

# **TAXATION OF PENSIONS BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Taxation of Pensions Bill as brought from the House of Commons on 3rd December 2014. They have been prepared by HM Revenue & Customs (HMRC) 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 any explanation or comment, none is given.

### **Structure of these notes**

3. These notes begin with a brief overview of authorised benefits payable from a registered pension scheme and the measures contained within the Bill. This is followed by an outline of the structure of the Bill, and of its territorial extent and application, and then by commentary on the Bill's clauses and Schedules. The final part contains information about the Bill's financial effects, compatibility with the European Convention on Human Rights and when the provisions in the Bill come into force.

### **BACKGROUND**

#### **Pensions tax legislation**

4. The legislation relating to UK registered pension schemes is set out in Part 4 of Finance Act 2004 and came into force on 6th April 2006 (commonly known as A-day). Legislation relating to the taxation of pension income is set out in Part 9 of the Income Tax (Earnings and Pensions) Act 2003.
5. The UK's existing system of pensions tax relief is typically described as Exempt, Exempt, Taxed (E, E, T), where each of the three letters corresponds to a phase in the lifecycle of pension savings. The first relates to the contributions, the second to the investment return and the third to the benefit payout:

- (E): tax relief is available on individual and employer contributions to a pension scheme. The employer contribution is not treated as a taxable benefit-in-kind for the employee. This means that contributions to a pension are not subject to income tax or to corporation tax. Furthermore, employer contributions do not give rise to a national insurance contribution (NICs) liability. In relation to individual contributions, tax relief is available at the individual's marginal rate, meaning relief is worth more to individuals who pay a higher marginal rate of income tax. Relief is available on contributions worth up to 100% of individuals' earned income or £3,600 if higher. But if annual and/or lifetime limits are exceeded, there are tax charges on the excess.
  - (E): investment growth within pension schemes is not subject to income or capital gains tax.
  - (T): when benefits are drawn, individuals are able to take a tax-free lump sum of up to 25% of the value of their benefits. The remaining pension rights are used to deliver an income usually payable for life, which is taxed like any other pension income. Pensions paid from tax-registered pension schemes are not subject to NICs.
6. This tax relief is given so that the funds are used to provide benefits later in life for the member and their dependants. The tax rules therefore set out what payments a registered pension scheme is authorised to make to or in respect of a person who is or has been a member of the pension scheme. That is, payments that meet the purpose for which tax relief has been given. These payments are known as authorised member payments and are set out in Finance Act 2004.

#### **Authorised member payments**

7. Authorised member payments include pensions, lump sums and death benefits permitted by Finance Act 2004 as well as transfers to another registered pension scheme or to certain overseas pension schemes.
8. Pension schemes are made up of one or more arrangements. Each arrangement is defined by the type of benefits that will be paid, and is either a defined benefit arrangement (that is where the benefit to be provided can be expressed in a value per year, for example as part of a final salary scheme) or a money purchase arrangement where the benefits to be provided are determined by the size of the individual's pension fund.
9. The only types of pension that can be paid from money purchase arrangements are scheme pensions, lifetime annuities or drawdown pensions. Scheme pensions and lifetime annuities must be payable for life and cannot decrease except in limited permitted circumstances.

10. A drawdown pension can either be income withdrawal or a short-term annuity. Individuals who want to go into drawdown must first designate some, or all, of their pension fund as available for drawdown, to what is known as a member's drawdown pension fund. The funds then remain invested until they are paid as income to the member.
11. Normally the amount of drawdown pension the individual can have in a year is limited. This is called capped drawdown. Under capped drawdown, the amount paid from the member's drawdown pension fund can vary each year. However the maximum that can be paid is 150% of the amount of an equivalent single life annuity that the member's drawdown pension fund could buy (the basis amount).<sup>1</sup> That way the member's drawdown pension fund should not be used up and as such the capped drawdown pension can be paid for life.
12. The only time an individual can take more than this maximum from their drawdown fund is where they meet the conditions to take flexible drawdown. To qualify they must have a guaranteed pension income of at least £12,000<sup>2</sup> a year. Where an individual meets the conditions, they can take as much of their member's drawdown pension fund as they wish in any year.
13. Where an individual first becomes entitled to a pension, they can normally take up to 25% of their pension fund tax free. All pensions, whether scheme pensions, annuities or drawdown are taxable in the hands of the individual as pension income at their marginal rate.
14. Similar rules apply to dependants where pension funds have been passed to them on the death of the member. These funds can be taken in the form of a dependants' scheme pension, a dependants' annuity or a dependants' drawdown pension. If the dependant wants to take funds as a dependants' drawdown pension, they must first designate those funds to a dependant's drawdown pension fund. A tax-free lump sum cannot be paid in connection with a dependants' pension.
15. In certain circumstances, a lump sum death benefit can be paid on the death of a member. For money purchase arrangements, where pension funds have not yet been taken or designated into drawdown, then the only lump sum that can be paid is uncrystallised funds lump sum death benefit. Where the member was in receipt of an annuity where the contract provided for a lump sum to be paid on their

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<sup>1</sup> The maximum that can be paid under capped drawdown was increased from 120% to 150% of the basis amount for drawdown years beginning on or after 27 March 2014.

<sup>2</sup> The Minimum Income Requirement was reduced from £20,000 to £12,000 for flexible drawdown declarations made on or after 27 March 2014.

death, then an annuity protection lump sum death benefit can be paid. Where the member was in receipt of a drawdown pension, a drawdown pension fund lump sum death benefit can be paid or, where there are no dependants, a charity lump sum death benefit can be paid. These lump sum death benefits are subject to a 55% tax charge payable by the scheme administrator, except a charity lump sum death benefit which is paid tax free, and except where the member dies before age 75 in which event the uncrystallised funds lump sum death benefit can be paid tax-free.

16. The only circumstances apart from flexible drawdown where an individual can normally take all of their pension pot as a single one-off payment is where their total pension savings in all funds are less than £30,000<sup>3</sup> (the trivial commutation limit), or in certain circumstances where the value of a small pension pot is less than £10,000<sup>4</sup>. To qualify for these payments, the individual must have reached age 60.
17. Normally under these rules 25% of the payment can be taken tax-free with the remaining 75% taxed as pension income at the individual's marginal rate.
18. Dependants' benefits can also be paid to a dependant as a trivial commutation lump sum death benefit. The maximum that can be paid as a trivial commutation lump sum death benefit is £18,000, but the whole lump sum will be taxable at that dependant's marginal rate.
19. Where a payment is made to or in respect of a member that is not an authorised member payment, this is known as an unauthorised payment. Where an unauthorised payment is made, certain tax charges apply which can, depending on the circumstances, total up to 70%. These charges are intended to recover the tax relief previously given, as a payment has been made which doesn't meet the purpose for which the tax relief was given.

#### **Limits on tax relief**

20. Since A-day, there have been no limits on the amount of pension savings an individual can have, but there are limits on the amount of tax relief that is available: these are the lifetime allowance and the annual allowance.
21. The lifetime allowance is the maximum amount of pension and/or lump sum that an individual can take from their pension schemes that benefits from tax relief. There is no limit on the amount of benefits that a pension scheme can pay an

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<sup>3</sup> The trivial commutation limit was increased from £18,000 to £30,000 for commutation periods beginning on or after 27 March 2014.

<sup>4</sup> The small pot limit was increased from £2,000 to £10,000 for payments made on or after 27 March 2014.

individual. The standard lifetime allowance is £1.25m for tax years 2014-15 onwards. Where the value of pension benefits taken (known as benefit crystallisation events or BCEs) exceeds the lifetime allowance, the lifetime allowance charge applies to the excess. The rate of the lifetime allowance charge will depend on how the individual takes their benefits.

- Any amount over the lifetime allowance taken as a lump sum is taxable at 55%.
  - Any amount over the lifetime allowance taken as a pension is taxable at 25%. The pension will also be taxable at the recipient's marginal rate.
22. There is also a limit on the amount of annual pension savings that benefits from tax relief. This is the annual allowance. The annual allowance is £40,000 for tax year 2014-15 onwards. Any unused annual allowance in respect of an individual can be carried forward from the three previous tax years and added to the £40,000, to make the individual's annual allowance for that tax year.
23. How pension savings are measured against the annual allowance depends on the type of arrangement. The pension savings for each arrangement are known as the pension input amount and the sum of all these amounts in respect of an individual is the total pension input amount. If an individual's total pension input amount is more than their annual allowance they will pay a tax charge on the excess over their annual allowance. This tax charge is called the annual allowance charge and is charged at the individual's marginal rate.
24. For most money purchase arrangements, the pension input amount is the total contributions made by the individual or anyone else on their behalf, including any made by any employer. The exception to this is where the arrangement is a cash balance arrangement where the pension input amount is the increase in the promised fund for the individual. For a cash balance arrangement the pension input amount could, for example, be the amount an employer has promised to provide for an employee, but without making a contribution to fulfil that promise until many years later.
25. However, in defined benefit arrangements, individuals accrue a right to an amount of annual pension from pension age based on a variety of factors, for example years of service or salary. To treat the two in a comparable way, a deemed notional contributions value is applied to the increase in value of pension rights between the start of the year and the end of the year. For defined benefit arrangements, the pension input amount is therefore calculated by multiplying the increase in their expected pension over the course of the year by a factor of 16. This broadly means that an increase in annual pension benefit of £1,000 would be deemed to reflect a contribution of £16,000.

26. Where an individual has a hybrid arrangement, as defined in section 152 Finance Act 2004, it is more difficult to calculate a comparable contribution value because the type of benefits provided are not decided until they are taken. In the circumstances, the pension input amount is worked out by calculating what would be the value of the pension input amount for each type of benefit that could be provided from the hybrid arrangement, and taking the highest of these values.

#### **Annual allowance reporting**

27. To help individuals know whether or not they may be liable to an annual allowance charge, if their pension input amount in a particular registered pension scheme exceeds the annual allowance for a tax year, the scheme administrator must provide the member with a pension savings statement by 6th October in the following tax year. The statement tells the member about their pension savings in that scheme for the tax year concerned, plus the three previous tax years. Individuals can also request this information from their scheme administrator if it would not be automatically provided to them.

#### **International**

28. There are circumstances in which an overseas pension scheme that is not a registered pension scheme will contain funds that have benefitted from UK tax relief. For example, where an individual comes to the UK as a member of an overseas pension scheme, contributions to their overseas scheme may benefit from UK tax relief just like contributions to a registered pension scheme. Funds in an overseas pension scheme which have built up in a registered pension scheme before being transferred to the overseas pension scheme will also have benefitted from UK tax relief.
29. Finance Act 2004 therefore contains charging provisions which apply in certain circumstances to members of non-UK pension schemes which are intended to reflect similar charges that would have applied had those funds been held in a registered pension scheme. However, for members of non-UK pension schemes, these charges only relate to the part of the member's non-UK pension fund that has benefitted from UK tax relief.

#### **Background to the changes**

30. The Government announced at Budget 2014 proposals to allow people aged 55 and above, from April 2015, to access their money purchase pension savings as they wish. These reforms mean that individuals with money purchase savings will be able to access their entire pension fund as they wish after age 55. This will allow individuals to make their own choices about how to use their pension savings.
31. As an interim measure a number of changes were made to the existing pension tax rules, to extend the circumstances in which an authorised member payment could

be made. These changes were enacted in the Finance Act 2014, had effect from 27th March 2014 and amended Finance Act 2004 to:

- increase the maximum income that a drawdown pensioner (member or dependant) with a capped drawdown pension fund can choose to receive up to 150 per cent of the “basis amount”;
- reduce the minimum income threshold for flexible drawdown to £12,000;
- allow members aged 60 or over, with total pension savings of £30,000 or less, to take out all of those savings as one or more trivial commutation lump sums;
- increase the small pots limit to £10,000; and
- increase to 3 the number of small pot lump sums that can be taken under non-occupational pensions.

