as it only currently applies to England and Wales.
    - cover pension sharing on divorce, to provide a new definition of "normal benefit age" and "normal pension age.

PREVIOUS LEGISLATION

18. The following notes give a brief overview of significant existing legislation that is referenced by this Bill. Further explanation, if required, is given in the clause-by-clause commentary.

19. The Pension Schemes Act 1993 is a consolidation Act that sets out various provisions in relation to classification of pension schemes, contracting out, early leavers (including preservation, revaluation and the right to take a transfer), the Pensions Ombudsman and other miscellaneous requirements.

20. The Pensions Act 1995 contains provisions relating to the Pensions Regulator, as well as provisions relating to the role and responsibilities of trustees, professionals and employers. It also provides requirements in respect of scheme administration, indexation of pensions in payment, protection against detrimental modifications, employer debt and winding up.

21. The Welfare Reform and Pensions Act 1999 makes provision for pension sharing on divorce.

22. The Pensions Act 2004 makes provision with regard to the Pensions Regulator and the Pension Protection Fund. It also makes provision in relation to scheme funding, and contains other miscellaneous provisions applying to pension schemes including internal controls, pension protection where there is a TUPE transfer and employer consultation requirements.

23. The Pensions Act 2008 makes provision for automatic enrolment, under which employers are required to enrol qualifying employees into a suitable pension scheme and to make pension contributions on their behalf.

24. The Public Service Pensions Act 2013 makes provision for the reform of public service pensions.

25. The Financial Services and Markets Act 2000 makes provision for the Financial Conduct Authority (FCA) and for a regulatory framework for financial services and markets.

OVERVIEW & STRUCTURE

26. The Bill is in six parts:

Part 1 – Categories of pension scheme

27. This Part of the Bill contains provisions for a new framework in relation to the categorisation of pension schemes. It establishes three mutually exclusive definitions for scheme type based on the type of promise provided in the accumulation phase of pension saving about the retirement benefits that a scheme offers to members at decumulation. The schemes are defined in terms of a "pensions promise" A scheme can be categorised as a defined benefits scheme, shared risk scheme or a defined contributions scheme, depending on the type of the promise. A scheme can also be treated as more than one scheme for the purposes of categorisation, in relation to different promises to members.

Part 2 - Collective Benefits

28. This Part defines the concept of collective benefits and makes provision for regulation-making powers in relation to them. These powers cover matters such as the setting of targets in relation to benefits, valuation, reporting requirements, transfer values, winding-up and governance.

Part 3 – General changes to legislation about Pension Schemes

29. This Part contains amendments to existing legislation, mostly as a consequence of the change to scheme definitions set out in Part 1 and the provisions about collective benefits in Part 2. It aims to ensure that current legislative requirements relating to scheme governance and administration apply in the appropriate way to the new categories, and enables requirements on governance and administration to apply to the specific needs of members of shared risk schemes. Firstly, it introduces a regulation-making power to set out conditions for a pensions promise being obtained from a third party (clause 36), provides a new requirement for managers to act in the best interests of members when taking certain decisions in relation to shared risk schemes and collective benefits (clause 37), and changes existing regulation-making powers which require schemes to disclose information to members (clause 38). It contains measures relating to the preservation and revaluation rules of pension rights according to benefit type (clauses 39 and 40), for members leaving a scheme before normal pension age. It provides for collective benefits to be exempt from the indexation requirements set out in the Pensions Act 1995 and provides new regulation-making powers to exclude pensions of a prescribed description from those indexation requirements (clauses 41, 42 and 43). Finally, it removes the statutory requirement for regulations to provide that the Pensions Regulator compile and maintain a register of trustees (clause 44), and makes changes to subsisting rights legislation to ensure members are protected against detrimental modifications to rights in a shared risk or defined benefits scheme (clause 45).

Part 4 - Pension flexibilities

30. This Part contains a series of changes relating to the introduction of the pension flexibilities announced in the Budget 2014.

Pensions Guidance

31. The Bill legislates to establish a pensions guidance service. It provides that the Treasury must make arrangements for the provision of pensions guidance and establishes a framework for the Financial Conduct Authority (FCA) to supervise designated guidance providers delivering pensions guidance by arrangement with the Treasury. It establishes a duty on the FCA to make rules to require specified pension providers to "signpost" towards the guidance service. It also provides for the funding of the pensions guidance service by way of a levy raised by the FCA on FCA regulated persons and paid to the Treasury.

Independent advice

32. The Bill provide for the provision of appropriate independent advice in respect of certain conversions and transfers. People in funded schemes offering "safeguarded benefits" (i.e. benefits which are neither money purchase nor cash-balance) will continue to be allowed to transfer their benefits. But the Bill introduces a requirement that they must take appropriate independent advice which will ensure they have properly considered the implications of a transfer.

Drawdown, conversion of benefits and lump sums

33. The Taxation of Pensions Bill makes changes to allow new forms of "authorised payments" for tax purposes. This Bill makes the primary changes required to deal with the consequences of schemes making such authorised payments. It also sets out the application of the authorised payment rules when a scheme is in the Pension Protection Fund (PPF) assessment period or begins to wind up.

Transfers out of defined benefits schemes

34. The Bill also extends the current transfer rights for scheme members with "flexible benefits" giving them a right to transfer up to and beyond their scheme's normal retirement age, and amends existing statutory transfer rights so that they apply at benefit category level, rather than at scheme level.

35. As the majority of public service defined benefits schemes operate on an unfunded basis, allowing transfers out of these schemes would expose the Exchequer to significant risks. Therefore the Bill restricts transfers out of certain public service defined benefits pension schemes.

36. In addition the Bill introduces a power for Ministers to require the cash equivalent transfer value for transfers from funded public service schemes to schemes from which flexible benefits can be obtained to be reduced, in certain circumstances.

Part 5 – Miscellaneous

37. This Part allows the Secretary of State to make payments into the Remploy Limited Pension and Assurance Scheme directly, rather than indirectly through the payments it makes to Remploy the wider organisation.

38. The Bill also contains minor provisions to:
    - enable the Lord Chancellor to establish a pension scheme for eligible fee-paid judges in the United Kingdom and Northern Ireland, as required by case law.
    - extends to Scotland section 38A of the Pension Schemes Act 1993 that were inserted by the Marriage (Same Sex Couples) Act 2013 as it only currently applies to England and Wales.
    - cover pension sharing on divorce, to provide a new definition of "normal benefit age" and "normal pension age".

Part 6 – General

39. This Part also contains a power to make consequential amendments and makes general provision in respect of regulations, the territorial extent of the Bill, Crown application and commencement.

Schedules 1-5

40. Schedule 1 - Early leavers: revaluation of accrued benefits.

41. Schedule 2 – Other amendments to do with Parts 1 and 2 of the Bill.

42. Schedule 3 - Covers pensions guidance.

43. Schedule 4 - Rights to transfer benefits.

44. Schedule 5 - Pension scheme for fee-paid judges: consequential amendments.

TERRITORIAL EXTENT

45. The Bill extends to England and Wales and to Scotland. Clause 78 only extends to Scotland. The provisions in sections 54(3), 72, 73 and 74 and Part 6 extend to Northern Ireland. Sections 51, 52, 60, 61, 62, 69(8) and (9) apply to Northern Ireland only.

COMMENTARY ON CLAUSES

PART 1 – CATEGORIES OF PENSION SCHEME

Clause 1: Introduction
Clause 2: Defined benefits scheme
Clause 3: Shared risk scheme (sometimes known as 'defined ambition')
Clause 4: Defined contributions scheme

46. These clauses define three new categories of pension scheme, which are: defined benefits scheme; shared risk scheme (sometimes referred to as 'defined ambition'); and defined contributions scheme. These categories apply only where legislation expressly states that they should, and do not apply in any public service pensions legislation.

47. The Pension Schemes Act 1993 currently defines a "money purchase scheme" as a scheme which offers only money purchase benefits. A money purchase benefit is generally taken to mean one which is accrued on the basis that the benefit will derive from a pot of contributions, together with any investment returns on those contributions. The legislative definition of a money purchase benefit is a "benefit the rate or amount of which is calculated by reference to a payment or payments made by the member or by any other person in respect of the member". The Pensions Act 2011 added a stipulation that a benefit (other than a pension in payment) is only money purchase if "its rate or amount is calculated solely by reference to assets which (because of the nature of the calculation) must necessarily suffice for the purposes of its provision to or in respect of the member".

48. Schemes which fall outside this definition are not generally defined in pensions legislation but are simply considered to be "non-money purchase".

49. Clauses 2 to 4 define three mutually exclusive categories of pension scheme. These categories are based on the type of promise the member has during the accumulation phase about the retirement benefit (income or pot).

50. The first category is a defined benefits scheme (clause 2). This type of scheme provides a pre-determined retirement income to all members, beginning at the scheme's normal pension age or decumulation point and continuing for life.[2] This income is pre-determined insofar as it is set at a rate that is calculated according to promised factors as stipulated in the scheme rules or other scheme documentation. This is expressed as a "full pensions promise" to members. The normal pension age or earliest occasion for accessing the full benefits is fixed – that is, the only way the age or period of accumulation can change is by change to the scheme rules. Schemes where the normal pension age changes in line with state pension age, without requiring a change to the

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[2] For example, some schemes might not have a normal pension age but might have a specific period of service defined by accumulation period.

scheme rules, are thus excluded. Also excluded are schemes which apply a longevity factor to the benefit entitlement. Regulations may prescribe additional requirements which must be met for a scheme to fall within the defined benefit category

51. The second category is a shared risk scheme (clause 3). This type of scheme offers a "pensions promise", but not a full pensions promise, to all members at some point during the accumulation phase in relation to at least some of the retirement benefit that members might receive, whether this benefit is given in the form of a retirement income or a retirement lump sum.

52. The third category is a defined contributions scheme (clause 4). This type of scheme gives no promise during the accumulation phase in relation to any of the retirement benefits that may be provided to members.

53. The definitions therefore describe the extent to which members receive a promise during the accumulation phase: a defined benefits scheme is a scheme which provides a full pensions promise to members; a shared risk scheme provides a pension promise about at least some of the benefits to be provided by the scheme; and a defined contributions scheme provides no pensions promise during the savings period. For further definition of "pensions promise" and related terms, see clause 5.

54. The following schemes provide examples for each of the categories. These are not exhaustive but are for illustration:

- a salary-related pension scheme where the retirement income to be paid out is determined according to a formula based on a salary: for example, 1/80 x average salary x years in pensionable service. The age or point at which this income can start to be paid in full to members can only be changed by a change to the scheme rules. This is a defined benefits scheme.