32. A consultation document “Freedom and choice in pensions” published on 19th March 2014 set out the Government’s proposals for reform and invited comments from a range of stakeholders on the changes announced at Budget 2014. A summary of responses to the consultation was published on 21st July 2014.
33. The summary of responses set out that the Government would take forward two separate pieces of legislation during the autumn of 2014 to deliver the changes: the Pension Schemes Bill and the Taxation of Pensions Bill.
34. The Pension Schemes Bill is designed to deliver the regulatory framework for defined ambition pension schemes, and includes provisions to enact the guidance guarantee and the restrictions on transfers from unfunded public service defined benefit schemes. It also includes changes to pensions legislation to ensure that individuals can access their pension savings flexibly.
35. A draft of this Taxation of Pensions Bill was published on 6th August 2014 for a four week technical consultation, to ensure that the legislation enacts the policy as intended. In total, 45 written responses were received.
36. The Government announced on 29th September 2014 that from 6th April 2015, the tax charge on certain death benefits would be reduced.
37. The Bill introduced into the House of Commons on 14th October 2014 had a number of changes either:

- as a consequence of consultation responses as well as making a number of technical improvements; or
  - to introduce new provisions on tax charges on death, international pensions and reporting requirements.
38. Amendments were made to the Bill during its committee and Report stages in the House of Commons. The amendments introduced during the Commons committee stage made changes so that any individual, not just a dependant, can inherit unused drawdown funds or uncrystallised funds on the death of the member where those funds are then used to provide a drawdown pension or pay a lump sum death benefit. Where the death of the member occurred before age 75, the changes enable any payments of income withdrawal to the beneficiary to be made tax-free providing the funds are designated to the beneficiary's drawdown fund within a two-year period and that the member had sufficient lifetime allowance available at the time of their death.
39. Amendments were also made to ensure that the equivalent of income withdrawal paid from a non-UK pension scheme will get similar tax treatment.
40. Further amendments were made at the Commons Report stage so that the reporting arrangements introduced by this Bill in respect of the money purchase annual allowance, apply only to active members of pension schemes.

## **SUMMARY**

41. The Bill makes a number of amendments to the existing legislation relating to the authorised pension benefits that can be provided to members of registered pension schemes and their beneficiaries. The changes give individuals with savings in money purchase arrangements much greater flexibility as to how they can take their benefits from age 55. From 6 April 2015 these individuals will be able to access as much as they want, when they want, from a money purchase arrangement. However, where individuals take advantage of the new flexibilities, any future savings in money purchase arrangements will be subject to a £10,000 money purchase annual allowance.
42. The changes made by this Bill:
- allow all of the funds in a money purchase arrangement to be taken as an authorised taxed lump sum, removing the higher unauthorised payment tax charges;



- increase the flexibility of the income drawdown rules by removing the maximum “cap” on withdrawal and minimum income requirements for all new drawdown funds from 6th April 2015;
- enable those with “capped” drawdown to convert to a new drawdown fund once arranged with their scheme should they wish;
- enable pension schemes to make payments directly from pension savings with 25 per cent taken tax-free (instead of a tax-free lump sum);
- introduce a limited right for scheme trustees and managers to override their scheme’s rules to pay flexible pensions from money purchase pension savings;
- remove some restrictions on lifetime annuity payments;
- ensure that individuals do not exploit the new system to gain unintended tax advantages by introducing a reduced annual allowance for money purchase savings where the individual has flexibly accessed their savings;
- increase the maximum value and scope of trivial commutation lump sum death benefits;
- provide new information requirements to ensure that individuals who have flexibly accessed their pension savings are aware of the tax consequences of doing so;
- restrict or reduce certain tax charges that apply to death benefits;
- enable persons other than dependants to inherit unused drawdown funds and provide that, where the death occurred before age 75, lump sum death benefits and drawdown pension from these funds can be paid tax free, subject to the member having sufficient available lifetime allowance; and
- make changes to the rules for individuals who receive UK tax relief in respect of pension savings in non-UK pension schemes, so that the flexibilities and restrictions to relief will apply equally to them.

## **OVERVIEW OF THE STRUCTURE OF THE BILL**

43. The Bill has four clauses and two Schedules.

44. Clause 1 introduces Schedule 1.

45. Clause 2 restricts and reduces the tax charges that apply to certain lump sums paid in respect of a member.
46. Clause 3 introduces Schedule 2.
47. Clause 4 contains definitions that apply to this Bill and a power to amend specified legislation in consequence of this Bill.
48. Schedule 1 provides the detail of the changes to existing legislation required to provide for the new pensions flexibility and is split into seven Parts.
49. Part 1 of Schedule 1 amends Finance Act 2004 (FA 2004) to distinguish between sums and assets designated as available to pay a drawdown pension before 6th April 2015 (to a drawdown pension fund), and those designated on or after that date where there has not been a previous designation at that date (to a flexi-access drawdown fund). There is no limit on how much can be taken from a flexi-access drawdown fund but when benefits are first accessed from that fund, the money purchase annual allowance rules described in Part 4 are triggered in respect of that member. Those with a drawdown pension fund can designate further sums and assets to that fund on or after 6th April 2015 but the existing capped drawdown limit will continue to apply to that fund. Similar rules apply for dependants.
50. Part 2 of Schedule 1 amends the requirements for lifetime and short-term annuities to provide greater flexibility for both members and dependants so that where the individual becomes entitled to the annuity on or after 6th April 2015, some of the conditions are removed that would have applied had the individual become entitled to the annuity before that date.
51. Part 3 of Schedule 1 permits the payment of a new type of authorised lump sum, an uncrystallised funds pension lump sum (UFPLS). An UFPLS can be paid on or after 6th April 2015 directly from pension savings under a money purchase arrangement to certain individuals aged 55 or over. There is no limit on the amount that can be paid as an UFPLS subject to the individual having available lifetime allowance. The individual will normally be liable to income tax at their marginal rate on 75% of the UFPLS, with the remaining 25% paid tax-free (the tax-free element thus gives the same result as if the individual had instead received a tax-free pension commencement lump sum with a taxed pension payment). Individuals who meet the conditions to have an UFPLS can therefore, if they wish, access as much of their money purchase pension savings as they want, without having first to designate the funds as available for drawdown. Where an UFPLS is paid, then this is flexible access and the money purchase annual allowance rules in Part 4 are triggered in respect of that member.

52. Part 4 of Schedule 1 amends the annual allowance charge provisions in FA 2004. It sets out that where an individual has flexibly accessed their pension savings on or after 6th April 2015, a £10,000 annual allowance will immediately apply to their future money purchase pension savings: the money purchase annual allowance rules. However, those individuals will retain an annual allowance for defined benefits pension savings of at least £30,000, depending on the value of new money purchase pension savings. Unused annual allowance brought forward from earlier tax years will not be available to increase the £10,000 annual allowance for their money purchase pension savings.
53. Part 5 of Schedule 1 makes a number of miscellaneous amendments to FA 2004, the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) and various Statutory Instruments made under FA 2004.
54. Part 6 of Schedule 1 amends the Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006/567) to provide for the passing on of information, both to scheme administrators and members, when individuals have flexibly accessed their pension savings to enable the correct operation of the money purchase annual allowance rules.
55. Part 7 of Schedule 1 makes a number of amendments in connection with non-UK pensions. Where UK pensions tax relief is provided to individuals who are members of overseas pension schemes, there are similar conditions and limitations to those that exist for registered pension schemes on the amount of tax relief available, what benefits can be provided from the UK tax-relieved savings and information requirements. Therefore, members of overseas schemes with pension benefits that have received UK tax relief are in broadly the same position as members of UK registered pension schemes. As the Bill provides for much more flexibility in how members of registered pension schemes access their money purchase savings along with reporting of that flexible access and a reduced annual allowance, Part 7 makes various changes in the existing limitations on access to pension savings in overseas schemes to maintain compatibility with the UK registered pension scheme tax regime.
56. Schedule 2 makes a number of changes in connection with death benefits and is split into four Parts.
57. Part 1 of Schedule 2 extends the categories of person who can have a drawdown fund following the death of a member. Currently pension death benefits can be paid only to dependants. This Part amends the rules to allow nominees and successors to designate funds into flexi-access drawdown funds and receive payments of drawdown pensions. It also provides that unused drawdown funds on the death of any beneficiary can be passed on to another successor.

58. Part 2 of Schedule 2 makes various amendments in connection with the lump sum death benefits that are subject to the special lump sums death benefit charge to provide that any lump sum death benefits from a nominee's or successor's drawdown fund are subject to similar taxing provisions as when lump sum death benefits are paid from a member's drawdown fund.
59. Part 3 of Schedule 2 introduces a new test against the lifetime allowance for funds that were uncrystallised at the time of a member's death and are subsequently designated as available to provide a flexi-access drawdown pension for a dependant or a nominee, but only where any income withdrawal from the drawdown fund can be paid income-tax-free as a result of the member having died before age 75.
60. Part 4 of Schedule 2 ensures that payments of income withdrawal from a dependant's, nominee's or successor's drawdown fund are not subject to income tax where the preceding member, dependant, nominee or successor, as appropriate, died before age 75 and the designation of the funds into drawdown for the beneficiary was made within a two-year period. It also ensures that the equivalent payments from non-UK pension schemes will receive the same tax treatment.

## **TERRITORIAL EXTENT**

61. The provisions in this Bill apply to all of the United Kingdom.

## **COMMENTARY ON CLAUSES**

### **Clause 1**

62. Clause 1 introduces Schedule 1.

### **Clause 2**

63. *Subsection (2)* amends section 206(1) of FA 2004 to provide that where a lump sum death benefit is subject to the special lump sum death benefit charge, the charge only applies where the member had reached age 75 at their death. The amended section 206(1) needs to be read alongside the new section 206(1A) inserted by paragraph 17 of Schedule 2 to the Bill.
64. *Subsection (3)* amends section 206(4) of FA 2004 to provide that the special lump sum death benefit charge is reduced from 55% to 45%. This charge applies where certain prescribed lump sum death benefits are paid on the death of a member.
65. *Subsection (4)* amends section 205A(4) of FA 2004 to provide that the serious ill-health lump sum charge is reduced from 55% to 45%. This charge applies where a

serious ill-health lump sum is paid to a member after they have reached age 75. All an individual's uncrystallised rights can be paid as a serious ill-health lump sum where the scheme administrator has received medical evidence that the member has less than 12 months to live.

**Clause 3**

66. Clause 3 introduces Schedule 2.

**Clause 4**

67. *Subsection (2)* defines abbreviations for two Acts referred to in the Bill.
68. *Subsection (3)* provides a power for the Commissioners for HMRC to amend by regulations, Part 4 of FA 2004 or Part 9 of the Income Tax (Earnings and Pensions) Act 2003 relating to the taxation of pensions, as a consequence of anything in this Bill.
69. *Subsection (4)* provides that any regulations made under subsection (3) are treated as made under Part 4 of FA 2004, and that they are excluded powers for the purposes of section 1014 of the Income Tax Act 2007 so that section does not apply to regulations made under subsection (3).

**Schedule 1**

***Part 1 - Drawdown pensions***

70. Paragraph 1 amends pension rule 5 in section 165(1) of FA 2004 to provide that the cap on the amount that can be taken each year as drawdown pension applies only to a member's drawdown pension fund as defined in paragraph 8 of Schedule 28 to FA 2004 (Schedule 28). Where funds are withdrawn from flexi-access drawdown funds (defined in the amendments made by paragraph 3 of Schedule 1), there is accordingly no cap on the amount that can be withdrawn each year.
71. Paragraph 2 amends the meaning of a member's drawdown fund in paragraph 8(1A) of Schedule 28. It provides that new members' drawdown pension funds cannot be created by the designation of sums and assets as available for the payment of a drawdown pension on or after 6th April 2015. But a drawdown pension fund existing on 5th April 2015 may remain a drawdown pension fund where the member designates additional funds to it on or after 6th April 2015, unless it was a flexible drawdown fund before 6th April 2015 because the scheme administrator had accepted the member's flexible drawdown declaration in respect of that arrangement.

72. Paragraph 3(1) inserts new paragraphs 8A to 8D into Schedule 28. Paragraph 3(2) clarifies when the new paragraph 8D has effect, in particular where either or both of the transfer and designation concerned were made before 6th April 2015.
73. New paragraph 8A(1) provides that a member's flexi-access drawdown fund is one where funds have been newly-designated as defined in new paragraph 8A(2).
74. New paragraph 8A(2) provides that newly-designated funds are those that have been designated on or after 6th April 2015 as available for the payment of a drawdown pension but in respect of which paragraph 8(1A), as amended by paragraph 2 of Schedule 1, does not apply. That is, newly-designated funds do not include funds being designated to a member's drawdown pension fund that was set up before 6th April 2015. Funds can also become newly-designated funds under new paragraphs 8B, 8C and 8D. Funds for the purpose of this paragraph include any sums and assets that derive from the designated funds, for example investment growth.
75. New paragraph 8A(2)(b) and (3) provide that the funds in a member's flexible drawdown fund that existed before 6th April 2015 become newly-designated funds on that date and cease to be member-designated funds.
76. New paragraph 8B(1) provides that new paragraph 8B(2) applies where the total drawdown pension withdrawn from a member's drawdown pension fund exceeds the maximum in pension rule 5 in section 165 (150% of the basis amount for that year, referred to as 'the cap') and where, additionally, before 6th April 2015 the member had not had a valid flexible drawdown declaration in respect of that fund accepted by the scheme administrator under section 165(3A) of FA 2004. New paragraph 8B(3) clarifies the circumstances in which a payment of drawdown pension would exceed the cap.
77. New paragraph 8B(2) provides that the sums and assets that made up the member's drawdown pension fund immediately before the payment that breaches the cap is made become a member's flexi-access drawdown fund immediately before that payment is made. This means that the payment will be made from a member's flexi-access drawdown fund as an authorised payment taxed at the member's marginal rate and will not be subject to any unauthorised payments tax charges that would otherwise have arisen.
78. New paragraph 8C provides that a member may notify the scheme administrator that they want to convert their member's drawdown pension fund to a member's flexi-access drawdown fund. It will become a member's flexi-access drawdown fund when the scheme administrator accepts the notification or, where the notification was accepted before 6th April 2015, at the start of 6th April 2015.

This paragraph does not apply if a member's drawdown pension fund has already become a flexi-access drawdown fund under new paragraph 8B.

79. New paragraph 8D provides that where a member transfers their drawdown funds from one scheme to another as part of a recognised transfer, they can as part of the transfer notify the scheme administrator of the receiving scheme that they wish the transferred drawdown funds to be newly-designated funds from the date of the transfer.
80. Paragraph 4 inserts new paragraphs 22A to 22D, relating to dependants, into Schedule 28. These new paragraphs broadly mirror the member changes under paragraph 3 of Schedule 1.
81. New paragraph 22A(1) provides that a dependant's flexi-access drawdown fund is one where funds have been newly-designated as defined in new paragraph 22A(2).
82. New paragraph 22A(2) provides that newly-designated dependant funds are those that have been designated as available for the payment of a drawdown pension on or after 6th April 2015 including funds that derive from the newly-designated dependant funds, for example investment growth. However this only applies where paragraph 22(2) of Schedule 28, as amended by paragraph 21 of Schedule 1, does not apply. That is, newly-designated dependant funds do not include funds being designated to a dependant's drawdown pension fund that was set up before 6th April 2015, unless section 167(2A) of FA 2004 relating to flexible drawdown applied to the fund immediately before that date. In addition funds can become newly-designated dependant funds under new paragraphs 22B, 22C and 22D.
83. New paragraph 22A(2)(b) and (3) provide that where the funds in a dependant's flexible drawdown fund that existed before 6th April 2015 become newly-designated dependant funds on that date, they cease from that date to be dependant-designated funds.
84. New paragraph 22B provides that where the total dependant's drawdown pension withdrawn from a dependant's drawdown pension fund for a year exceeds the maximum as set out in pension death benefit rule 4 in section 167, that is 150% of the basis amount for that year, the dependant's drawdown pension fund becomes a dependant's flexi-access drawdown pension fund immediately before the payment is made. This means that the payment will be made from a dependant's flexi-access drawdown fund as an authorised payment of drawdown pension taxed at the dependant's marginal rate and not subject to any unauthorised payments tax charges that would otherwise have arisen.

85. New paragraph 22C provides that a dependant may notify the scheme administrator that they want to convert their dependants' drawdown pension fund to a dependant's flexi-access drawdown fund at any time. The dependant's flexi-access drawdown fund will start from the time the scheme administrator accepts the notification or, where the notification was accepted before 6th April 2015, at the start of 6th April 2015. This paragraph does not apply if a dependant's drawdown pension fund has already become a dependant's flexi-access drawdown fund under new paragraph 22B.
86. New paragraph 22D provides that where a dependant transfers their drawdown funds from one scheme to another as part of a recognised transfer, they can as part of the transfer notify the scheme administrator of the receiving scheme that they wish the transferred drawdown funds to be newly-designated funds from the date of the transfer.
87. Paragraph 6 amends pension death benefit rule 4 in section 167(1) of FA 2004 to provide that the cap on the amount that can be taken each year as drawdown pension applies only to a dependant's drawdown pension fund (defined in paragraph 22 of Schedule 28). Where funds are withdrawn from a dependant's flexi-access drawdown fund, there is no cap on the amount that can be withdrawn each year.
88. Paragraph 7 amends section 168(1) of FA 2004 to add a 'flexi-access drawdown fund lump sum death benefit' (see paragraph 24 of Schedule 1) to the list of authorised lump sum death benefits that may be paid in respect of a member of a registered pension scheme. This is the equivalent of the existing drawdown pension fund lump sum death benefit in paragraph 17 of Schedule 29 to FA 2004 (Schedule 29).
89. Paragraphs 8 to 12, 14, 15, 18 to 20, 22, 26, 27 and 29 make a number of consequential amendments to FA 2004, so that where the legislation refers to a member's drawdown pension fund or a dependant's drawdown pension fund, an additional reference is inserted to a member's flexi-access drawdown fund or a dependant's flexi-access drawdown fund as appropriate.
90. Paragraph 13 amends section 206(1) of FA 2004 to add a flexi-access drawdown fund lump sum death benefit to the list of lump sum death benefits that are subject to the special lump sum death benefits charge. This charge is the liability of the scheme administrator and is currently charged at the rate of 55%. The rate is being changed to 45% by Clause 2 of this Bill.
91. Paragraph 16 amends section 216(1) of FA 2004 as it relates to benefit crystallisation event 5A (BCE 5A). BCE 5A occurs when an individual reaches age 75 having previously designated funds as available for drawdown. The



amount of the BCE 5A that is tested against the lifetime allowance on the individual's 75th birthday is the increase in the value of the drawdown fund since the designation. The amendment provides that the amount that is crystallised under BCE 5A includes the value of any flexi-access drawdown pension fund on the date of the individual's 75th birthday less the amount previously crystallised when those funds were first designated for drawdown.

92. Paragraph 17 amends section 273A(1) of FA 2004 which provides a power for HMRC to make regulations in connection with certain lump sum death benefits that are paid by an insurance company, where the payment is treated under section 161 of FA 2004 as being made by a registered pension scheme. It adds a flexi-access drawdown fund lump sum death benefit to the list of payments in connection with which HMRC may make regulations.
93. Paragraph 21 amends the definition of a dependant's drawdown pension fund in paragraph 22(2) of Schedule 28. Funds must have been first designated as available for the payment of a dependant's drawdown pension before 6th April 2015. Additional funds can be added on or after 6th April 2015 to a dependant's drawdown pension fund existing on 5th April 2015. This applies only where the dependant had not had a valid dependant flexible drawdown declaration in respect of that arrangement accepted by a scheme administrator under section 167(2A) of FA 2004 before 6th April 2015, in which case the fund will be dependant's flexi-access drawdown fund from 6th April 2015.
94. Paragraph 23 amends the definition of a drawdown pension fund lump sum death benefit in paragraph 17 of Schedule 29 to limit the benefit to payments under a drawdown pension fund or a dependant's drawdown pension fund. That is where sum and assets were first designated to the fund as available for drawdown before 6th April 2015. Death benefit payments from a flexi-access drawdown fund are provided for separately (see paragraph 24 of Schedule 1) and cannot be drawdown pension fund lump sum death benefits.
95. Paragraph 24 inserts new paragraph 17A into Schedule 29. This provides the conditions for a payment of a flexi-access drawdown fund lump sum death benefit. These are the same conditions as for a drawdown pension fund lump sum death benefit except that they apply where sums and assets were designated as available for drawdown on or after 6th April 2015 other than to a member's or a dependant's drawdown pension fund.
96. New paragraph 17A(1) to (4) provide that a lump sum death benefit is a flexi-access drawdown fund lump sum death benefit where a member, dependant, nominee or successor was at the time of their death entitled to income withdrawal from a flexi-access drawdown fund, and it is not a charity lump sum death benefit as defined in paragraph 18 of Schedule 29.

97. New paragraph 17A(5) and (6) provide that the maximum that can be paid as a flexi-access drawdown fund lump sum death benefit is the total of the sums and assets in the flexi-access drawdown fund immediately before the payment is made.
98. Paragraph 25 amends paragraph 18 of Schedule 29 to allow a charity lump sum death benefit to be paid in respect of a member's or a dependant's flexi-access drawdown fund.
99. Paragraph 28 amends paragraph 20(4) of Schedule 36 to FA 2004 (Schedule 36) to provide how a valuation for the purposes of the lifetime allowance is carried out where a member has a flexi-access drawdown pension that before 6th April 2015 was a capped drawdown pension. This paragraph provides that where the first benefit crystallisation event (BCE) in respect of the member that occurs on or after 6th April 2006 is also on or after 6th April 2015, the valuation for the purposes of the lifetime allowance is 80% of the maximum annual drawdown amount that could have been paid at the time the funds convert to flexi-access.
100. Paragraph 30 amends regulation 2(1) of the Pension Benefits (Insurance Company Liable as Scheme Administrator) Regulations 2006 (SI 2006/136), to add a flexi-access drawdown fund lump sum death benefit to the list of lump sum death benefits that when paid by an insurance company cause the insurance company to be treated as the scheme administrator for the purposes of the special lump sum death benefit charge to income tax under section 206 of FA 2004. The insurance company is liable to account for that charge under section 254(1) to (7) of FA 2004, and liable to penalties for failing to make a return or fraudulently or negligently making an incorrect return.
101. Paragraph 31 amends section 636A of ITEPA 2003 to provide that, where a flexi-access drawdown fund lump sum death benefit is paid, although it may be liable to the special lump sum death benefits charge by virtue of section 206 FA 2004, it is not liable to any other income tax.
102. Paragraph 32 repeals various provisions relating to pre-6 April 2015 flexible drawdown in FA 2004 and Finance Act 2011 (FA 2011) as well as revoking the Registered Pension Schemes (Prescribed Requirements of Flexible Drawdown Declaration) Regulations 2011 (SI 2011/1792).
103. Paragraph 33 amends the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (SI 2006/207) to make consequential amendments to regulations 6 and 7 as a result of the repeal of sections 165(3A) and 167(2A) of FA 2004 in this Bill. It also makes a number of consequential amendments to regulation 14 to reflect the changes in this Bill to Schedule 28. Regulation 14 lists every provision in Schedule 28 that refers to a

“scheme administrator” and modifies how Schedule 28 applies in relation to pensions paid by a relevant non-UK scheme by substituting “scheme manager” for “scheme administrator” wherever this occurs.