- a pension scheme into which the employer and employee pay contributions. These contributions are then invested, and so the retirement benefit in part depends on how those investments perform, but some contributions are used to purchase a deferred annuity or otherwise secure a promise about part of the income that will be received in retirement. The retirement benefit received is a combination of that promise and the funds accumulated via contributions and investment returns. This is a shared risk scheme.

- a pension scheme into which the employer and employee pay contributions, which are then invested. The retirement benefit depends wholly on the money contributed to the scheme and the investment return, and potentially any pooling of risk between members, and so the employee is given no promise or certainty during the accumulation phase. This is a defined contributions scheme.

55. For a scheme which does not fit into any of the categories, regulations must be made to treat the scheme as two or more schemes which do fit into the categories (see clause 6).

Clause 5: Meaning of "pensions promise" etc.

56. This clause explains what is meant by the terms "pensions promise" and "full pensions promise".

57. *Subsection (1)* states that (for the purposes of defining a defined benefits scheme), there is a "full pensions promise" provided to members, if, at all times before the benefit comes into payment, there is a promise about the level of benefit that will be received and the level of benefit is determined wholly by reference to that promise in all circumstances. (*Subsection (3)* contains more about what a promise about the level of benefit consists of.)

58. *Subsection* (2) states that (for the purposes of defining a shared risk or defined contributions scheme), a "pensions promise" is provided if there is a promise to members during the accumulation phase, in relation to a retirement benefit, about the level of benefit that will be received. The level is the rate of the income or the amount of the lump sum (see clause 7). The promise must be expressed at *a* time before the benefit comes into payment, but unlike under a defined benefits scheme, does not need to be expressed at *all* times before payment, i.e. throughout the accrual phase.

59. Any pensions promise about a level of retirement benefit includes a promise about the factors that will be used to calculate the level of a retirement benefit (subsection (3)(a)). These factors, may, for example, include the length of pensionable service, or be linked to the member's salary, but do not include longevity factors. A promise that the level of retirement benefit will be calculated by reference to what the pot of contributions or investment returns can provide does not constitute a 'pensions promise' for the purposes of defining a defined benefits or shared risk scheme (subsection (3)(b)). Neither is it a promise where a scheme specifies the factors that will be used to distribute the assets between members and establish the value of a collective benefit (subsection (3)(c)).

60. A pensions promise is provided if the scheme sets out the promise, or if it requires the promise to be obtained from a third party. This enables a pension scheme to be defined on the basis of the member's experience of whether there is a pensions promise, regardless of whether it comes from the scheme itself, the employer or a third party.

61. *Subsection (5)* provides that, in relation to a shared risk or defined contributions scheme, there is also a promise if the scheme offers the option of a promise (or the option of requiring a promise). This means that the scheme categorisation depends on what the scheme offers to members, not the offer that individual members take up. Should a scheme offer a money purchase pension with the option for members to purchase a guarantee, because there is the potential for a pensions promise to be given, this scheme would be defined as a shared risk scheme.

62. *Subsection (6)(a)*states that discretions to vary the benefit do not affect a scheme's categorisation where it would be considered otherwise as offering a "full pensions promise". This is providing that these are capable only of being used for reasons related to a member's individual circumstances and meet other requirements that may be specified in regulations. For example, a defined benefits scheme may make provision for early retirement on the grounds of ill health, on a case-by-case basis, without it affecting the categorisation of the scheme under the new definitions. Since these discretions are exercised only on an individual basis, they are different from discretions applied at the scheme level.

63. *Subsection (6)(b)* states that a scheme may also offer other discretions in relation to retirement benefit without affecting its categorisation as a defined benefits scheme, as long as those discretions are of a description specified in regulations.

64. *Subsection (7)* provides that certain promises about the level of retirement income are not to be counted as pensions promises if they are only given within a specified period of that income coming into payment and are conditional on it coming into payment by a particular date. This is to cater for defined contributions schemes which also provide a retirement income stream, and make a promise only at the point of decumulation, about that income. Such schemes will need to discuss and make a commitment to the member about that retirement income before the first payment is made, but will usually only make the promise in relation to the final pot and only in the immediate run up to the retirement date, so it provides no more certainty to the member than other DC schemes. This subsection enables this type of scheme to remain defined contributions. It does this by excluding from the definition of "pensions promise" promises which meet a four part test: – that the promise is about the level of income; that promise is conditional on the income coming into payment by a certain date; that the promise is first given during a period in the run-up to that date (with the length of that period to be specified in regulations); and that it is not a promise of a specified description (to ensure that where a scheme makes a promise within the prescribed period which does give the member greater certainty, this will be counted as a pensions promise - for example, where a promise is made about an income before the sum total of the savings is known).

65. Subsection (8) states that, when working out whether there is a particular kind of promise in relation to some or all of the benefits that may be provided as set out in clauses 2 to 4, account can be taken of benefits which may be provided only after the member has been a member of the scheme for a certain length of time and any other benefits that may be provided to the member at a future time – for example, where members start in a scheme with money purchase benefits and no promise, but then after a certain number of years or at a certain age start accruing benefits to which a promise attaches.

Clause 6: Treatment of a scheme as two or more separate schemes

66. This clause requires regulations to be made for a pension scheme that does not fit within any of the categories set out in the clauses above (it is not a defined benefits, defined contributions or shared risk scheme) to be treated as if it were two or more separate schemes, each then fitting within a category, for the purposes of these definitions and other specified legislation.

67. An example of such a scenario would be where an existing scheme has a defined benefits section which is not open to new members, and a defined contributions section for new members. This type of scheme would not be defined as a shared risk scheme, since, though there are some elements of a pensions promise, the promise is not available to all members. Instead, regulations must be made providing for the scheme to be treated as if it were two schemes for the purpose of the categorisation – in the example given above, it is likely that the power would be used to treat the scheme as if it were a defined benefits scheme and a defined contributions scheme.

68. The clause also enables regulations to be made to provide for other circumstances in which a scheme can be treated as two or more schemes, each fitting within one of the scheme categories.

Clause 7: Interpretation of Part 1

69. This clause defines the terms for the purposes of Part 1.

70. "Normal pension age", in relation to retirement benefits, refers to the earliest age at which, or occasion on which, the pension scheme member is entitled to receive benefits from the scheme without adjustment for taking benefits early or late. If there is no such age or occasion, "normal pension age" will be normal minimum pension age as defined by section 279(1) of the Finance Act 2004 – that is, before 6th April 2010, 50, and on or after that date, 55. A "fixed" normal pension age means a pension age (or other decumulation occasion) that cannot be changed except by an amendment to the scheme rules.

71. "Pension scheme" has the meaning given by section 1(5) of the Pension Schemes Act 1993 – that is, as "a scheme or other arrangements comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people: on retirement; on having reached a particular age, or; on termination of service in an employment".

72. 'Retirement benefit' refers to the benefit that a member of a pension scheme receives, which can be provided either in the form of a "retirement income" or a "retirement lump sum". Retirement income is a pension or annuity payable to the member on reaching normal pension age. A retirement lump sum is a lump sum which is payable to the member on reaching normal pension age or made available for the provision of other retirement benefits on or after this time (this may include the purchase of an annuity).

PART 2 – COLLECTIVE BENEFITS

Clause 8: Introduction and definition

73. Clause 8 sets out the defining characteristics of a “collective” benefit.

74. Where, in all circumstances the rate or amount of the benefit payable to or in respect of a member depends entirely on (a) the amount available to pay that member’s and other members’ benefits and (b) factors used to determine what proportion of that amount is available for the provision of the particular benefit, these benefits are defined as ‘collective’ in the Bill. The definition also provides that a benefit which is a money purchase benefit is not a collective benefit.

Clause 9: Duty to set targets for collective benefits

75. Clause 9 provides that regulations may require that trustees or managers of pension schemes offering collective benefits set targets in relation to the rate or amount of those benefits. In particular, regulations can be made about, amongst other things, the way that targets are expressed, recorded and published. The intention is that members of a scheme with collective benefits should be provided with a reasonable estimate of the benefits that they can expect to receive from the scheme; in the absence of a well defined pot over which the individual has clear ownership, the target is a way of illustrating for the member what they might receive. Regulations may also require trustees or managers to set initial targets at such a level that the probability of meeting the target will fall within a range specified in regulations and for this to be certified by an actuary. The setting of targets is to ensure that schemes providing collective benefits operate in a transparent manner and provide some assurance to members in relation to those benefits.

76. Clause 9 (3) provides that regulations may, in particular, make provision for matters to which the actuary should have regard, and may require trustees or managers to provide the actuarial certificate to a specified person. Regulations may also make provision about the content of the actuarial certificate and require the trustees or managers to obtain the certificate from an actuary who has certain qualifications or meets other specified requirements.

Clause 10: Policy about factors used to determine each benefit
Clause 11: Powers to impose requirements about factors used to determine each benefit

77. Clause 10 provides that regulations may require trustees or managers to have a policy on the factors used to calculate members' benefits and to implement that policy. Clause 11 allows the Secretary of State to make requirements about the factors to be used and any policy under clause 14 must be consistent with these requirements.

Clause 12: Payment schedule
Clause 13: Overdue contributions and other payments

78. Clause 12 provides for a power to make regulations which may require trustees or managers to prepare a payment schedule which shows the contributions due for payment to the scheme in respect of any collective benefits, and the dates on which these contributions are payable. Clause 13 gives a regulation-making power to require a specified person to be notified in the event of any payment shown in a payment schedule becoming overdue. Regulations can also make provision for the recovery of overdue payments.

79. Clause 12(4) and 13(3) provide that regulations may make provisions corresponding, or similar, to those set out in sections 87 and 88 of the Pensions Act 1995 (which deal with schedules of payments for money purchase schemes).

Clause 14: Statement of investment strategy
Clause 15: Investment performance reports

80. Sections 35 and 36 of the Pensions Act 1995 (together with the Occupational Pension Schemes (Investment) Regulations 2005) outline the requirements and principles governing investments for trust-based schemes, including a requirement for the trustees to draw up a statement of investment principles. Amongst other things, this statement must cover the trustees' policies in relation to the kinds of investment to be held, the balance between different kinds of investment, risks, and the expected return on investments.

81. Clause 14 gives a regulation-making power to require trustees or managers of a scheme to produce a statement about the investment strategy to be followed in connection with the provision of "collective" benefits.

82. Clause 14(3) gives a power for these regulations to make corresponding or similar provision to that which applies to trust-based schemes under the 1995 Act. Regulations may provide for specific requirements about what must be included in the statement of investment strategy, and how frequently the strategy should be reviewed.

83. Under clause 15 regulations may be made requiring the trustees or managers of schemes to obtain regular reports on the performance of investments held for the provision of collective benefits. Regulations may provide for how frequently the investment

performance reports should be obtained, from whom they should be obtained and what the reports must include.