104. Paragraph 34 amends regulation 12 of the Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006 (SI 2006/499) in respect of members’ and dependants’ drawdown pension fund and recognised transfers. The paragraph extends the circumstances when this regulation applies to include transfers of members’ and dependants’ flexi-access drawdown funds. It provides that a transfer of sums and assets from one arrangement to a new arrangement under which no other sums or assets are held is a recognised transfer. The sums and assets transferred are treated as remaining sums and assets held under the old arrangement for various prescribed purposes set out in SI 2006/499. Paragraph 34 also removes references to the conditions for flexible drawdown arrangements for both members and dependants as these are no longer required from 6th April 2015.
105. Paragraph 35 amends the Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006/567) as a consequence of the introduction of flexi-access drawdown to remove information requirements on scheme administrators that are no longer required and extend existing information requirements in connection with drawdown pension funds to include similar requirements for flexi-access drawdown funds.

## ***Part 2 - Annuities***

106. Paragraph 37 inserts new paragraph 3(1A) into Schedule 28 to provide an additional definition of a member’s lifetime annuity where the member became entitled to the annuity on or after 6th April 2015. From this date the annuity must still be payable for life by an insurance company but the annuity can decrease and it can continue to be paid after the member’s death if the member dies before the end of a guarantee period of any length specified in the annuity contract. In addition a member is no longer subject to the unauthorised payments charges if they have not had an opportunity to select the insurance company paying the lifetime annuity. This is subject to new sub-paragraph (2C)(za), see paragraph 44 of Schedule 1.
107. Paragraph 38 inserts new paragraph 6(1ZA) into Schedule 28 to provide an additional definition of a member’s short-term annuity where the member became entitled to the annuity on or after 6th April 2015. From this date the annuity must still be purchased out of a member’s drawdown pension fund or a member’s flexi-access drawdown fund. It must be payable for no more than five years by an insurance company but the annuity can decrease. In addition a member is no

longer subject to the unauthorised payments charges if they have not had an opportunity to select the insurance company paying the annuity.

108. Paragraph 39 inserts new paragraph 17(1ZA) into Schedule 28 to provide an additional definition of a dependant's annuity where the dependant became entitled to the annuity on or after 6th April 2015 or, where it was purchased together with a member's lifetime annuity, where the member became entitled to that annuity on or after 6th April 2015. From this date the annuity must still be payable by an insurance company and only for the period up to the dependant's death, marriage or entering a civil partnership (or where the dependant is the member's child, where they cease to be a dependant), but the annuity can decrease. In addition the dependant is no longer subject to the unauthorised payments charges if they or the member have not had an opportunity to select the insurance company paying the annuity.
109. Paragraph 40 inserts new paragraph 20(1ZA) into Schedule 28 to provide an additional definition of a dependant's short-term annuity where the dependant became entitled to the annuity on or after 6th April 2015. From this date the annuity must still be purchased out of a dependant's drawdown pension fund or a dependant's flexi-access drawdown fund. It must be payable for no more than five years (subject to it ending before the dependant's death) and payable by an insurance company but the annuity can decrease. In addition a dependant is no longer subject to the unauthorised payments charges if they or the member have not had an opportunity to select the insurance company paying the annuity.
110. Paragraph 41 amends pension rule 2 in section 165(1) of FA 2004 which sets out the types of pension that can be paid to a member as an authorised payment from a registered pension scheme. Where the entitlement to an annuity arises on or after 6th April 2015, paragraph 41 removes the requirement that to be an authorised payment the annuity must not be paid after the member's death for longer than 10 years after the member became entitled to the annuity. This change reflects the amendment that paragraph 37 of Schedule 1 makes to paragraph 3 of Schedule 28.
111. Paragraph 43 amends paragraph 3(1) of Schedule 28 which defines a member's lifetime annuity so that this existing definition applies only where the member became entitled to the lifetime annuity before 6th April 2015. Where the entitlement to the annuity arises on or after this date, the definition that applies is in new paragraph 3(1A).
112. Paragraph 44 amends paragraph 3(2C) of Schedule 28 and inserts new sub-paragraph (2E) to extend the scope of paragraph 3(2C) to enable regulations made under paragraph 3(2B) to specify circumstances in which, following the cessation of an annuity and a transfer of funds which are used to purchase a new flexible

annuity, the new flexible annuity will not be a lifetime annuity for the purposes of Part 4 of FA 2004.

113. Paragraph 45 amends paragraph 6(1) of Schedule 28 which defines a member's short-term annuity so that this existing definition applies only where the member became entitled to the annuity before 6th April 2015. Where the entitlement to the annuity arises on or after this date, the definition that applies is in new paragraph 6(1ZA).
114. Paragraph 46 amends paragraph 6(1C) of Schedule 28 and inserts new subparagraph (1E) to extend the scope of paragraph 6(1C) to enable regulations made under paragraph 6(1B) to specify circumstances in which, following the cessation of an annuity and a transfer of funds which are used to purchase a short-term annuity, the new annuity will not be a short-term annuity for the purposes of Part 4 of FA 2004.
115. Paragraph 47 amends paragraph 17(1) of Schedule 28 which defines a dependants' annuity so that this definition applies only where either the dependant became entitled to the annuity before 6th April 2015, or (where it was purchased together with a member's lifetime annuity) the member became entitled to that annuity before 6th April 2015. Where the entitlement to the annuity arises on or after this date, the definition that applies is in new paragraph 17(1ZA).
116. Paragraph 48 makes a consequential amendment to paragraph 17(1A) of Schedule 28 to provide that as for paragraph 17(1), where the entitlement arises on or after 6th April 2015, a dependants' annuity is purchased together with a lifetime annuity if the dependants' annuity is related to the lifetime annuity.
117. Paragraph 49 amends paragraph 17(4) of Schedule 28 and inserts new subparagraph (6) to extend the scope of paragraph 17(4) to enable regulations made under paragraph 17(3) to specify circumstances in which, following the cessation of a dependant's annuity and a transfer of funds which are used to purchase a dependant's annuity, the new annuity will not be a dependant's annuity for the purposes of Part 4 of FA 2004.
118. Paragraph 50 amends paragraph 20(1) of Schedule 28 which defines a dependants' short-term annuity so that this definition applies only where the dependant became entitled to the annuity before 6th April 2015. Where the entitlement to the annuity arises on or after this date, the definition that applies is in new paragraph 20(1ZA).
119. Paragraph 51 amends paragraph 20(1C) of Schedule 28 and inserts new subparagraph (1E) to extend the scope of paragraph 20(1C) to enable regulations

made under paragraph 20(1B) to specify circumstances in which, following the cessation of a dependant's short-term annuity and a transfer of funds which are used to purchase dependant's short-term annuity, the new annuity will not be a dependant's short-term annuity for the purposes of Part 4 of FA 2004.

120. Paragraph 52 makes consequential changes to paragraphs 87 and 95 of Schedule 16 to FA 2011 so that added references to an annuity purchased out of drawdown pension funds also include a reference to an annuity purchased out of unsecured pension funds. These paragraphs contain transitional provisions in connection with changes introduced from 6th April 2011 to remove the effective requirement to purchase an annuity at age 75 and apply where a member or dependant was entitled to a short-term annuity on that date.

### ***Part 3 - Pension payments out of uncrystallised funds***

121. Paragraph 54 amends section 166(1) of FA 2004 to insert an uncrystallised funds pension lump sum (UFPLS) as a type of lump sum that may be paid to a member of a registered pension scheme as an authorised payment.
122. Paragraph 55 amends section 166(2) of FA 2004 so that the entitlement to a UFPLS arises immediately before it is paid so that it is tested against the member's available lifetime allowance at that point.
123. Paragraph 57 inserts new paragraph 4A into Schedule 29. This sets out the requirements for a payment to be a UFPLS.
124. New paragraph 4A(1) provides the general conditions that a payment needs to meet to be a UFPLS, and that a payment can't be a UFPLS where any of the new paragraph 4A(3) to (5) applies to the member.
125. New paragraph 4A(2) provides that where the member has not reached age 75 when a UFPLS is paid, if the amount of the lump sum paid uses up all the member's lifetime allowance, any excess paid over the available lifetime allowance will not be a UFPLS. This excess can still be paid as an authorised lump sum but will be a lifetime allowance excess lump sum and is liable to income tax at 55% under section 215 FA 2004 (lifetime allowance charge).
126. New paragraph 4A(3) to (6) specify the further circumstances in which a member with transitional protection under Schedule 36 cannot be paid a UFPLS, because allowing the payment of a lump sum that was 25% tax-free may enable the member to receive higher amounts of tax-free payments than they are currently entitled to. The prescribed circumstances are where immediately before the payment:

a) the member was entitled to either primary or enhanced protection under Schedule 36 of FA 2004 and the member had a right to a tax-free lump sum of greater than £375,000 on 5th April 2006; or

b) the member is entitled to a lifetime allowance enhancement factor under the provisions listed in new paragraph 4A(6) and the available portion of their lump sum allowance is less than 25 per cent of the amount of the payment.

127. Paragraphs 58 to 60 amend paragraph 12 of Schedule 29 to ensure that any amount paid to a member aged 75 or over that exceeds the maximum that can be paid as an UFPLS because the member does not have sufficient available lifetime allowance is taxed as income. Where the member is under age 75 at the time of the payment, it is taxed as a lifetime allowance excess lump sum.
128. Paragraph 61 amends paragraph 15 of Schedule 32 to FA 2004 (Schedule 32) and provides that a UFPLS is a relevant lump sum, and therefore when the entitlement to the UFPLS arises, the full amount of the UFPLS is tested against the individual's lifetime allowance as a benefit crystallisation event of type 6 listed in section 216 of FA 2004 (a BCE 6).
129. Paragraph 62 amends section 636A of ITEPA 2003 which provides an exemption from income tax for certain lump sums paid by registered pension schemes.
130. Paragraph 62(2) inserts new subsections (1A) to (1C) into section 636A to provide how a UFPLS is taxed. New subsection 1A provides that where the member is under age 75, 25% of the amount of the UFPLS is paid free of income tax, and the remainder is taxed as if it were a pension under section 579A of ITEPA 2003, that is, it is taxed at the individual's marginal rate. New subsections (1B) and (1C) provide that where the member is aged 75 or over, and they have more available lifetime allowance (as adjusted in accordance with paragraph 12 of Schedule 29 as amended by paragraphs 50 to 52 of Schedule 1) than the amount of the UFPLS, then the lump sum will be taxed in the same way as if the member was under age 75. If a member aged 75 or over has less lifetime allowance than the amount of the UFPLS, then an amount equal to 25% of their available lifetime allowance can be paid tax-free, with the remainder of the lump sum taxable at the individual's marginal rate. The different method of taxing payments for members pre- and post- age 75 is because at age 75 all uncrystallised benefits will have been tested against the lifetime allowance already and any lifetime allowance charge will have been imposed at that time.

#### ***Part 4 - Annual allowances***

131. Paragraph 63 amends section 227 of FA 2004 to provide that the annual allowance charge is payable where an individual has a chargeable amount, as

defined in new section 227ZA, for a tax year. The charge is on the chargeable amount. This allows the annual allowance position for an individual who has not flexibly accessed their pension, to be unaffected by the amendments made by Schedule 1.

132. Paragraph 64 inserts new section 227ZA into FA 2004 which defines the chargeable amount. The chargeable amount will be the alternative chargeable amount, as defined in new section 227B, if the individual has flexibly accessed their pension and the amount of their money purchase pension savings exceeds £10,000, commonly referred to as the ‘money purchase annual allowance’ and the alternative chargeable amount exceeds the default chargeable amount, as defined in new section 227ZA(3). Otherwise the chargeable amount will be the default chargeable amount.
133. New section 227ZA(1) and (2) provide that, starting with the tax year in which the individual first flexibly accesses their pension rights, the chargeable amount will be the alternative chargeable amount if their money-purchase input sub-total (MPIST), as defined in new section 227C, is greater than £10,000, and the alternative chargeable amount is greater than the default chargeable amount. New section 227B defines the alternative chargeable amount. New section 227G prescribes when an individual is treated as first flexibly accessing their pension rights.
134. New section 227ZA(3) provides that the default chargeable amount is the amount by which the individual’s total pension input amount exceeds their annual allowance, including any available carry forward. This preserves the current position for determining the amount of any annual allowance charge due both for those who haven’t flexibly accessed their pension and for those who have but whose money purchase pension savings are £10,000 or less.
135. Paragraph 65 inserts new sections 227B to 227G into FA 2004.
136. New section 227B provides that where the alternative chargeable amount applies it is based on the sum of the following amounts;
  - the excess of the MPIST over £10,000; and
  - the excess of the defined-benefit input sub-total (DBIST) over the amount found by deducting £10,000 from the individual’s annual allowance as set out in section 228(1) (£40,000 for tax year 2014-15) including any available carry forward under section 228A. Pension input amounts for hybrid arrangements are included in the MPIST or the DBIST, as appropriate.



137. New section 227B(1) specifies how the alternative chargeable amount is calculated.
138. New section 227B(2) specifies the alternative annual allowance.
139. New section 227B(3) and (4) define the DBIST as the sum of:
- all the pension input amounts for each defined benefits arrangement the individual is a member of;
  - the pension input amount for any hybrid arrangement that the individual is a member of where amount C is the pension input amount. That is, if amount C (the calculation done on the basis that the arrangement is to provide defined benefits) is higher than amount A (calculation on the basis that the arrangement is to provide cash balance benefits) and/or amount B (calculation on the basis that the arrangement is to provide other money purchase benefits), it is amount C that is included when calculating the member's DBIST; and,
  - other pension input amounts in respect of money purchase and/or hybrid arrangements that relate to pension input periods ending in the tax year which ended before the member first flexibly accesses their pension rights or include the day on which the member first flexibly accessed their pension rights. For hybrid arrangements this includes any hybrid arrangements where the pension input amount is amount A or B. The amounts to be included in DBIST in these cases are calculated in accordance with new sections 227E and 227F.
- The calculation is also subject to new section 227D.
140. New section 227B(5) provides that for a hybrid arrangement, where the defined benefit input (amount C) and the money purchase input (amount A or B) are equal, the money purchase input amount is included in MPIST. So where amount C is equal to the greater of amounts A and B, amount C is not included in the DBIST amount mentioned at subsection (3)(b). If there is only one of amounts A and B, and amount C is equal to it, again amount C is not included in the amount mentioned at subsection (3)(b). Instead amount A or B as appropriate is included in MPIST in new section 227C(1)(b).
141. New section 227C(1) defines the MPIST as the total of all the pension input amounts for each cash balance and other money purchase arrangement relating to the individual plus any pension input amount for a hybrid arrangement where the amount to be tested against the annual allowance under section 237 is amount A or B because that amount is higher than C.

142. New section 227C(2) provides for the MPIST to be reduced in the tax year in which rights are first flexibly accessed or a pension input period ending in the tax year contains the day on which rights are first flexibly accessed even if that day is not in the same tax year, under new sections 227E(2) and 227F(2), (3) and (5).
143. New section 227C(3) provides that certain input amounts for hybrid arrangements are subject to new sections 227B(5) and 227D.
144. New section 227D provides how to calculate the pension input amount, for a hybrid arrangement made on or after 14th October 2014 (the date this Bill was introduced) that contains a defined benefit option, for the purposes of new sections 227B(3)(b) (which relates to the element of DBIST that is derived from any hybrid arrangement where the pension input amount is amount C) and 227C(1)(b) (which relates to the element of MPIST that is derived from any hybrid arrangement where the pension input amount is amount A or B). The pension input amount will be the amount that provides the highest tax charge rather than automatically being the highest input amount, the intention being to prevent tax avoidance. This section applies where input amount C is the higher or highest amount for the purpose of calculating the pension input amount for the hybrid arrangement under section 237 (a relevant hybrid arrangement). If that is the case, a calculation must be done to find out whether using A or B instead of C for some or all of the individual's relevant hybrid arrangements would result in a higher chargeable amount. Where it does then, for the relevant hybrid arrangements identified, C is replaced by A or B as appropriate in the calculation of the alternative chargeable amount.

### Example

An individual has two hybrid arrangements set up on or after 15th October 2014. In the first, the benefits will be either cash balance or defined benefits, in the second they will be either other money purchase or defined benefits. They also have a separate money purchase arrangement with a pension input amount of £4,000.

### Step 1

The first step is to work out the relevant input amounts as set out in section 237 of FA 2004 to see whether either of the hybrid arrangements are relevant hybrid arrangements. In this case, the relevant input amounts are as follows:

Arrangement 1    Amount A is £6,000 and amount C is £14,000

Arrangement 2    Amount B is £7,000 and amount C is £17,000

Arrangement 3 Money purchase input amount is £4,000

As amount C is higher for arrangements 1 and 2, both are relevant hybrid arrangements (section 227D(1)).

### Step 2

The next step is to identify all the possible combinations of how sets of the relevant hybrid arrangements can be made up (or not made up as the case may be). In this example, there are four possible combinations:

Combination 1 - Use only arrangement 1

Combination 2 - Use both arrangement 1 and 2

Combination 3 - Use only arrangement 2

Combination 4 - Do not use either arrangement 1 or 2

Arrangement 3 is not included in the combinations as it is not a hybrid arrangement.

### Step 3

Next, for each combination, calculate what MPIST would be if for each relevant hybrid arrangement amount A or B as appropriate was treated as the relevant input amount instead of amount C. In this example:

Combination 1 – £6,000 + £4,000 for arrangement 3 = £10,000 MPIST

Combination 2 – £13,000 + £4,000 for arrangement 3 = £17,000 MPIST

Combination 3 – £7,000 + £4,000 for arrangement 3 = £11,000 MPIST

Combination 4 – Nil + £4,000 for arrangement 3 = £4,000 MPIST

### Step 4

If the maximum MPIST under step 3 has been no more than £10,000, then the £10,000 money purchase annual allowance does not apply for that tax year, and all pension savings are tested against the £40,000 annual allowance. If as in this case, the maximum MPIST is greater than £10,000, you move to step 5.

### Step 5

Next, for any combination where the MPIST is over £10,000 calculate what the alternative chargeable amount under section 227B would be if, for each relevant hybrid arrangement, amount A/B was treated as the relevant input amount instead of amount C.

The alternative chargeable amount is the amount by which the DBIST exceeds the alternative annual allowance plus the amount by which the MPIST exceeds £10,000.

If a relevant hybrid arrangement is not included in a combination, input amount C for that arrangement will be included in the DBIST under section 227B(3).

In this example, only the alternative chargeable amounts for Combination 2 and Combination 3 need to be calculated as only those two combinations have MPISTs over £10,000.

Combination 2 – Nil (DBIST) + £7,000 (MPIST) = £7,000 alternative chargeable amount

Combination 3 – Nil (DBIST) + £1,000 (MPIST) = £1,000 alternative chargeable amount

### Step 6

The final step is to identify the highest or higher amount calculated at step 4 which in this example is the £7,000 for Combination 2. Accordingly, Combination 2 results in the highest tax charge, which is made up of the 2 relevant hybrid arrangements, 1 and 2, called the “maximising set”.

145. New section 227E applies where a pension input period ends in the same tax year as the individual flexibly accesses their pension rights, but before that flexible access occurs. New section 227E(2) provides that in such a case the pension input amount for an arrangement is nil for the purposes of calculating the MPIST. New section 227E(3) provides that the actual input amount is included in the DBIST.
146. New section 227F applies to a pension input period during which an individual first flexibly accesses their pension rights, but subject to sub-section (7).
147. New section 227F(2) and (3) set out what amount is included in respect of cash balance arrangements and other money purchase arrangements respectively for the purpose of the MPIST in new section 227C. For cash balance arrangements,

the amounts are calculated by reference to the proportion of the pension input period that covers the period from the day after the date pension rights are flexibly accessed. For other money purchase arrangements it is the actual contributions paid to those arrangements in that part of the pension input period.

148. New section 227F(4) provides that for any money purchase arrangement, the amount of the excess of the actual pension input amount over the amount included in the MPIST, by virtue of subsection (2) or (3), is to be included in the DBIST calculated in accordance with new section 227B(3).
149. New section 227F(5) provides how much of relevant input amounts A or B in respect of hybrid arrangements are included in the MPIST. For cash balance arrangements, they are treated as being the amount that is represented by the proportion of the pension input period that covers the period from the day after the date the member first flexibly accesses pension rights. For other money purchase arrangements it is the actual contributions paid to those arrangements in that part of the pension input period.
150. New section 227F(6) provides that for a hybrid arrangement the input amount attributable to the period before the pension was flexibly accessed is to be included in the DBIST.
151. New section 227F(7) provides that new section 227F does not apply if the member had made a valid declaration that they met the flexible drawdown conditions accepted by a scheme administrator before 6th April 2015.
152. New section 227G specifies when pension rights are first flexibly accessed and therefore when the alternative chargeable amount may apply. The money purchase annual allowance will apply from the earlier or earliest of the dates that apply under subsections (2) to (9) in relation to an individual. See also the amendment made by paragraph 69 of Schedule 1, under which there can be a further date to be considered when pension rights may be first flexibly accessed.
153. New section 227G(2) provides if, on or after 6th April 2015, an individual has created a flexi-access drawdown fund by designating sums and assets into it or as a result of the operation of new paragraph 8D(2) of Schedule 28, and then takes a qualifying payment from that fund, they are treated as having flexibly accessed their pension rights immediately before that payment was made. This will potentially trigger the application of the money purchase annual allowance from the date of the payment. New section 227G(10) prescribes when a payment is a qualifying payment.

154. New section 227G(3) provides that where an individual was entitled to a flexible drawdown pension before 6th April 2015 under section 165(3A), this will automatically mean that the member has flexibly accessed their pension from the start of 6th April 2015 and therefore potentially triggers the application of the money purchase annual allowance from that date. No payment of drawdown pension is required for the money purchase annual allowance to apply.
155. New section 227G(4) provides that where the total withdrawn from a member's drawdown pension fund for a year exceeds the maximum ("the cap") as set out in pension rule 5 in section 165, so that new section 8B of Schedule 28 (see paragraph 76 above) applies, the member has flexibly accessed their pension immediately before the first qualifying payment. The money purchase annual allowance potentially applies from the date the first qualifying payment is made, whether this is the payment that results in the cap being exceeded or a subsequent payment. New section 227G(10) defines what a qualifying payment is.
156. New section 227G(5) provides that where a scheme administrator accepts a notification to change a member's drawdown pension fund to a flexi-access drawdown fund, so that new section 8C of Schedule 28 (see paragraph 78 above) applies, and a qualifying payment of drawdown pension is paid from this fund, the member has flexibly accessed their pension immediately before the first qualifying payment is made. They therefore potentially trigger the money purchase annual allowance from the date the payment is made. New section 227G(10) defines what a qualifying payment is.
157. New section 227G(6) provides that the first payment of a UFPLS to an individual will mean that they flexibly accessed their pension immediately before the payment is made and therefore they potentially trigger the money purchase annual allowance from the date of that payment.
158. New section 227G(7) and (8) provide that where a member receives a payment of a lifetime annuity under a flexible annuity contract then this will mean that they flexibly accessed their pension immediately before the payment is made and therefore they potentially trigger the money purchase annual allowance from the date of that payment. A flexible annuity contract is one set up on or after 6th April 2015 where the terms of the contract allow the payments to go down, or they can be varied to allow payments to go down, other than in prescribed circumstances set out in regulations.
159. New section 227G(9) provides that where a member receives a payment of a scheme pension from a money purchase arrangement where there are fewer than 12 individuals including the member receiving such scheme pensions, this will mean that they flexibly accessed their pension immediately before the payment is

made and therefore they potentially trigger the money purchase annual allowance from the date of that payment.