Clause 16: Investment powers

84. Under this clause regulations may make provision in relation to investment powers of trustees or managers of schemes containing collective benefits. The regulations may also make provision allowing trustees or managers to delegate decisions about investments to another person and provision about the investment powers of any person to whom such decisions have been delegated. In this way trustees or managers can delegate powers to those with investment knowledge to act in an appropriate way. These regulations may make similar provision to section 34 or 36 of the Pensions Act 1995, which contain provision relating to powers of investment, delegation and choice of investments for occupational trust based schemes.

Clause 17: Restriction on borrowing by trustees and managers

85. This clause provides for a power to make regulations to prohibit trustees or managers of schemes containing collective benefits from borrowing money or acting as a guarantor, except in specified cases. This also applies to anyone to whom the trustees or manager have delegated decisions about collective benefit investments. This is to ensure that funds held for the purposes of collective benefits are used to provide those benefits.

Clause 18: Investment powers: duty of care

86. This clause provides a power to make regulations to ensure that trustees or managers of schemes which contain collective benefits, and those who have had investment functions delegated to them, cannot be excluded from liability when exercising their investment functions involving collective benefit investments. This requirement will help to ensure that those responsible for collective benefit investments cannot avoid their duty of care in respect of how they manage the funds, in turn helping to ensure the funds are properly managed and providing a safeguard for members. This clause allows current restrictions that apply under section 33 of the Pensions Act 1995 to trustees of trust based occupational schemes in relation to investment functions to similarly apply in relation to those running schemes which offer collective benefits.

Clause 19: Valuation reports
Clause 20: Valuation process

87. Clause 19 gives a regulation-making power which may require those schemes offering collective benefits to obtain a document, prepared by an actuary, which values the assets held by the scheme for the purposes of providing collective benefits and assesses how likely it is that the scheme will be able to meet any targets in relation to those benefits. This document is defined in the Bill as a “valuation report”. Among other matters, the regulations may make provision about the content and frequency of valuation reports, may require that the actuary preparing the report must have particular qualifications or meet other requirements and may require the actuary to certify whether the probability falls within the required probability range or not.

88. Clause 20 provides for a power to make provision about the methods or assumptions to be used by an actuary when drawing up a valuation report. Regulations made under this clause may require an actuary to have regard to guidance when preparing the valuation report and may impose other requirements on the actuary.

89. The clause also contains a power to require the trustees or managers to decide which methods or assumptions the actuary should use and a power for regulations to set out matters that the trustees or managers must take into account, or principles they must follow, when making that decision. These principles might, for example, state the parameters of the economic and actuarial assumptions must be used.

Clause 21 Policy for dealing with a deficit or surplus

90. Under this clause, regulations may provide that trustees or managers of schemes offering collective benefits are required to have a policy for dealing with circumstances where the probability of a scheme meeting a target in relation to a collective benefit is outside of the required range of probability set out in regulations - termed in the Bill as “deficit” or “surplus”.

91. Trustees and managers will usually have some flexibility and discretion about how they react to a “deficit or surplus”, therefore the clause sets out powers which may require the policy to contain provision for a ‘deficit or surplus’ to be dealt with in one or more of a range of ways. Regulations may require the policy, to contain an explanation of the possible effect of the policy on members in different circumstances and to be drawn up with a view to achieving certain results within a specified period of time. Regulations may require consultation with members about the policy and any changes to it, and may make provision for the policy to be regularly reviewed or revised. Regulations may also make provision about the content of the policy and set out matters or principles that trustees must take into account or follow in setting the policy.

Clause 22: Power to impose requirements about dealing with a deficit or surplus

92. This clause provides for regulations to set out circumstances in which a deficit or surplus must be dealt with in a particular way. The regulations can set out specific things trustees or managers must do and the time within which they have to do them.

Clause 23: Deficits attributable to an offence or the imposition of a levy

93. This clause sets out a regulation-making power to allow an amount to be treated as a debt due from an employer to a scheme offering collective benefits in situations where a deficit in relation to a target benefit has resulted from a specified offence or the imposition of a specified levy. In this context, clause 20 (2) provides that regulations may mirror, or be similar to, any provision made by section 75 (amounts deemed to be debts due from an employer) of the Pensions Act 1995.

Clause 24: Payment of amounts out of collective benefit funds

94. Regulations under this clause will ensure that assets held in relation to collective benefits are used to provide those benefits. However there is a power to make exceptions to this general rule. It may be that there are some limited circumstances when it may be appropriate for an employer or some other party to be entitled to some share of any surplus from the scheme. For example where an employer wishes to assist a collective benefit scheme that falls into difficulty by putting some extra funds in, then to encourage such an action there may be arrangements in place to allow the possibility of full or partial repayment to the employer if the scheme has a future surplus. The regulations within this clause may be similar to existing provisions in section 37 of the Pensions Act 1995.

Clause 25: Transfer value: policy for calculating cash equivalent of benefits

95. This clause contains a power to require trustees or managers of a scheme offering collective benefits to have and to follow a policy for the calculation and verification of cash equivalents of collective benefits. The cash equivalent is used for the purpose of calculating transfer values and for valuing rights for sharing pensions on divorce.

96. Regulations under this clause may require trustees or managers to ensure that the policy is consistent with any requirements imposed by regulations under section 97 or 101I of the 1993 Pension Schemes Act or section 30 of the Welfare Reform and Pensions Act or any other specified requirements. Regulations may also make provision about the content of the policy, the review and revision of the policy and may require trustees or managers to consult about the policy. The regulations can also set out the sort of things trustees or managers must take into account or principles they must follow in setting the policy.

Clause 26: Winding up

97. This clause provides for regulations about the winding up of schemes providing collective benefits. The regulations can also apply to part of a scheme providing collective benefits.

98. The regulations can make provisions about the distribution of assets between members, the operation of the scheme during wind up, discharge of liabilities, and excess assets on wind up. The Pensions Act 1995 already makes provision in relation to these areas for some occupational pension schemes.

99. The clause therefore provides for regulations to disapply, amend or otherwise modify the application of sections 38, 73, 73A, 73B, 74 and 76 of the Pensions Act 1995, which concern the winding up of occupational pension schemes. It also provides for regulation-making powers to be used to make provision corresponding or similar to any provision made by sections 38, 73, 73A, 73B, 74 and 76 of the Pensions Act 1995.

Clause 27: Requirement to wind up scheme in specified circumstances

100. This clause provides for regulations to set out circumstances in which the trustees or managers must wind up either the whole or part of a scheme providing collective benefits. The powers have been drafted to ensure that any wind up required under this provision will be as effective as if it had been made under powers conferred by the scheme. Regulations made under this clause may also override any other legislation or scheme rules that would otherwise prevent wind up, and override any need for any consent or procedure that would otherwise be required.

Clause 28: Policies about wind up

101. Under this clause, regulations may provide that trustees or managers of schemes offering collective benefits are required to have a policy for dealing with wind up of a scheme providing collective benefits and to follow the policy.

102. The regulations can require trustees or managers to consult about the policy and to make provision for reviewing and revising the policy.

103. The regulations can also make provision about the content of the policy and can set out the sort of things trustees or managers have to take account of or the principles they have to follow when putting the policy together.

104. The regulations can require the policy to include an explanation of when trustees are required to wind up the scheme and the circumstances when they have the power to decide when to wind up. If they have the power to decide when to wind up, regulations can require the policy to set out how they intend to use that power.

105. The regulations can also require the policy to include an explanation of how assets will be distributed, and if the trustees or managers have the power to decide how to distribute assets, how they intend to use that power.

Clause 29: Working out which assets are available for the provision of which benefits

106. This clause provides for regulations to set out how to work out which benefits are available for the provision of collective benefits, which assets are available for the provision of *which* collective benefits (for example if there is more than one section in a scheme providing collective benefits) and which assets are available for the provisions of benefits other than collective benefits.

Clause 30: Requirement to obtain actuarial advice
Clause 31: Sub-delegation
Clause 32: Publication etc of documents
Clause 33: Enforcement

107. Clause 30 provides that regulations may require trustees or managers to consult an actuary who has specified qualifications or meets other specified requirements before making a specified decision or taking other specified steps.

108. Clause 31 provides a power for regulations to confer discretion on a person in relation to the provisions in Part 2 of the Bill, for example regulations may make provision for the methods or assumptions to be used by an actuary but leave some discretion about these matters to the actuary.

109. Clause 32 provides that where regulations made under Part 2 of the Bill require the trustees or managers to prepare or obtain a document, regulations may also impose requirements about the publication of that document and require copies of that document to be sent to certain persons.

110. Clause 33 provides a power for the regulations made under this Part of the Bill to provide for civil penalties to apply where a person breaches requirements in those regulations.

Clause 34: Overriding requirements

111. This clause allows for regulations made under this Part of the Bill to override any conflicting provisions in scheme rules

Clause 35: Interpretation of Part 2

112. This clause defines a number of expressions used in this Part of the Bill.

113. The clause also provides that a power conferred by this Part of the Bill to make provision corresponding or similar to any provision made by a section of another Act includes a power to make provision corresponding or similar to any provision that may be made by regulations under that section.

PART 3 – GENERAL CHANGES TO PENSIONS LEGISLATION ABOUT PENSION SCHEMES

Clause 36: Pensions promise obtained from third party

114. This clause relates to the possibility of a pensions promise, for the purposes of a defined benefits or shared risk scheme being obtained from a third party, as set out in clause 5. It contains a power to enable the Secretary of State to make regulations to require that trustees or managers of a scheme must not obtain any such promise from a third party unless conditions set out in the regulations are met. Regulations under this clause may also provide for civil penalties to apply to a person who fails to comply with them. This

clause also makes changes to section 34(7) of the Pensions Act 1995 to add this clause to the list of provisions that section 34, which makes its own provisions in relation to trustees' power of investment, cannot override.

Clause 37: Duty to act in the best interests of members

115. Regulations under this clause may require managers in non-trust based schemes to act in members' best interests when taking certain specified decisions. This duty may apply in shared risk schemes and schemes offering collective benefits.

116. Regulations may provide for the duty to override obligations that are inconsistent with that duty, but do not otherwise affect any other duty that might arise. Where a manager has breached or threatened to breach such regulations to act in members' best interests, regulations may provide that the manager will be subject to the same consequences as would follow from breach of a fiduciary duty.

Clause 38: Disclosure of information about schemes

117. Section 113 of the Pension Schemes Act 1993 sets out a power for the Secretary of State to make regulations in relation to occupational and personal pension schemes, setting out requirements to keep certain persons informed of various matters including the scheme's constitution, its administration and finances, and the rights and obligations that may arise under the scheme.

118. This clause amends section 113, removing the list at subsection (2) of the persons who can be kept informed under provisions of the regulations, and instead specifying that it applies in respect of 'persons of prescribed descriptions' – that is, the persons who should be kept informed will be set out in secondary legislation.