160. New section 227G(10) and (11) provide that a qualifying payment is income withdrawal from the fund or payment of a short-term annuity purchased using sums or assets out of the fund, except where the whole of the fund was made up of disqualifying pension credits as defined in paragraphs 2(3) and (4) of Schedule 29. A pension credit under a pension sharing order on divorce is disqualifying if the person subject to the corresponding debit had an actual entitlement to a pension under the arrangement to which the pension sharing order related.
161. Paragraph 66 omits, in relation to tax year 2015-16 onwards, section 227A of FA 2004, which provides that an individual who has taken a flexible drawdown pension has an effective annual allowance of nil. Individuals entitled to drawdown pension by virtue of section 165(3A) of FA 2004 will automatically be deemed to have flexibly accessed their pension savings at 6th April 2015 and therefore will potentially become subject to the money purchase annual allowance from 2015-16. Individuals entitled to dependants' drawdown pension by virtue of section 167(2A) of FA 2004 will automatically revert to the default annual allowance from 2015-16 unless they are subject to the money purchase annual allowance for any other reason. As a consequence, this paragraph also omits paragraph 45 of Schedule 16 to FA 2011 which originally inserted section 227A into FA 2004.
162. Paragraph 67 inserts new subsections (8) and (9) into section 228A of FA 2004 which relates to the carry forward of unused annual allowance.
163. New section 228A(8) provides that where an individual has been subject to the £10,000 money purchase annual allowance for an earlier tax year, the amount available for any carry forward from that year is adjusted accordingly. Unused money purchase annual allowance cannot be carried forward to subsequent tax years.
164. New section 228A(9) provides that where an individual or dependant has taken a flexible drawdown pension before 6th April 2015 then for tax year 2015-16 onwards they will not have any carry forward of unused annual allowance for any tax year before 2015-16 during which they were entitled to flexible drawdown pension or flexible dependants' drawdown pension.
165. Paragraph 68 inserts new subsection (2A) into section 237B of FA 2004. This provides that for the purpose of determining whether section 237B applies, the default chargeable amount applies to the individual, and not the alternative chargeable amount. Where section 237B applies, the member may request that the scheme administrator pays some or all of their annual allowance liability in return for an equivalent actuarial reduction in their promised benefits – commonly

known as “scheme pays”. This means that the scope of when scheme pays can apply is not increased by these changes.

166. Paragraph 69 inserts new paragraph (4) into article 25C of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (SI 2006/572). This provides that where an individual who has primary protection (but not enhanced protection), and protected pre- 6th April 2006 lump sum rights of greater than £375,000, receives a stand-alone lump sum (that is a tax free lump sum that is paid not in connection with a pension) from a money purchase arrangement on or after 6th April 2015, then they are treated as first flexibly accessing their pension immediately before the payment of the stand-alone lump sum. This will potentially trigger the money purchase annual allowance on the day the lump sum is paid.

#### ***Part 5 - Miscellaneous amendments***

167. Paragraph 70 amends the anti-recycling rules in paragraph 3A(3) of Schedule 29 which prevent the exploitation of the pensions tax rules to generate artificially high amounts of tax relief by using the pension commencement lump sum to make a further tax-relieved contribution into a registered pension scheme. The amendment reduces to £7,500 the minimum aggregate value of pension commencement lump sums paid to an individual in a 12 month period that triggers the recycling rule.
168. Paragraph 71 amends paragraph 7(1) of Schedule 29 to provide that from 6th April 2015, a trivial commutation lump sum can be paid only in respect of a defined benefits arrangement. Those with relatively small amounts of money purchase savings will be able to take an UFPLS from this date, so there is no longer a need for trivial commutation lump sum rules for money purchase arrangements. Paragraph 71 also provides that from 6th April 2015, a trivial commutation lump sum can be paid once the member has reached normal minimum pension age (normally age 55) in line with the minimum age for the payment of other pension benefits, a reduction from the previous requirement for the member to be aged at least 60, or where the ill-health condition in paragraph 1 of Schedule 28 is satisfied. Paragraph 71 also provides that to be a trivial commutation lump sum, a lump sum only needs to extinguish any defined benefit rights relating to the member under that pension scheme.
169. Paragraph 72 amends article 23C(4) of the Taxation of Pension Schemes (Transitional Provisions) Order 2006 (SI 2006/572) to provide that from 6th April 2015, under that article, lump sums of up to £10,000 representing a member’s remaining pension after payment of certain protected pension commencement lump sums can be paid once the member has reached normal minimum pension



age (normally age 55), rather than the minimum age of 60 which applied previously, or the ill-health condition is satisfied.

170. Paragraph 73 amends the Registered Pension Schemes (Authorised Payments) Regulations 2009 (SI 2009/1171).
171. Paragraph 73(2) substitutes a new regulation 10 as a consequence of the removal of a trivial commutation lump sum as an option for money purchase arrangements from 6th April 2015. This new regulation 10 provides that certain lump sums that would have been authorised payments under the regulations, but for the fact that they hadn't extinguished all rights under the scheme because of the ongoing payment of a lifetime annuity, can be commuted to a lump sum if they are less than £10,000. This lump sum does not count towards the limit in regulation 11A(2).
172. Paragraph 73(3) provides that from 6th April 2015 a lump sum under regulations 11, 11A or 12 (small pot lump sums of up to £10,000) can be paid as an authorised payment once the member has reached normal minimum pension age (normally age 55), or the ill-health condition is satisfied.
173. Paragraph 74(1) to (4) amend paragraph 20 of Schedule 29 to provide a new circumstance when a trivial commutation lump sum death benefit may be paid. As a result, a trivial commutation lump sum death benefit may also be paid to an individual in respect of any entitlement they had to receive any guaranteed pension payments of a lifetime annuity or scheme pension payable after the member's death. The lump sum must extinguish the individual's rights to receive the guaranteed pension payments under the scheme or contract concerned. This applies to payments made on or after 6th April 2015.
174. Paragraph 74(4) amends paragraph 20(2) of Schedule 29 to increase the limit for the trivial commutation lump sum death benefit to £30,000 to bring the maximum in line with a trivial commutation lump sum. This applies to payments made on or after 6th April 2015.
175. Paragraph 75 amends Schedule 29 to remove the facility for schemes to pay a winding-up lump sum death benefit. This provision is unnecessary from 6th April 2015 because all winding-up lump sum death benefits also satisfy the conditions to be a trivial commutation lump sum death benefit.
176. Paragraph 76 amends paragraph 7 of Schedule 32 which prescribes how a lifetime annuity is valued for the purpose of testing against the lifetime allowance where an individual becomes entitled to it before normal minimum pension age, and where the ill-health condition is not met. It provides that where the individual

becomes entitled to the lifetime annuity after 5th April 2015, the amount of the BCE 2 that is tested against the lifetime allowance is the greater of the sums and assets used to purchase the lifetime annuity and the amount that would have been tested against the lifetime allowance had the lifetime annuity been a scheme pension on the day the member became entitled to it. That is, 20 times the annual rate of the lifetime annuity on that date.

177. Paragraph 77 amends paragraph 20(4)(a) and (b) of Schedule 36 which prescribe how a pre-6th April 2006 drawdown pension is valued for the purposes of the lifetime allowance, if and when the first BCE occurs in respect of the individual on or after this date. The lifetime allowance was introduced from 6th April 2006 and pensions in payment on that date were not tested against the lifetime allowance but their value does reduce the amount of available lifetime allowance that an individual has when a BCE occurs. This paragraph provides that where the member's first BCE is on or after 6th April 2015, and either the individual was receiving "capped drawdown" or had opted to receive "flexible drawdown" in a pension year that began on or after 27th March 2014, the amount of the lifetime allowance available is reduced by 80% of 25 times the maximum amount that could have been paid as a drawdown pension. As the maximum that can be paid as a drawdown pension was increased from 120% to 150% of the basis amount from 27th March 2014, limiting the amount tested to 80% of this figure ensures that overall it gives the same result as before 27th March 2014.
178. Paragraph 78 inserts new paragraph 23ZA into Schedule 36 in connection with transfers relating to individuals who have a protected pension age protecting their right to take their pension before the normal minimum pension age, currently age 55. It ensures that where an individual has taken their pension benefits before the normal minimum pension age using their protected pension age, then if they transfer the protected pension benefits that are in payment as part of a recognised transfer, any pension payments before age 55 will be authorised payments. This applies to any recognised transfers made on or after 6th April 2015.
179. Paragraph 79 inserts new section 273B into FA 2004. New section 273B provides a permissive scheme rules override in connection with certain payments in respect of money purchase arrangements that will be authorised payments as a result of amendments made by Schedule 1, so that the trustees or scheme managers can make these payments if they wish, even if the rules of the scheme do not allow the payment to be made.
180. Paragraph 81 amends section 579CA of ITEPA 2003, regarding the taxation of pensions for individuals who are temporarily non-resident, as it applies when the individual's year of departure was in or after the 2013-14 tax year and the individual's period of return is in the 2015-16 tax year or later. Section 579CA provides that a relevant withdrawal under a registered pension scheme during a

period of temporary non-residence is to be treated as taxable pension income under section 579B when the individual returns to the UK. What constitutes a period of temporary non-residence is set out in Part 4 of Schedule 45 to Finance Act 2013 (FA 2013), which contains anti-avoidance rules in connection with the new statutory residence test introduced by FA 2013.

181. Paragraph 81(2) amends section 579CA so that it does not apply unless the total relevant withdrawals under section 579CA and 576A exceed £100,000. New section 579CA(4A) inserted into ITEPA 2003 by paragraph 81(3) provides that when calculating the value of relevant non-sterling withdrawals, the values are translated into sterling values by reference to the average exchange rate for the year to 31st March that falls in that tax year. HMRC publishes average exchange rates on its website. Where the value of relevant withdrawals during a temporary period of non-residence exceeds £100,000, all of the withdrawals are treated as taxable pension income subject to section 579B in the period of return to the UK, not just the excess over £100,000.
182. Paragraph 81(3) and (4) amend the definition of relevant withdrawal. Relevant withdrawals comprise the payments to members that would, under new section 227G, trigger the application of the money purchase annual allowance and the payments to beneficiaries of equivalent character (which do not trigger the application of money purchase annual allowance). Payments to members that would not trigger the application of the money purchase annual allowance by virtue of being attributable to a disqualifying pension credit (see section 227G(10) and (11), inserted by paragraph 65 of Schedule 1) are also included as relevant withdrawals.
183. Paragraph 82 amends section 579CA of ITEPA 2003 as it applies when the individual's year of departure was before the 2013-14 tax year and the individual's year of return is the 2015-16 tax year or later. Before the 2013-14 tax year, section 579CA applied to individuals who satisfied the "residence requirements" as defined in section 579CA(2). Section 579CA was amended by paragraph 117 of Schedule 45 to FA 2013 and now, as explained above, applies when relevant withdrawals are made during a temporary period of non-residence. To prevent the change in the definition of when section 579CA applies affecting people who had become non-resident before the statutory residence test came into effect, paragraph 158 of Schedule 45 to FA 2013 provides that the unamended rules apply when the temporary period of non-residence began before the new statutory residence test came into force on 6 April 2013. Paragraph 82 of Schedule 1 accordingly makes the same amendments to the former definition of what constitutes a relevant withdrawal as paragraph 81 makes to the current section 579CA.