119. The clause also introduces a requirement for schemes to have regard to any guidance prepared by the Secretary of State when complying with disclosure requirements.

Clause 39: Extension of preservation of benefit under occupational pension schemes

Schedule 1 – Early leavers: revaluation of accrued benefits

120. This clause amends Part 4 of the Pension Schemes Act 1993, which concerns the preservation of benefit for early leavers of occupational pension schemes. Pension scheme members whose pensionable service is terminated before reaching normal pension age are entitled to payment of the benefit accrued up to that point, providing they have two years' qualifying service or have previously transferred their rights into the scheme from a personal pension. (Members who leave without a preserved benefit are entitled to transfer the value of the benefits they have accrued or receive a refund of their own contributions.)

121. The preserved benefit to which former members are entitled – termed "short service benefit" – is the same as that which would have been payable when they were members of the scheme. This benefit can either be represented in respect of the member or the member's dependants, or both.

122. The Pensions Act 2014 introduced a requirement that, where all benefits for a member are money purchase benefits, a preserved pension must be provided after 30 days' qualifying service.

123. The clause states that schemes must provide a short service benefit where leavers have at least 30 days' qualifying service and all the pension benefit is a non-salary related one (that is, not calculated either by rate or amount with reference to the member's salary) or where it is a collective benefit. If any of the pension benefit is salary related, the two year rule still applies.

124. Where a benefit may be calculated on a salary related basis in some circumstances and a non-salary related basis in others (e.g. an underpin benefit which pays the higher of the two calculations), it will be treated as salary-related for these purposes.

125. If a member's pensionable service began before the amendments came into force, the previous requirements for preservation of benefits will continue to apply.

126. The clause also ensures the uniform accrual rules do not apply in respect of collective benefits.

Clause 40: Revaluation of accrued benefits

127. When a member stops being an active member of a scheme more than a year prior to retirement, the accrued benefits are required to be "revalued" at the scheme's normal pension age to provide a measure of inflation protection over the period of deferral. Sections 83 to 86 of, and Schedule 3 to, the Pension Schemes Act 1993 set out the procedure for revaluation based on benefit type.

128. The existing section 84 of the Pensions Schemes Act 1993 takes the final salary method as its default method of revaluation for accrued benefits. This method requires benefits to be increased by inflation capped at 5 or 2.5 per cent each year, but there is an alternative for average salary, flat rate or money purchase benefits. In these cases, the legislation allows for revaluation using the average salary and flat rate methods, where trustees or managers consider these methods, respectively, to be more appropriate than the final salary method, and the money purchase method where benefits are money purchase or benefits from a personal pension scheme.

129. The basic principle behind the non-final salary provisions is that both active scheme members and those who have left the scheme before normal pension age should be

treated in the same way. Their rights in relation to accrued benefits should not be affected because they have, for example, changed their place of employment and consequently left that pension scheme.

130. The methods are set out in Schedule 3 to the 1993 Act. For the final salary method, the annual Occupational Pensions (Revaluation) Order sets out the percentages to be used for people retiring during the following year. The average salary and flat rate methods state that benefits are to be revalued in the same way as they would have been had the member remained in pensionable service. In the money purchase method the requirement is to apply the same investment return on the accrued benefits to both active and deferred members.

131. The Pensions Act 2011 (Transitional, Consequential and Supplementary Provisions) Regulations 2014 introduced an additional cash balance method for cash balance benefits not calculated by reference to final salary which accrue after section 29 of the Pensions Act 2011 is commenced. This will also require that active and deferred members are treated in the same way.

132. Schedule 1 amends the legislation in the Pension Schemes Act 1993. There will be no changes to the method applicable for benefits which accrued before the changes come into force or for relevant pension credits rights where entitlement arose before the changes come into force. A new "default method" will apply for all benefits except those which are money purchase, salary related or flat rate. ("Salary related" will include final salary cash balance schemes). The default is simply to revalue benefits as they would have been had the member remained in pensionable service.

133. The exceptions for the default method remain money purchase benefits, flat rate benefits and what are now termed "salary related" benefits. A salary related benefit must be revalued using the final salary method except where those benefits are average salary and trustees or managers consider the average salary method more appropriate. Money purchase benefits should be revalued using the money purchase method. These methods continue to apply the definitions set out in Schedule 3 to the 1993 Act where referenced.

134. Collective benefits will be revalued using the default method.

135. The Schedule (see new section 84D) also sets out the revaluation procedure for hybrid benefits – those benefits which are made up of different components, the highest of which is paid. In this case, each component will be revalued separately before deciding which is the highest. This replicates the effect of provision currently contained in secondary legislation. At new section 84E there is provision for schemes which have used certain alternative methods of revaluation (primarily public service pension schemes) to continue to do so.

136. There is also a power (at new section 85A) to add revaluation methods for personal pension schemes. This is to allow for the possibility that in the future the design of personal pensions introduces a wider range of benefits than are provided for by the new provisions.

Indexation

Clause 41: Collective benefits exempt from indexation
Clause 42: Regulatory own fund schemes exempt from indexation
Clause 43: Power to create other exemptions from indexation

137. The Pensions Act 1995 makes provision for indexation of pensions under occupational pension schemes (other than public service pension schemes). Clause 41 excludes collective benefits from the requirement to annually increase pensions in payment set out in section 51 of the 1995 Act.

138. Clause 42 amends the provision in section 51 of the Pensions Act 1995 to ensure schemes set up as “Regulatory Own Funds” will be exempt from requirements to index benefits. This is as it may not always be appropriate for such schemes to index the benefits offered. Clause 38(3) introduces a definition of a Regulatory Own Fund which refers directly to Article 17 of European Council Directive (2003/41/EC).

139. Clause 43 amends section 51 of the Pensions Act 1995 to insert a regulation making power that may disapply the requirement to annually increase pensions in payment to a pension or part of a pension of a specified description. The power cannot be used to remove the requirement to index pensions that came into payment or parts of pension attributable to pensionable service that has occurred before the day on which regulations come into force, or to a pension or any part of a pension under a defined benefits scheme. The regulations will therefore not be able to affect rights already accrued or benefits under a defined benefits scheme.

Clause 44: Removal of requirement to maintain register of independent trustees

140. This clause removes the statutory requirement for regulations to provide that the Pensions Regulator compile and maintain a register of trustees (the relevant regulations are the Occupational Pension Schemes (Independent Trustee) Regulations SI 2005/703).

141. Section 23 of the Pensions Act 1995 allows the Pensions Regulator to appoint an independent trustee to a scheme whose employer has suffered an insolvency event. The Regulator can only appoint a trustee from the trustee register, which it must establish and maintain. But the Regulator has another, general power (under section 7 of the Act) to appoint trustees to replace a person found not to be “fit and proper” to be a trustee. In relation to this there is no requirement to appoint from a register of trustees. This clause removes the requirement to maintain a register of trustees under section 23, in order that the Regulator can instead follow the same procedure as when appointing trustees under section 7.

Clause 45: Rules about modification of schemes

142. Section 67 of the Pensions Act 1995 contains provisions to protect members against detrimental modifications to their "subsisting rights" – that is, "any right which at that time has accrued to or in respect of the member to future benefits under the scheme rules; or any entitlement to the present payment of a pension or other benefit which the member has at that time, under the scheme rules".

143. The clause replaces the existing regulation making power to disapply section 67 for the exercise of a power in a prescribed manner and replaces it with a power to disapply in prescribed cases.

144. Modifications can only be made if the value of the benefits is the same before and after the change or if the member agrees. Some changes can only be made if the member agrees: these are called "protected modifications". Section 67A sets out the circumstances in which a modification to members' rights is a 'protected modification'.

145. Currently, section 67A states that a change is a "protected modification" where money purchase benefits would replace non-money purchase benefits, or where the change would result in a reduction to a pension in payment.

146. This clause amends section 67A to include a modification where a right to benefits that include a pensions promise is to be replaced by a right to benefits where there is no pensions promise, where a right to a retirement income in respect of which there is a pension promise becomes a right to benefits other than retirement income and where a right is replaced with a right or entitlement to collective benefits.

147. This clause also amends section 67A to provide that a reduction to a collective benefit in payment is not a "protected modification".

Clause 46: Other amendments to do with Parts 1 and 2
Schedule 2 – Other amendments to do with Parts 1 and 2

148. Schedule 2 makes consequential amendments to existing pensions legislation to take account of the categories of scheme defined in Part 1 and collective benefits defined in Part 2. The Schedule also makes some resulting changes to replace references to money purchase schemes to limit the number of ways of categorising schemes in legislation.

149. Where there are references in existing legislation to a "money purchase scheme", these are generally replaced by references to "a scheme under which all the benefits that may be provided are money purchase benefits". This does not change the effect of the legislation – rather, they are technical changes to limit the number of categories that can be attached to pension schemes.

150. In other cases, the new categories are themselves substituted for existing definitions.

Pension Schemes Act 1993

151. Section 124 of the Pension Schemes Act 1993 places a duty on the Secretary of State to pay unpaid contributions to schemes in the event of employer insolvency and consequent default on employer contributions. The amount the Secretary of State is required to pay is the least of three amounts set out in paragraphs (a) to (c) of *subsection (3)*. Subsection (3A) states that where the scheme is a money purchase scheme, the amount is the lesser of the amounts specified in paragraphs (a) and (c) (paragraph (b) is not relevant to money purchase schemes). The Schedule amends the wording to replace "money purchase scheme" with "defined contributions scheme, or a shared risk scheme under which all of the benefits that may be provided are money purchase benefits". The Schedule also amends subsection (3A) so that it also applies to a shared risk scheme under which all the benefits that may be provided are money purchase benefits or collective benefits. This updates the provision to ensure it applies in the right way to schemes which offer collective benefits and that they are covered by the appropriate provision, as well as ensuring all schemes which are shared risk and have only money purchase and collective benefits, and schemes which are defined contributions and provide a guaranteed income after the point of retirement, are captured.

152. Section 181 of the Act is amended so that the terms, "defined contributions scheme", "defined benefits scheme", and "shared risk scheme", as set out in Part 1 of this Bill and "collective benefit", as set out in Part 2 of this Bill, apply in that Act.

Pensions Act 1995

153. Section 37 of the Pensions Act 1995 makes provision in relation to payments to employers when a trust based occupational scheme is in surplus. Paragraph 7 of the Schedule amends subsection (1A) of section 37 of the Act to disapply that section in relation to funds held for the purposes of collective benefits. Funds held for the purposes of providing collective benefits should only be used to provide those benefits except in very limited circumstances. Employer liability in respect of collective benefits is limited to the employer contributions and they cannot be required to make any additional payments where the funds are insufficient to meet the targets. Correspondingly, they should not, as a general rule, have a right to any surplus in the fund. Regulations made under clause 24 will set out any exceptions to the rule that the funds must only be used for provision of collective benefits.

154. Sections 51 and 51A of the Pensions Act 1995 relate to indexation requirements for pension schemes (that is, the method by which pensions in payment are increased annually to take account of inflation). The Schedule amends subsection (1)(a)(iii) of section 51 of the Act, which exempts pensions in money purchase schemes from indexation requirements in certain circumstances, by substituting "defined contributions scheme" for "money purchase scheme". It consequently amends section 51A to replace 'money purchase scheme' with "defined contributions scheme". This means that the indexation requirements exclude all defined contributions schemes, including money-

purchase schemes, schemes offering collective benefits, and those that are defined as self-annuitising under section 51A.

155. Section 73 of the Pensions Act 1995 deals with distribution of liabilities when an occupational pension scheme winds up. Paragraph 11 of the Schedule amends subsection (2) of section 73 of the Act to reflect the new scheme categories found in Part 1 of the Bill.

156. This paragraph applies the existing provisions on wind up to the new categories of defined benefits, shared risk and defined contributions schemes. The provisions on winding up don't apply to schemes under which all the benefits that may be provided are money purchase benefits or prescribed schemes or schemes of a prescribed description. This maintains the current position.

157. An "employer debt" is a reference to a statutory debt arising under section 75 of the Pensions Act 1995. Section 75 of the Pensions Act 1995 applies to an occupational pension scheme (other than a scheme which is a money purchase scheme, or a prescribed scheme or a scheme of a prescribed description) where there is a funding deficit in circumstances where either the scheme is winding up or a prescribed event has occurred in relation to the employer.

158. Paragraph 12 of the Schedule provides that section 75 will not apply to an occupational pension scheme which offers only collective benefits, money purchase benefits, or a combination of the two.

159. This paragraph also provides that where a scheme offers a combination of collective and non-collective benefits, the scheme is to be treated for the purposes of Part 1 of the Pensions Act 1995 as two separate schemes, with one scheme relating to the collective benefits and the other relating to the other benefits. Not all benefits in a defined contributions scheme will necessarily be money-purchase – some or all may be collective benefits.

160. Sections 87 and 88 of the Pensions Act 1995 make provision requiring trustees or managers of occupational money purchase schemes to prepare schedules of payments for scheme members. The Schedule amends this requirement so that it applies to all defined contribution schemes and any shared risk schemes under which either all of the benefits that may be provided are money purchase benefits, or a combination of money purchase and collective benefits. The wording of subsection (2)(a) is altered to place focus on the type of benefits that are being offered, in order that 'relevant benefits' are considered regardless of whether a scheme is a defined contributions or a shared risk scheme

161. Section 124 of the Act is amended so that the terms "defined contributions scheme", "defined benefits scheme" and "shared risk scheme", as set out in Part 1 of this Bill, apply in that Act and to include a definition of "occupational" in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme.

Welfare Reform and Pensions Act 1999

162. Section 38 of the Welfare Reform and Pensions Act 1999 makes provision about the treatment of pension credits in winding up. Currently it does not apply to a money purchase scheme. The amendment replaces the reference to a money purchase scheme with a reference to a scheme under which all the benefits that may be provided are money purchase benefits. This does not change the effect.

Pensions Act 2004

163. The majority of the amendments made to the Pensions Act 2004 by paragraphs 26 to 38 of Schedule 2 take out a number of references to money purchase schemes and update provisions in the 2004 Act to take account of the new pension scheme categories and the introduction of collective benefits. In most cases, the effect of the provisions is to extend exemption of the provision from schemes offering only money purchase benefits to schemes in which all benefits are collective or a combination of collective and money purchase. However, in paragraph 26 there is a further qualification – with the effect that the provision does apply to schemes with only money purchase benefits which include a third party promise.

164. Paragraphs 24, 30, 33 and 36 also amend the definition of pensions legislation in sections 13, 90, 254 and 291 of the Pensions Act 2004 to include provisions in and under the Bill, ensuring that the Regulator can take action where there are breaches of the Bill and Regulations made under it and to allow for modification of the provisions where schemes receive contributions from a European employer.

165. Section 126 of the Pensions Act 2004 defines those occupational pension schemes which are eligible to be taken over by the Board of the Pension Protection Fund. Paragraph 31 of the Schedule amends the Pensions Act 2004 to include reference to the new categories of occupational pension scheme in Part 1 of the Bill, (defined benefits, shared risk and defined contributions schemes) as eligible for the Pension Protection Fund. This paragraph also has the effect that occupational pension schemes that offer only money purchase and collective benefits, and occupational pension schemes that offer only collective benefits are not eligible for the Pension Protection Fund.

166. Section 318 of the Pensions Act 2004 defines terms used throughout the Act. Paragraph 38 of the Schedule inserts the new scheme category and collective benefit definitions introduced by this Bill and omits the definition of "money purchase scheme".

Pensions Act 2008

167. Sections 20 to 28 of the Pensions Act 2008 set out the requirements that a pension scheme must meet if it is to be a qualifying scheme for the purposes of meeting an employer's enrolment duties under pension legislation. (This is sometimes referred to as "automatic enrolment".)

168. The amendments replace the existing definitions of "defined benefits scheme", "money purchase scheme" and "hybrid scheme" in these sections with the new definitions set out in Part 1 of this Bill, and change the section headings accordingly. The quality requirements are on the whole unchanged (except where stated).

169. Section 26 is amended to refer to a personal pension scheme "that is a defined contributions scheme". The requirements are the same except it will no longer be a requirement that all benefits under the scheme must be money purchase benefits.

170. Section 99 is amended to insert the definitions of "defined benefits scheme", "defined contributions scheme" and "shared risk scheme" as set out in Part 1 of this Bill, as well as defining "occupational" as it applies to these pension schemes. The original references to "defined benefits", "defined benefits scheme", "money purchase scheme" and "hybrid scheme" are omitted.

PART 4 PENSION FLEXIBILITIES

Clause 47: Pensions guidance

171. Clause 47 introduces Schedule 4 to the Bill. Schedule 4 contains amendments to the Financial Services and Markets Act 2000, and other legislation, about the giving of pensions guidance to pension scheme members with a right or entitlement to cash balance benefits or other money purchase benefits.

Independent advice

Great Britain

Clause 48: Independent advice in respect of conversions and transfers: Great Britain

172. This clause provides that trustees or managers of a pension scheme (in Great Britain) will be required to check that a member or survivor has received appropriate independent advice before converting the member's or survivor's safeguarded benefits into flexible benefits, or making a transfer payment in respect of safeguarded benefits to a scheme in which the member or survivor will acquire flexible benefits. Clause 48(3) gives the Secretary of State a regulation making power to make exceptions to that requirement. This also provides that the regulations can specify what trustees and managers must do to check that a member has received appropriate independent advice, and when the check must be carried out. Trustees or managers who fail to carry out the

required check will be liable to civil penalties. An impact assessment on the policy of requiring independent advice was published on 19th November and is available in the library of the House.

Clause 49: Power to require employer to pay for the advice for purposes of section 48

173. This clause confers a regulation-making power to enable the Secretary of State to specify circumstances in which an employer must arrange or pay for a member or survivor to receive the appropriate independent advice required by clause 48. The regulations can in particular impose a limit on the amount that an employer must pay, prohibit an employer from seeking to recover the employer's costs from a member or survivor and impose civil penalties on an employer who fails to comply with the regulations.

Clause 50: Independent advice: consequential amendments - Great Britain

174. This clause makes amendments consequential upon clauses 48 and 49.

Northern Ireland

Clause 51: Independent advice in respect of conversions and transfers: Northern Ireland

175. This clause makes provision for Northern Ireland similar to that made by clause 48. However in this case the power to make regulations is conferred on the Department for Social Development in Northern Ireland.

Clause 52: Power to require employer to arrange advice for purposes of section 51

176. This clause makes provision for Northern Ireland similar to that made by clause 49. However the power to make regulations is conferred on the Department for Social Development in Northern Ireland.

Clause 53: Independent advice: consequential amendments: Northern Ireland

177. This clause makes amendments consequential upon clauses 51 and 52.

Income tax exemption

Clause 54: Independent advice: income tax exemption

178. This clause inserts a new section, 308B, into the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). That section provides that no liability to income tax will arise where conditions A to C are satisfied. Condition A is that the provision, payment or reimbursement is required by regulations made under the powers given by clauses 49 and 52. If only part of the payment meets this requirement - for example where the amount exceeds the defined cost threshold provided for in the regulations - only that part will benefit from the tax exemption. Condition B is that the income tax exemption

is not valid for any independent advice provided as part of a salary sacrifice arrangement, as defined in section 308B(6). Condition C is that such other requirements as may be specified in regulations made by the Treasury must be satisfied.

179. Clause 54(2) makes a consequential amendment to section 228 ITEPA.

180. Clause 54(3) provides that the amendments will take effect for the tax year 2015-16 and subsequent tax years.

Drawdown, conversion of benefits and lump sums

181. The Taxation of Pensions Bill is making certain changes to allow new forms of "authorised payments" for tax purposes. The circumstances in which funds may be designated as drawdown funds are extended, and the payment of lump sums from uncrystallised benefit rights under a "money purchase arrangement" will be permitted.

182. "Money purchase arrangements", for the purposes of tax legislation, include those providing cash balance benefits as well as those providing what pension legislation defines as money purchase benefits. Cash balance arrangements are like money purchase arrangements, inasmuch as they provide a fund to the member but, unlike a money purchase arrangement, cash balance ones make a promise as to the amount of that fund.

183. These clauses, therefore, deal with the changes required in pensions legislation to reflect the consequences of allowing a cash balance occupational pension scheme to allow its members the options of designating funds as available for drawdown and/or taking an uncrystallised funds pension lump sum.

Great Britain

Clause 55: Sums or assets that may be designated as available for drawdown: Great Britain

184. This clause applies where a pension scheme offers members the option of a drawdown pension, and restricts the designation of funds for the payment of a drawdown pension to those funds held to provide money purchase benefits. It provides for this restriction to override any scheme rule which operates otherwise. The requirement for funds designated as available for drawdown to be money purchase benefits does not apply in relation to any funds designated before the coming into force of these provisions.

Clause 56: Provision about conversion of certain benefits for drawdown: Great Britain

185. This clause is a regulation making power. It allows regulations to be made which would place conditions on the conversion of cash balance benefits into money purchase

benefits, where that conversion is being undertaken to allow the member or the member's survivor to take up the option of a drawdown pension.

186. Some examples of the situations the regulations may cover are described. These are:
- where only part of the cash balance benefits are converted, covering how the benefit left in the cash balance arrangement should be calculated in the future.
- where a member or the member's survivor wishes to take up the option of a drawdown pension before reaching the scheme's normal entitlement date, placing conditions on how the cash balance benefits are calculated prior to conversion and the conditions under which the money purchase benefits may be reduced.