184. Paragraph 83 amends section 576A of ITEPA 2003 as it applies when the individual's year of departure was in or after the 2013-14 tax year and the individual's period of return is in the 2015-16 tax year or later. Section 576A provides that a relevant withdrawal under a relevant non-UK scheme during a period of temporary non-residence is to be treated as taxable pension income under section 575 of ITEPA 2003 when the individual returns to the UK. What constitutes a period of temporary non-residence is set out in Part 4 of Schedule 45 to Finance Act 2013 (FA 2013), which contains anti-avoidance rules in connection with the new statutory residence test introduced by FA 2013. Paragraph 83 of Schedule 1 makes similar amendments to the definition of what constitutes a relevant withdrawal as are being made to the current section 579CA by paragraph 81, except that the amendments apply as if the payment had been made from a registered pension scheme.
185. Paragraph 84 amends section 576A of ITEPA 2003 as it applies when the individual's year of departure was before the 2013-14 tax year and the individual's year of return is the 2015-16 tax year or later. Paragraph 84 of Schedule 1 makes the same amendments to the definition of what constitutes a relevant withdrawal as are being made to the current section 576A by paragraph 83.
186. Paragraph 85 amends section 164 of FA 2004 and inserts new subsections (3) and (4), to provide a power to make regulations to provide that an authorised payment under FA 2004 does not trigger the money purchase annual allowance, or that an authorised payment is not a relevant withdrawal for the purposes of temporary non-residence under section 579CA of ITEPA 2003, or for relevant non-UK schemes under section 576A of ITEPA 2003.

#### ***Part 6 – Provision of information***

187. Paragraphs 86 to 91 amend the Registered Pension Schemes (Provision of Information) Regulations 2006 (SI 2006/567).
188. Paragraph 87 inserts new regulations 14ZA to 14ZE of SI 2006/567, which set out the information that that must be provided where a member has flexibly accessed their pension rights. The new information requirements are intended to ensure that the member is aware that they have flexibly accessed their pension rights and the consequences of having done so, and that the scheme administrator for every scheme that they are a member of is also aware so that if necessary they can provide information about the member's savings in that scheme based on the lower £10,000 money purchase annual allowance.
189. New regulation 14ZA requires a scheme administrator to provide a statement to a scheme member within 31 days when it appears they have first flexibly accessed their pension rights in that scheme and sets out the relevant events that require the

scheme administrator to provide the statement, and the information that should be included in the statement.

190. New regulation 14ZB sets out the requirement for scheme members who have flexibly accessed their pension savings to notify the scheme administrator of any other registered pension scheme they are an accruing member of that they have received a statement under new regulation 14ZA. An individual is an accruing member of a registered pension scheme if at the time, or any time after, the relevant event occurred under new regulation 14ZA they are an active member of either a cash balance or hybrid arrangement under that scheme or they (or someone else on their behalf) pay a contribution to a money purchase arrangement that is not a cash balance arrangement under that scheme. They must provide the information to the scheme administrator within 91 days of receiving the statement or becoming an accruing member, whichever is the later.
191. New regulation 14ZC requires scheme administrators making recognised transfers of member's rights where they are aware that the member has flexibly accessed their pension savings to notify the scheme administrator of the receiving scheme that the member has flexibly accessed their pension rights, and the date the event occurred, within 31 days of the transfer.
192. New regulation 14ZD requires individuals who have a flexi-access drawdown fund as a result of having had a valid notification for flexible drawdown accepted on or before 5th April 2015 to notify the scheme administrator of any other registered pension scheme they are an accruing member of that they are treated as having flexi-accessed their pension rights at 6th April 2015. An individual is an accruing member of a registered pension scheme if on or at any time after 6th April 2015 they are an active member of either a cash balance or hybrid arrangement under that scheme or they (or someone else on their behalf) pay a contribution to a money purchase arrangement that is not a cash balance arrangement under that scheme. They must provide the information to the scheme administrator within 91 days of 6th April 2015 or becoming an accruing member of the other scheme, whichever is the later.
193. New regulation 14ZE requires individuals who convert their existing drawdown pension fund to a flexi-access drawdown fund on or after 6th April 2015, and this is their first flexible access across all their schemes, to notify the scheme administrator of any other registered pension scheme they are an accruing member of, that they are treated as having flexi-accessed their pension rights from the date of conversion. An individual is an accruing member of a registered pension scheme if on or at any time after the date of conversion they are an active member of either a cash balance or hybrid arrangement under that scheme or they (or someone else on their behalf) pay a contribution to a money purchase arrangement that is not a cash balance arrangement under that scheme. They must

provide the information to the scheme administrator within 91 days of the date of conversion or becoming an accruing member of the other scheme, whichever is the later.

194. Paragraph 88 amends regulation 14A of SI 2006/567 in relation to the provision of an annual pension savings statement where the member's pension savings in that scheme have exceeded the annual allowance.
195. Paragraph 88(2) to (4) amend paragraph (1), make a consequential amendment to paragraph (8) and insert new paragraphs (9) to (12) extending the circumstances in which a scheme administrator is required to give the member a pension savings statement and the information that should be included in the statement, to include where they believe the member has flexibly accessed their pension rights and they have money purchase or relevant hybrid arrangement pension input amounts of more than £10,000 in that scheme.
196. Paragraphs 89 and 90 make changes to regulations 3(1) and 14B(1) of SI 2006/567 as consequence of paragraphs 87 and 88 of Schedule 1. All of the changes made in SI 2006/567 come into force on 6th April 2015.

***Part 7 - Overseas pensions***

197. Paragraph 92 amends section 169(4) of FA 2004 to extend the scope of the existing power to make regulations in connection with information requirements for scheme managers of qualifying recognised overseas pension schemes (QROPS). The amendment provides that regulations made under this power may also require the scheme manager of a QROPS or former QROPS to provide information i) to the scheme administrator of a registered pension scheme or ii) to the scheme manager of a QROPS or former QROPS or iii) to a member or former member of a QROPS or former QROPS.
198. Paragraph 93 amends section 251 of FA 2004 to extend the scope of the existing power to make regulations in connection with information requirements for scheme administrators.
199. Paragraph 93(2) provides that regulations made under this power may also require the scheme administrator to provide information to the scheme manager of a QROPS. It also provides that the regulations may require members of relevant non-UK schemes to provide information to scheme administrators of registered pension schemes or scheme managers of relevant non-UK pension schemes.
200. Paragraph 93(3) amends section 251(6) and provides that the definition of relevant non-UK scheme in section 251 is the same as in paragraph 1 of Schedule 34 to FA 2004 (Schedule 34).

201. Paragraph 94 inserts new sub-paragraph (2A) into paragraph 5 of Schedule 33 to FA 2004 (Schedule 33) which defines a qualifying overseas pension scheme (QOPS).
202. New paragraph 5(2A) of Schedule 33 confirms that, for the purposes of the requirement in paragraph 5(1)(c) of Schedule 33 that a scheme manager must provide an undertaking to HMRC to comply with any prescribed benefit crystallisation information requirements, “benefit crystallisation information requirements” includes prescribed information requirements relating to when an individual first flexibly accesses their pension rights.
203. Paragraph 95 amends Schedule 34 which provides for certain tax charges to apply to savings in non-UK pension schemes where those savings have benefited from UK tax relief.
204. Paragraph 95(2) amends paragraph 1(3) of Schedule 34 to provide that the tax charges that apply in connection with the payment of an UFPLS can also apply to payments from a relevant non-UK scheme as if they were payments from a registered pension scheme.
205. Paragraph 95(3) amends paragraph 1(4) of Schedule 34 to provide that these member payment provisions also include the provisions of section 636A of ITEPA 2003 relating to an UFPLS. This is shown separately because section 636A(1A) to (1C) of ITEPA 2003 is not within the provisions of Part 4 of FA 2004 as are the other member payment charges.
206. Paragraph 95(4) inserts new paragraph 5A into Schedule 34. This provides that a payment made from a relevant non-UK scheme will be taxed as a relevant withdrawal under section 576A ITEPA 2003 where tax is due under the member payment charges in Schedule 34 but the UK cannot immediately collect the tax under the terms of a double taxation agreement.
207. Paragraph 95(5) amends paragraph 6 of Schedule 34 as a consequence of the new paragraph 5A, to provide that where overseas tax has been paid in respect of the relevant withdrawal, then any UK tax liability will be reduced by the amount of overseas tax paid.
208. Paragraph 95(6) amends paragraph 7(2) of Schedule 34 to extend the scope of the existing regulation-making power in connection with these member payment provisions to provide that the regulations can include transitional provisions.
209. Paragraph 95(7) inserts new paragraphs 9ZA and 9ZB into Schedule 34.

210. New paragraph 9ZA provides that the lower money purchase annual allowance will also potentially apply where an individual is or has been a currently-relieved member of a currently-relieved non-UK pension scheme and flexibly accesses pension rights under that non-UK pension scheme.
211. New paragraph 9ZB provides that any pension scheme that is or has been a QROPS is treated as a registered pension scheme for the purposes of whether the money purchase annual allowance rules are triggered in respect of individuals with UK tax relieved savings in that QROPS. This ensures that where the equivalent of an UFPLS is paid, or payments are taken from the equivalent of a flexi-access drawdown fund from a QROPS, this counts as a trigger for when the individual flexibly accesses their pension rights. This means that the money purchase annual allowance potentially applies from that date if the individual continues to contribute to a registered scheme or currently-relieved scheme.
212. Paragraph 95(8) inserts new sub-paragraph (3) into paragraph 11 of Schedule 34 to provide that where an individual first flexibly accesses their pension during a tax year, when calculating the amount of the pension input under a money purchase arrangement in a non-UK scheme for the periods before and after that first access, the same appropriate fraction for the tax year applies to both calculations.
213. Paragraph 95(9) amends paragraphs 12(2) and 19(2) of Schedule 34 to extend the scope of the existing regulation making powers in connection with the application of the annual allowance and lifetime allowance charges to members of non-UK schemes to provide that the regulations can include transitional provisions.
214. Paragraph 96 amends the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) Regulations 2006 (SI 2006/207).
215. Paragraph 96(2) amends regulation 5 of SI 2006/207 to clarify that it only applies to Part 3 of SI 2006/207. This is so that regulation 5, which modifies FA 2004 as it applies to relevant non-UK schemes, will not apply to the new Part 4 of these Regulations (which relates to section 636A of ITEPA) inserted by paragraph 96(15).
216. Paragraph 96(3) to (14) amend regulation 15 of SI 2006/207 which modifies Schedule 29 (Authorised Lump Sums) as it applies to relevant non-UK schemes. Paragraphs 96(4) to (9) and (11) to (14) provide that when working out whether a member has lifetime allowance available after a relevant BCE has occurred, the value of any UFPLS paid since the relevant BCE is to be taken into account for various prescribed purposes. Paragraph 96(10) inserts new paragraph (4A) into regulation 15 of SI 2006/207 which amends paragraph 4A of Schedule 29 to disregard the value of the relevant BCEs when calculating the member's available



lifetime allowance under regulation 15. Relevant BCE has its existing meaning of BCE 8 (a transfer to a QROPS) and a BCE occurring by virtue of paragraph 15 of Schedule 34.