187. Finally, any regulations made under this power may override any scheme rules which conflict with them.

Clause 57: Provision about calculation of lump sums: Great Britain

188. This clause relates to a member or a member's survivor taking a lump sum from accrued rights to cash balance benefit, where the scheme rules permit this option. It provides for regulations to provide for the calculation of that lump sum.

189. Some examples of the situations the regulations may cover are specified. These are:
- Where only part of the cash balance benefits is taken as a lump sum, regulations may determine how the remaining benefits are to be treated after the lump sum has been taken; and
- Where a member or the member's survivor wishes to take up the option of a lump sum before reaching the scheme's normal entitlement date, the regulations may place conditions on how the cash balance benefits are calculated to determine the amount of the lump sum available and also set out conditions under which the lump sum may be reduced.

190. Finally, any regulations made under this power may override any scheme rules which conflict with them.

Clause 58: Restrictions on conversion of benefits during winding up etc: Great Britain

191. This clause will prevent non-money purchase benefits being converted into money purchase benefits after the date the occupational pension scheme begins to wind up. This is to prevent a member avoiding any reduction in their benefits, consequent on underfunding, by changing the category of their benefits from non-money purchase to money purchase.

192. This clause also restricts the options available to members with non-money purchase benefits when their pension scheme is in a Pension Protection Fund assessment period. At present under section 135 of the Pensions Act 2004 non-money purchase benefits

cannot be transferred or discharged. This provision prevents conversion of these benefits to money purchase benefits.

Clause 59: Restriction on payment of lump sums during PPF assessment period: Great Britain

193. This clause adds an extra condition to section 138 of the Pensions Act 2004, which is about the payment of scheme benefits whilst a scheme is in a PPF assessment period. At present section 138 requires that the benefits payable to a member must be reduced to the level of compensation which would be payable if the scheme transferred into the PPF. In future, benefits paid as lump sums can only be paid where lump sum compensation would be payable if the scheme had transferred into the PPF. This continues the current position, and means that members will not be able to take out a new uncrystallised funds pension lump sum from rights to non-money purchase benefits during an assessment period.

Northern Ireland

Clause 60: Sums or assets that may be designated as available for drawdown: Northern Ireland

194. This clause is duplicating the effect of clause 55 above for Northern Ireland.

Clause 61: Provision about conversion of certain benefits for drawdown: Northern Ireland

195. This clause gives a regulation making power to the Department for Social Development in Northern Ireland which will cover the same areas as described under clause 56 above.

Clause 62: Provision about calculation of lump sums: Northern Ireland

196. This clause gives a regulation making power to the Department for Social Development in Northern Ireland which will cover the same areas as described under clause 57 above.

Clause 63: Restrictions on conversion of benefits during winding up etc: Northern Ireland

197. This clause replicates the effect of clause 58 above to schemes which begin to wind up or which enter the PPF assessment period under the law of Northern Ireland.

Clause 64: Restriction on payment of lump sums during PPF assessment period: Northern Ireland

198. This clause is duplicating the effect of clause 59 above in relation to scheme based in Northern Ireland regarding payments made by schemes during the PPF assessment period.

Transfers

199. Clause 65 introduces the new Schedule 4 which makes changes to the rights a member has to transfer their pension savings prior to accessing those savings.

Clause 66: Restriction on transfers out of public service defined benefits schemes: Great Britain

200. This clause restricts the right (under the Pension Schemes Act 1993) to transfer from one pension scheme to another, so as to prevent a member of an *unfunded* public service defined benefits scheme using that right to transfer to another pension scheme in which they can obtain flexible benefits. The clause confers a power enabling the Treasury to make regulations providing that that restriction will not apply in certain circumstances or in relation to certain schemes or to schemes of a certain type. The restriction will not apply where a member has already made an application under section 95 of the Pension Schemes Act 1993 requiring the trustees or scheme managers to use the member's cash equivalent to transfer to another scheme before 6th April 2015.

Clause 67: Reduction of cash equivalents: funded public service defined benefits schemes: Great Britain

201. This clause confers a power on the relevant person to designate a *funded* public service defined benefits scheme. For schemes other than certain Scottish schemes and the UK Parliamentary and Scottish Parliamentary schemes, the relevant person is defined as any Minster of the Crown by whom or with whose approval a funded public service defined benefits pension scheme was established; or the Treasury. For certain Scottish schemes the relevant person is the Scottish Ministers. For the MPs' pension scheme the relevant person is the Independent Parliamentary Standards Authority and the trustees of the Parliamentary Contributory Pension Fund (PCPF), for the Ministerial pension scheme the relevant person is the trustees of the PCPF and for the Scottish Parliamentary pension scheme the relevant person is the trustees of the Scottish Parliamentary Contributory Pension Fund.

202. The power may be used only if the relevant person considers that the level or expected level of transfers out of the scheme, either singly or in combination with other factors, increases the likelihood of payments out of public funds being needed to ensure that the scheme can meet its liabilities. A designation may have effect for no more than two years and may be renewed or revoked depending on whether there is still a need for it.

203. Clause 67(4) confers a power on the Treasury to make regulations which provide that where a designation has been made the scheme trustees or managers must reduce the amount of the cash equivalent for acquiring flexible benefits in another scheme by an amount determined in accordance with the regulations.

Clause 68: Restriction on transfers out of public service defined benefits schemes: Northern Ireland

204. This clause makes provision for Northern Ireland similar to that make by clause 66. It restricts the right (under the Pension Schemes (Northern Ireland) Act 1993) to transfer from one pension scheme to another, so as to prevent a member of an unfunded public service defined benefits scheme using that right to transfer to another pension scheme in which they can obtain flexible benefits. It also confers a power enabling the Department of Finance and Personnel to make regulations providing that that restriction will not apply in certain circumstances or in relation to certain schemes or to schemes of a certain type.

Clause 70: Reduction of cash equivalents: funded public service defined benefits schemes: Northern Ireland

205. This clause makes provision for Northern Ireland similar to that make by clause 67. However the power to designate is conferred upon the Department of Finance and Personnel or any Northern Ireland department by whom or with whose approval the scheme was established; and the power to make regulations is given to the Department of Finance and Personnel.

Chapter 5: Interpretation of Part 4
UK definitions

206. Clauses 72, 73 and 74 provide interpretation for Part 4 of the Bill. The clauses introduce a definition of a "flexible benefit" which will determine whether the requirements relating to independent advice (Clauses 48 to 54), drawdown treatment of lumps sums (Clauses 55 to 64) and transfers (Clauses 65 to 71) will apply to that form of benefit or not. It also contains definitions of 'cash balance benefits' which are a form of benefit which will fall within the scope of flexible benefits.

207. These definitions seek to ensure that where a member's pension saving results in a cash amount, as opposed to an income amount, they are able to access those benefits flexibly. The definition of "flexible benefit" is intended to include all those benefit categories which fall within the scope of the flexibilities introduced by the Taxation of Pensions Bill.

208. The definition includes money purchase benefits, cash balance benefits and also a residual category of benefits which are neither money purchase nor cash balance benefits for the purposes of pensions legislation (other than the provisions relating to pensions in the Finance Act 2004). This residual category may include a benefit structure which provides a sum of money at the member's retirement date, but is also subject to an additional guarantee, such as the option of a guaranteed annuity rate offered before the member becomes entitled to receive their pension.

Schedule 3 Pensions guidance

209.**Paragraph 1** provides that the amendments that follow are to be made to the Financial Services and Markets Act 2000.

210.**Paragraph 2** provides that a new Part 20A is to be inserted in Financial Services and Markets Act 2000 after section 333 of that Act. It provides that Part 20A is to contain new sections 333A to 333R.

211.*New section 333A* introduces the new Part and defines the term “pensions guidance” in subsection (2). Subsection (3) provides definitions for the purposes of new Part 20A of the Financial Services and Markets Act 2000.

212.*New section 333B* provides for the Treasury’s role in relation to pensions guidance. Subsection (1) provides for a duty on the Treasury to make arrangements for a pensions guidance service. Subsection (2) provides that in addition to making arrangements for the giving of guidance the Treasury may also make arrangements to both publicise the availability of the guidance and for research into it.

213.*New section 333C* provides that bodies listed in subsection (2) – the Pensions Advisory Service and the three national associations of Citizens Advice Bureaux – are to give pensions guidance in accordance with arrangements made with the Treasury. Subsection (3) provides that these bodies may make arrangements with third parties to discharge their duty. Subsection (4) provides that the Citizens Advice associations may jointly carry out their functions: this is analogous to section 1(3) of the Consumers, Estate Agents and Redress Act 2007.

214.Subsections (5) and (6) provide that the Treasury may repeal the reference to any of the bodies listed in subsection (2) and may make such consequential amendments – for example, to section 333E – as are appropriate.

215.*New section 333D* provides in subsection (1) that the Treasury may make grants or loans to the Pensions Advisory Service and Citizens Advice in Northern Ireland. There is no reference to the other national Citizens Advice associations as there is an existing power in section 40A of the Consumers, Estate Agents and Redress Act 2007. Subsection (2) provides that power to grant fund in subsection (1) is limited to funding to enable the giving of pensions guidance and that the grant may be given subject to other terms as specified by the Treasury.

216.*New section 333E* concerns the designation of guidance providers. Subsections (1)(a)-(d) provides that those bodies in section 333C with a statutory function of giving pensions guidance are designated and subsection (e) provides for the Treasury to have a power to designate. Subsection (2) sets out conditions that must be met before the

Treasury designates a person under subsection (1)(e). Subsection (3) provides Treasury with power to revoke a designation under subsection (1)(e). Subsections (4) and (5) provide for the Treasury to give notice to the relevant persons where a person is designated or a designation is revoked. Subsection (6) provides a duty for the Treasury to publish a list of persons who are designated under subsection (1)(e).

217. Subsection (1) of *new section 333F* provides for a duty on designated guidance providers and the Treasury to co-operate in the giving of pensions guidance. Subsection (2) provides for the sharing of information in pursuit of this requirement.

218. *New section 333G* provides for a criminal offence of falsely claiming to be giving pensions guidance under Treasury arrangements. Subsection (1) concerns the offence itself and provides that a person commits the offence if they describe themselves as giving pensions guidance by arrangement with the Treasury, or of they behave or hold themselves out to be giving guidance with the Treasury, when they are not. Subsection (2) provides that persons who are designated guidance providers will be giving pensions guidance under arrangement with the Treasury. Subsection (3) provides a defence to the offence in subsection (1), for those who take all reasonable precautions and undertake all due diligence to avoid committing the offence. Subsection (4) provides that the offence is to be tried summarily and sets out the penalties in the different criminal jurisdictions in the UK. Subsections (5) and (6) provide for modifications to subsection (4)(a) pending the coming in to force of certain reforms to sentencing in the Criminal Justice Act 2003 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

219. *New section 333H* provides in subsection (1) that the FCA must set standards for the giving of pensions guidance. Subsection (2) provides that a private person (as defined in subsection (3)) suffering a loss as a result of a breach of the standards will be able to take action in the Court to recover damages for that loss. Subsection (4) provides that the FCA may specify that breach of certain standards will not be actionable under subsection (2). Subsection (5) provides the FCA with the flexibility to make different standards for different classes of designated guidance providers and for incidental, supplemental, consequential and transitional standards. Subsection (6) applies certain procedural provisions of the Financial Services and Markets Act 2000 which apply to the FCA's setting of *rules* to its setting of standards under subsection (1), with modifications.

220. *New section 333I* provides in subsection (1) that the FCA must monitor the compliance of designated guidance provided with the standards it sets under section 333H(1). Subsections (2) to (5) concern the application – with modification – of parts of Part XI of the Financial Services and Markets Act 2000 concerned with the FCA's powers to gather information and conduct investigations.

221. *New section 333J* establishes that the FCA may make recommendations to designated guidance providers if it considers that they have failed to comply with one or more

standards set under section 333H, and thereafter, make recommendations to the Treasury that the Treasury give a direction under section 333M. Subsections (2) and (3) provide a rebuttable presumption that a recommendation made to the Treasury will be made public unless in the FCA's view, to do so would be against the public interest or otherwise inappropriate. Subsection (4) provides that the FCA may make a recommendation even where a designation has been revoked by the Treasury, providing the failure to comply with the standards was at a time when the designation was in effect.

222. *New section 333K* provides at subsection (1) that the FCA must issue a statement of its policy with respect to the making of recommendations under section 333J. Subsections (2) to (5) concern various matters in consequence of the issuing of the FCA's policy statement: subsections (2) and (3) are concerned with the altering or replacement of the statement; subsection (4) provides that the Treasury must consent before a statement is issued; and subsection (5) requires the FCA to publish the statement in such a way as to bring it to the attention of the public. Subsection (6) provides that the FCA may charge a reasonable fee for providing copies of the statement.

223. *New section 333L* concerns the procedure that the FCA must follow when preparing and issuing a policy statement under section 333K.

224. *New section 333M* provides that the Treasury has a power to issue directions to a designated guidance provider where the Treasury considers the provider has failed to comply with the FCA's standards. Subsection (2) provides that the Treasury may only give a direction where the FCA has made a recommendation under section 333J(1)(b). Subsection (7) provides that a direction given under subsection (1) is enforceable by Court order on application by the Treasury.

225. *New section 333N* makes provision regarding the relationship between the Treasury's powers regarding the revocation of designation in section 333E(3) and the power to issue a direction in section 333M(1).

226. *New section 333O* provides that in discharging its general pensions guidance functions (as defined in subsection (3)), the FCA must do so with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated pensions guidance providers. Subsection (2) provides that the FCA must also have regard to its strategic and operational objectives and the regulatory principles set out in Part 1A of the Financial Services and Markets Act 2000.

227. Sections 139A and 139B of the Financial Services and Markets Act 2000 provide the FCA with a power to give guidance in the form of information and advice regarding the Act and the FCA's functions under it. *New section 333P* gives the FCA a similar power to give guidance in the context of its pensions guidance functions specified in subsection (1). Subsections (2) and (3) provide that where the FCA gives guidance to a

class of designated guidance providers in relation to the FCA's standards or the rules regarding the funding of the FCA's pensions guidance costs under section 333Q the FCA must comply with the procedural requirements specified in subsection (3) unless doing so would be prejudicial to the interests of recipients of guidance. Subsections (4) to (8) concern procedural matters in connection with the giving of general guidance as defined in subsection (9).

228. *New sections 333Q and 333R* concern the funding for the pensions guidance scheme. *New section 333Q* provides for the FCA to collect amounts from designated guidance providers to cover the FCA's pensions guidance costs as specified in subsection (4). Subsection (2) provides that the FCA must consult the Treasury before it publishes a draft of the rules. Subsection (3) provides that the amounts recovered under this section may include sums to cover the costs the FCA incurs in collecting the payments and to permit the FCA to maintain an adequate reserve.

229. *New section 333R* concerns the funding of the Treasury's pensions guidance costs, as defined in subsection (10). Subsection (2) provides that the FCA will make rules with a view to collecting from authorised persons the amount the Treasury has notified to the FCA under subsection (1). Subsection (3) provides that the FCA's rules may include a component to cover the FCA's collection costs. Subsection (8) provides that the money that the FCA collects – minus any portion allocated for the FCA's collection costs – must be paid to the Treasury, who will then pay those funds into the Consolidated Fund as required by subsection (9).

230. Subsections (4) to (7) concern specific procedural requirements regarding the rules made under section 333R in addition to the requirements set out in Chapter 2 of Part 9A of the Financial Service and Markets Act 2000 and provide for the Treasury to have oversight over the rules that are made. Subsection (6) provides that the Treasury may notify the FCA of factors that it will take into account.

231. Subsection (11) provides that for the purpose of the definition of subsection (10)(b) the expenses of designated guidance providers shall include the specified expenses.

232. Subsection (12) provides the Treasury with a power to amend the definition of the "Treasury's pensions guidance costs" in subsection (10) by regulations.

233. **Paragraph 3** amends section 1B of the Financial Services and Markets Act 2000 (the FCA's general duties) in consequence of the insertion of new section 333O and provides that when the FCA is carrying out its pensions guidance functions it is to be guided by the duties in section 333O and not those in section 1B.

234. **Paragraph 4** amends section 1M of the Financial Services and Markets Act 2000 (FCA's general duty to consult) in consequence of the new duty in section 333O.

235. **Paragraph 5** amends section 1S of the Financial Services and Markets Act 2000 (reviews by independent person into discharge of FCA's functions) in consequence of the new duty in section 333O to insert references to the relevant parts of that duty.

236. **Paragraph 6** inserts a new section 137FB in the Financial Services and Markets Act 2000. New section 137FB provides for a duty on the FCA to make rules requiring managers and trustees of FCA-regulated pension schemes to flag to their members who have flexible benefits the availability of pensions guidance. Section 113 of the Pensions Schemes Act 1993 provides for the Secretary of State to make regulations in relation to disclosure of information requirements for pension schemes and FCA is obliged to have regard to such regulations when setting its rules pursuant to subsection (3). Subsection (2) provides that the FCA must consult the Secretary of State and the Treasury before publishing a draft of the rules.

237. **Paragraph 7** amends section 138F in consequence of the new rule making powers the FCA is granted by other provisions of this Schedule.

238. **Paragraph 8** concerns amendments to section 138I of the Financial Services and Markets Act 2000 (which concerns the FCA's procedure when making rules) to add the references to the FCA's new rule making powers. Subparagraphs (a) and (b) concern the exemption from the requirement to carry out a cost benefit analysis and subparagraph (c) concerns an exemption from the requirement to consult the Prudential Regulation Authority.

239. **Paragraph 9** amends section 139A of the Financial Services and Markets Act 2000 in consequence of the insertion of section 333O with the effect that when giving guidance regarding the functions specified in section 333P the FCA is guided by the duties in section 333O not section 1B.

240. **Paragraph 10** amends section 140A of the Financial Services and Markets Act 2000 to apply the competition scrutiny regime in Chapter 4 of Part 1 of the Financial Services and Markets Act 2000 in the context of the FCA's pensions guidance functions.

241. **Paragraph 11** amends section 168 of the Financial Services and Markets Act 2000 (which concerns the FCA's power to appoint an investigator). This amendment gives the FCA the same powers to investigate an individual suspected of the new offence in section 333G of falsely claiming to give pensions guidance pursuant to arrangements with the Treasury as it has pursuant to section 24 of the Financial Services and Markets Act 2000 to investigate those suspect of falsely claiming to be authorised.

242. **Paragraph 12** amends section 429 of the Financial Services and Markets Act 2000 (which concerns Parliamentary control of statutory instruments under that Act) to provide that regulations made by the Treasury under section 333C (repealing the

conferral of functions in that section) or s.333R (adding to, or amending, the definition of "the Treasury's pensions guidance costs") are subject to the affirmative procedure.

243. **Paragraphs 13 to 16** amend Schedule 1ZA to the Financial Services and Markets Act 2012. **Paragraph 13** amends the list the FCA's new legislative functions which should be exercised by the FCA through its governing body to add references to the FCA's new functions of making a policy on making recommendations (s.333K) and setting standards under s.333H. Subparagraph 13(c) provides that the giving of general guidance in the context of pensions guidance is subject to the same controls as other general guidance issued by the FCA.

244. **Paragraph 14** concerns the FCA's obligation to provide an annual report and amends this obligation require the FCA to detail its compliance with the overarching duty to protect recipients of pensions guidance (s.333O(1)) in its annual report.

245. **Paragraph 15** is consequential on the creation by the new Part 20A of the Financial Services and Markets Act 2000 of a new group of persons – designated guidance providers – that the FCA monitors.

246. **Paragraph 16** amends the FCA's powers to raise fees. These amendments provide that the FCA's pensions guidance costs are ring-fenced (that is, the fees raised under the FCA's existing fee raising powers are entirely separate and distinct from the FCA's pensions guidance costs).

247. **Paragraph 17** amends the list of "legislative functions" in section 85 of the Finance Act 2012 which are not subject to the complaints regime, to add reference to the FCA's pensions guidance functions.

248. **Paragraph 18** makes transitional provision. Subparagraph (1) makes provision so that requirements of the Bill can be satisfied by things done before the commencement of the Bill. Subparagraph (2) disapplies certain requirements that are otherwise imposed in connection with the consultation on the standards to be set pursuant to section 333H in order that the consultation that the FCA has already undertaken might satisfy the requirements of the Bill.

249. **Paragraph 19** provides that costs that the FCA has incurred in anticipation of its new pensions guidance functions – such as the cost of carrying out consultations and drafting rules – might be recovered by the FCA pursuant to the powers set out in the Schedule.

Schedule 4 Rights to transfer benefits

250. The Schedule amends current transfer rights, currently contained in Chapter 4 of Part 4 to the 1993 Act (which will become Chapter 1 of a new Part 4ZA), by giving scheme

members a new statutory right to transfer separate categories of accrued benefits, where they have two or more categories of benefits within the same pension scheme. Currently, Chapter 4 only allows a member to transfer the entirety of their accrued rights to benefits out of the scheme. These changes will permit the member to transfer a category of benefit, provided that they have ceased to accrue rights to that category of benefit, while retaining rights to another category of benefit in the scheme.

251. Members with benefits other than money purchase benefits will continue to receive a statement of entitlement with a cash equivalent relating to the rights to be transferred. Members with money purchase benefits will continue to have the right to transfer the realisable value of their rights. As now, the details concerning calculation of a cash equivalent will be provided by regulations.

252. Paragraphs 1 to 4 of this Schedule substitute Chapters 1 and 2 of a new Part 4ZA for Chapters 4 and 5 of Part 4 to the Pension Schemes Act 1993 and make consequential amendment to other legislation. Paragraphs 5 to 8 substitute new sections 93, 93 and 94A for sections 93 and 94 of that Act. New section 93 extends existing transfer rights for members of occupational pension schemes. This section permits members with flexible benefits to transfer their pension rights at any age, provided that they have ceased to accrue rights in relation to the category of benefit that they want to transfer, and that rights to the benefit have not crystallised. This section also allows members to transfer any category of benefit, irrespective of whether or not the member is accruing rights to a different category of benefit under the same scheme. New section 93A requires trustees or managers to provide members with a statement of entitlement in relation to transferrable right to non-money purchase benefits. New section 94 reflects the changes which allow members to continue to accrue different categories of benefit, and permits members to transfer flexible benefits whether or not they have attained normal pension age under the scheme.

253. Paragraphs 6 to 8 of this Schedule makes consequential amendments to reflect the extension of the rights to transfer.

254. Paragraph 9 of this Schedule substitutes a new section 98, which reflects the extension of the right to transfer, and provides for a member who has attained a right to a cash equivalent to lose this right if they do not make an application within the prescribed timeframe or if the scheme is wound-up.

255. Paragraph 10 of this Schedule makes consequential amendments to section 99 of the 1993 Act.

256. Paragraph 11 of this Schedule inserts a number of new sections into the 1993 Act. New section 100A prohibits a scheme from containing rules requiring members to transfer the entirety of their rights to benefit in circumstances where the member also has rights to a different category of benefit within the scheme. It also ensures that a member will

not cease to accrue rights under a scheme merely because the member has exercised the statutory transfer right in relation to a different category of benefit. Paragraph 11 also makes consequential amendments to insert new section 100B, which contains a definition of "scheme rules" (to replace the existing definition of the "applicable rules" in section 94(2) of the 1993 Act). New section 100C provides a revised definition of "normal pension age" to reflect the extension of the right to transfer specific categories of benefit, and to cater for cases where the scheme has different normal pension ages, or no normal pension age, for different categories of benefit. New section 100D provides other definitions.

257. Paragraphs 12 to 18 of this Schedule also makes similar amendments to Chapter 5 of Part 4 of the Pension Schemes Act 1993 (which becomes Chapter 2 of Part 4ZA to that Act) to the provisions permitting transfer of pensions credit benefit rights (rights arising from pension sharing on divorce).

258. Paragraphs 19 to 40 of the Schedule make consequential amendments to other legislation.

259. Similar provisions are made for Northern Ireland by paragraphs 41 to 76 of this Schedule.

PART 5 – MISCELLANEOUS

Clause 75: Payments into Remploy Limited Pension and Assurance Scheme

260. This clause allows for the Secretary of State to make payments into the Remploy Limited Pension and Assurance Scheme, the occupational pension scheme for the organisation Remploy.

261. Remploy is a non-departmental public body that provides employment services for disabled people and those with barriers to work. Its pension scheme is currently funded by Remploy via monies received from the Department for Work and Pensions. The proposed legislation will enable the Department for Work and Pensions to fund the scheme directly.

Clause 76: Pension scheme for fee paid judges
Schedule 5: Pension scheme for fee-paid judges; consequential amendments

262. This clause provides for a power under the Judicial Pensions and Retirement Act 1993 (JUPRA) to enable the Lord Chancellor to establish a pension scheme for eligible fee-paid judges in the United Kingdom, as required by case law. This is for historic cases only. As things currently stand, the case law requires pensions to be provided in respect of service reaching back to 7th April 2000, but the point is subject to appeal. It also ensures that fee-paid judges who are subsequently appointed to the salaried judiciary are

extended the same protection rights as members of existing public service pension schemes as provided for in regulations under the Public Service Pensions Act 2013.

263. Schedule 5 contains amendments. Some of the amendments ensure that pensions under the new scheme for fee-paid judges go up with inflation.

Clause 77: Judicial pensions - pension sharing on divorce etc

264. This clause corrects the part of the Judicial Pensions and Retirement 1993 (paragraph 1 (5) of Schedule 2A) dealing with pension sharing to ensure that it works correctly for cases where pension sharing is activated after a person has left judicial office. This will apply to both salaried judiciary and eligible fee-paid judges.

Clause 78: Extension to Scotland of certain provisions about marriage of same sex couples

265. Section 38A of the Pension Schemes Act 1993 inserted by the Marriage (Same Sex Couples) Act 2013 enables regulations to be made in relation to the administration of survivor benefits in a 'relevant gender change' case. This clause extends section 38A to Scotland and makes minor consequential amendments so that regulations made under section 38A can apply to Scotland.

Clause 79: Pension sharing and normal benefit age

266. When a pension is shared on divorce, the former spouse's or civil partner's share may (or, in the case of unfunded public service schemes must) be retained in the pension scheme as a pension credit benefit. Schemes must have a normal benefit age when they start to pay the pension credit benefit. At the moment this must be between 60 and 65.

267. As longevity increases, some pension schemes will start to increase their normal pension age above 65. This clause amends section 101C of the Pension Schemes Act 1993 to allow a pension scheme to increase its normal benefit age for a pension share to a permitted maximum. The permitted maximum is 65, or if higher, the highest normal pension age for any benefit payable to, or in respect of, ordinary members of the scheme.

268. The clause also amends section 101B of the Pension Schemes Act 1993 to provide a new definition of "normal benefit age" and "normal pension age.

PART 6 - GENERAL

Clause 80: Power to make consequential amendments

269. This clause contains a regulation-making power for the Secretary of State or the Treasury to make consequential amendments to existing legislation: for example, to accommodate the categories set out in Part 1 and the concept of 'collective benefits' in Part 2.

Clause 81: Regulations

270. This clause concerns the regulation-making powers that have been set out in the Bill and the procedure for exercising those powers, including the parliamentary scrutiny that will be applied to them. Further detail on individual regulation-making powers is set out in the Delegated Powers Memorandum.

Clause 82: Crown application

271. This clause states that the provisions in sections 36, 37, 48, 49, 51, 52, 55, 56, 57, 60, 61 and 62 and Part 2 of the Bill apply to a pension scheme managed by or on behalf of the Crown as they apply to other pension schemes.

Clause 83: Extent

272. This clause concerns the territorial extent of the Bill. In general, the Bill extends to England, and Wales and to Scotland only. However, paragraph (3) ensures that clause 78 only extends to Scotland. Subsection (4) extends sections 54(3), 72, 73 and 74 and Part 6 to Northern Ireland. P Sections 51, 52, 60, 61, 62, 69(8) and (9) apply to Northern Ireland only. Any amendment or repeal made by the Bill has the same extent as the provision to which it relates.

Clause 84: Commencement

273. Please see Commencement Dates below.

Clause 85: Short title

FINANCIAL EFFECTS OF THE BILL

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

Categories of pension scheme

275. The introduction of the new framework may create some small upfront costs for all current schemes as they assess how the new definitions apply to them and identify themselves under the new framework (i.e. as a defined benefits, defined contributions or shared risk scheme). However, there are expected to be zero net regulatory costs in the long term.

Pension Flexibilities: Private Sector Transfers

276. The financial effects of the changes in this legislation that introduce the advice requirement safeguard are detailed in an impact assessment, which was published on the 19th November, and is available in the library of the House.

277. It is expected that employers operating defined benefit schemes, the schemes themselves, and pension scheme members will occur costs in complying with the advice requirement. These costs consist of the ongoing administrative cost of verifying whether scheme members have received professional financial advice before initiating a transfer;

and the costs of the professional financial advice itself. The impact assessment also takes account of the benefits that will accrue to professional financial advisers who are positively impacted by the requirement to take advice.

Pensions Guidance

278. There are expected to be no net cost to the public purse as a consequence of the pensions guidance service. The scheme introduced by Schedule 3 to the Bill provides that the Treasury will ask the FCA to collect – from the population of authorised persons regulated by the FCA – sums to meet the Treasury's expected costs making arrangements (including for the grant funding of designated guidance providers) for the pensions guidance service. The FCA is to be responsible for determining the precise allocation of these costs and has undertaken a public consultation regarding this.

279. The FCA's pensions guidance costs are to be met by a levy on designated pensions guidance providers who themselves will be funded by the Treasury pursuant to the arrangement described above.

280. The costs on pensions providers as a result of rules made by the FCA under new section 137FB – requiring FCA-regulated pensions providers to signpost customers towards pensions guidance – are expected to be minimal.

Effects of the Bill on Public Service Manpower

281. The Impact Assessment has identified, where appropriate, the majority of the impacts on the public sector. As the majority of the clauses relate to private pensions, it is not expected that the Bill will have any significant impact.

282. The clause providing for the pensions guidance service will have a slight effect on public service manpower given the central role afforded to the Treasury.

Remploy

283. There are no financial effects expected: the Department for Work and Pensions currently funds Remploy who in turn fund the pension scheme. The proposed legislation will change the funding mechanism but will have no impact on the amount.

IMPACT ASSESSMENT

284. The Bill is accompanied by a summary of impacts which include Impact Assessments for the different provisions covered. This summary of impacts, and updates as appropriate, are available on the Parliamentary website[3].

EUROPEAN CONVENTION OF HUMAN RIGHTS

285. 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). In the opinion of Lord Bourne of Aberystwyth, the provisions of the Bill are compatible with the Convention rights and he has made a statement to this effect.

COMMENCEMENT DATES

286. The provisions in , sections 47, 54, 56, 57, 60, 62, 65, 67(1) and (4), 68, 70(1) and (4), 71, 72, 73, 74, Schedule 3, Schedule 4, 76, 77 and Schedule 5, come into force on the day the Bill receives Royal Assent.

287. Clause 79 comes into force on 1st April 2015.

288. Clauses 48, 49, 50, 51, 52, 53, 55, 58, 59, 60, 63, 64, 66, 67(2) and (3), 69, 70(2) and (3) come into force on 6th April 2015.

289. The remainder of the Bill will be brought into force by commencement regulations.

[3] Bill documents — Pension Schemes Bill 2014-15 http://services.parliament.uk/bills/2014-15/pensionschemes/documents.html

PENSION SCHEMES BILL

EXPLANATORY NOTES

These notes refer to the Pension Schemes Bill
as brought from the House of Commons on 26th November 2014
[HL Bill 63]

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