217. Paragraph 96(15) inserts new Part 4 and regulation 18 into SI 2006/207.
218. New regulation 18 modifies section 636A of ITEPA 2003 to provide similar modifications to those amended by paragraph 96(4) to (14). Regulation 18 provides that when a relevant non-UK scheme pays an UFPLS after a relevant BCE has occurred, when working out how much lifetime allowance the member has available for the purposes of new section 636A(1B) as inserted by paragraph 62 of Schedule 1, the value of any prior relevant BCE must be ignored, the referable portion of any earlier PCLS or any earlier UFPLSs paid since the relevant BCE is deducted even if the lump sum concerned has been paid since the member reached the age of 75, and the referable portion which would have crystallised by virtue of the member becoming entitled to a pension since the relevant BCE is deducted, even if the member had reached the age of 75 before becoming so entitled. The referable portion is the amount that relates to the funds that have received UK tax relief.
219. Paragraph 97 amends the Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2013 (SI 2013/2259), and the Pension Schemes (Information Requirements for Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (SI 2006/208). The amendments change the start date from which scheme managers are required to re-notify their QROPS status to delay the implementation by 12 months. This is because before 6th April 2015 schemes would have to re-notify on the basis of the information in place at that time. As scheme managers can re-notify HMRC up to six months before they are due to do so, they could provide the information changed as a result of the amendments in this Bill within 30 days of 6th April 2015. It would provide no benefit for schemes to notify HMRC twice in a short space of time.

## **Schedule 2**

### ***Part 1 – Death benefits: Nominees and successors***

220. Paragraph 2(2) and (3) amend section 167 of FA 2004 to relax the existing requirement that pension death benefits for money purchase arrangements must be paid to a dependant, so that death benefits can also be paid to either a nominee or a successor. It provides that a nominee can receive a nominee's drawdown pension and a successor, a successor's drawdown pension.
221. Paragraph 2(4) inserts new subsection (1A) into section 167 to provide that a beneficiary (that is, a dependant, nominee or successor) becomes entitled to

- income withdrawal when funds are designated into their dependants', nominees' or successors' drawdown pension as appropriate.
222. Paragraph 2(5) amends section 167(2) to provide that a pension death benefit includes a pension payable to a successor on the death of a beneficiary.
223. Paragraph 3 inserts new paragraphs 27A to 27K into Schedule 28 of FA 2004. These new paragraphs provide definitions of nominee and successor as well as defining their respective drawdown pensions.
224. New paragraph 27A defines a nominee. A nominee can be any individual other than a dependant who is nominated by the member, or where there are no dependants and no individual or charity has been nominated by the member, any individual nominated by the scheme administrator.
225. New paragraph 27B defines nominees' drawdown pension as a nominees' short-term annuity (new paragraph 27C of Schedule 28) or nominees' income withdrawal (new paragraph 27D of Schedule 28).
226. New paragraph 27C(1) defines a nominees' short-term annuity. A nominees' short term annuity is purchased on or after 6th April 2015 using sums or assets in a nominee's flexi-access drawdown fund (new paragraph 27E of Schedule 28) and must be payable by an insurance company. It can be payable for no more than 5 years and must end before the death of the nominee. These requirements are similar to those for a dependants' short-term annuity that is purchased on or after 6th April 2015.
227. New paragraph 27C(2) and (3) contain powers for HMRC to make regulations in respect of nominees' short-term annuities for cases where the annuity ceases and the sums or assets are transferred to provide a new nominees' short-term annuity. Regulations under these powers may prescribe the extent to which, following a transfer, a new nominees' short-term annuity is to be treated as if it were the original nominees' short-term annuity.
228. New paragraph 27D defines nominees' income withdrawal as any amount that the nominee is entitled to receive from their nominee's flexi-access drawdown fund, other than payments of a short-term annuity.
229. New paragraph 27E defines a nominee's flexi-access drawdown fund as one where funds have been newly-designated (new paragraph 27E(2)). As with a dependant, a nominee will be able to designate any uncrystallised funds, or any unused drawdown funds that the member had on their death, to a nominee's flexi-access drawdown fund.

230. New paragraph 27E(2) defines newly-designated funds as those funds that have been designated as available for the payment of a nominees' drawdown pension on or after 6th April 2015 and were unused drawdown funds or unused uncrystallised funds immediately before being designated plus any sums or assets that derive from these funds.
231. New paragraph 27E(3) defines unused drawdown funds as any drawdown funds in respect of the member that, just before the member's death, had not been used to pay income withdrawal or a short-term annuity plus any sums or assets that derive from these funds.
232. New paragraph 27E(4) and (5) define when sums or assets are unused uncrystallised funds. For cash balance arrangements this is any sums or assets that the member could have been entitled to immediately before their death, and which since the member's death have not been designated for dependants' or nominees' drawdown pension, or to provide a dependants' annuity or scheme pension. For other money purchase arrangements this is any sums or assets held in the arrangement that had not been designated for the member's own drawdown or used to provide a scheme pension for the member or any dependant immediately prior to the member's death, and have not been used since the member's death for a dependant's annuity or a dependants' scheme pension, or designated as available for either dependants' or nominees' drawdown pension.
233. New paragraph 27F defines a successor as someone who inherits any unused flexi-access drawdown funds on the death of a dependant, a nominee or a successor. A successor can be anyone nominated by the previous beneficiary or where no nomination has been made by the previous beneficiary, an individual nominated by the scheme administrator. As these changes do not impose any limit on how many times unused funds can be passed on, successors' flexi-access drawdown funds that are unused at the time of the successor's death will also be capable of being passed to another nominated successor.
234. New paragraph 27G defines successors' drawdown pension as a successors' short-term annuity (new paragraph 27H of Schedule 28) or successors' income withdrawal (new paragraph 27J of Schedule 28).
235. New paragraph 27H(1) defines a successors' short-term annuity. The requirements for a successors' short-term annuity are similar to those for a nominees' short-term annuity.
236. New paragraph 27H(2) and (3) contain powers for HMRC to make regulations in respect of successors' short-term annuities for cases where the annuity ceases and the sums or assets are transferred to provide a new successors' short-term annuity. Regulations under these powers may prescribe the extent to which, following a

transfer, a new successors' short-term annuity is to be treated as if it were the original successors' short-term annuity.

237. New paragraph 27J defines successors' income withdrawal as any amount that the successor is entitled to receive from their successor's flexi-access drawdown fund, other than payments of a short-term annuity.
238. New paragraph 27K defines a successor's flexi-access drawdown fund. The requirements for a successor's flexi-access drawdown fund are similar to those for a nominee's flexi-access drawdown fund. However successors will only be able to designate into their flexi-access drawdown fund unused drawdown funds, as there will be no uncrystallised funds available to successors. This is because the preceding dependant or nominee will have already crystallised any uncrystallised funds on the death of the member, either through the payment of a lump sum death benefit or by designating the uncrystallised funds to drawdown on their own account. Where the intended dependant or nominee dies before receiving the funds, then those funds can be paid to an alternative dependant or nominee, rather than a successor.
239. Paragraphs 4 to 14 make a number of amendments to FA 2004 as a consequence of the introduction of the terms 'nominee' and 'successor' in paragraph 3. These ensure that where the legislation refers to a dependant or a dependant's drawdown pension fund or a dependant's flexi-access drawdown fund, additional references are inserted to a nominee or successor or a nominee's flexi-access drawdown fund or successor's flexi-access drawdown fund as appropriate.
240. Paragraph 15 amends paragraph 18 of Schedule 29 and widens the circumstances when a charity lump sum death benefit can be paid. Currently a lump sum can be paid on the death of the member or dependant, to a charity nominated by them provided that there are no (or no other) dependants. The amendment enables a charity lump sum death benefit to be paid where there are unused funds in a nominee's or successor's flexi-access drawdown fund at their death and there are no dependants of the member. If no charity has previously been nominated by the member, the nominee or successor may choose the charity to benefit on their own death.
241. Paragraph 16 amends the Registered Pension Schemes (Transfers of Sums and Assets) Regulations 2006 (SI 2006/499), to provide that a transfer of a nominee's or successor's flexi-access drawdown fund to a similar drawdown fund in another registered pension scheme is a recognised transfer and therefore an authorised payment. This ensures that no tax charges will arise in connection with the transfer.

***Part 2 – Lump sum death benefits***

242. Paragraphs 17 amends section 206 of FA 2004 as it relates to the special lump sum death benefit charge that arises where certain lump sum death benefits are paid where the member has reached age 75 at the time of their death. In clause 2 of this Bill, the charge that applies is reduced from 55% to 45%.
243. Paragraph 17(2) inserts new subsection (1ZA) into section 206 of FA 2004 which provides that references to a member and their death, are to be read as also applying to a dependant, nominee or successor and their death, so that the charge may also arise where a flexi-access lump sum death benefit is paid from a dependant's, nominee's or successor's flexi-access drawdown fund, or where a drawdown pension fund lump sum death benefit is paid from a dependant's drawdown pension fund.
244. Paragraph 17(3) inserts new subsections (1B) and (1C) into section 206 of FA 2004.
245. New subsection (1B) provides that the special lump sum death benefits charge also applies if a member dies before age 75, and a drawdown pension fund lump sum death benefit, a flexi-access drawdown fund lump sum death benefit or an uncrystallised funds lump sum death benefit is paid outside a two-year period. The two-year period starts on the date on which the scheme administrator first knew of the member's death or, if earlier, the day when they could first reasonably have been expected to know of it. Currently where a lump sum death benefit is not paid within this period it is an unauthorised payment and is subject to tax charges of up to 70%.
246. New subsection (1C) provides that the special lump sum death benefit charge also applies if a beneficiary dies before age 75, and prescribed lump sum death benefits are paid outside the two-year period.
247. Paragraphs 17(4) and (5) and 18 make further consequential changes.
248. Paragraph 19 makes a number of amendments in connection with the uncrystallised funds lump sum death benefit.
249. Paragraph 19(1) amends paragraph 15 of Schedule 29 to remove the requirement that, to be an authorised payment, the lump sum must be paid within a two-year period.
250. Paragraph 19(2) amends paragraph 16 of Schedule 32 which sets out which lump sum death benefits are relevant lump sum death benefits and are tested against the member's lifetime allowance as a BCE 7. The amendment means that an

uncrystallised funds lump sum death benefit is only tested against the lifetime allowance if it will be paid tax-free, that is, if it is paid where the member died before age 75 and is paid within a two-year period.

251. Paragraph 19(3) amends section 636A of ITEPA 2003 to provide that an uncrystallised funds lump sum death benefit is subject to income tax only under section 206 of FA 2004, that is, only where either the member died after reaching age 75 or the member died before reaching age 75 and the lump sum was not paid within the two-year period.

***Part 3 – Uncrystallised rights at member’s death***

252. Paragraph 21 inserts a new benefit crystallisation event 5C (BCE 5C) into section 216(1) of FA 2004. BCE 5C provides that any funds designated into a dependant’s or a nominee’s flexi-access drawdown fund will be tested against the member’s lifetime allowance if the member was under the age of 75 when they died and the funds are designated within the relevant two-year period. The amount that is tested against the member’s lifetime allowance will be the total of the sums and assets designated as available for drawdown. Where the member does not have sufficient lifetime allowance remaining at the time of their death, the excess will be subject to the lifetime allowance charge. This test ensures that unlimited amounts of tax-relieved pension savings cannot be passed on entirely tax-free.
253. Paragraph 22 amends section 217 of FA 2004 to provide that the person liable to any lifetime allowance charge arising as a result of new BCE 5C, will be the dependant or nominee as appropriate. That is, the charge will be the sole liability of the recipient.
254. Paragraph 23 amends section 219 of FA 2004 to provide that where there is more than one relevant post-death crystallisation event (BCE 5C and/or BCE 7) in respect of the member, the BCEs are to be treated as occurring immediately before the member’s death, but after the entitlement to any pension commencement lump sum.
255. Paragraph 24(2) amends paragraph 1 of Schedule 32 to provide that where a BCE 5C or BCE 7 occurs, the relevant pension schemes are the registered pension schemes that the individual was a member of immediately before their death.
256. Paragraph 24(3) inserts new paragraphs 14B and 14C into Schedule 32. New paragraph 14B defines the relevant two-year period for the purposes of BCE 5C as the period starting on the date on which the scheme administrator first knew of the member’s death or, if earlier, the day when they could first reasonably have been expected to know of it. New paragraph 14C defines relevant unused uncrystallised funds for the purposes of BCE 5C as any unused uncrystallised funds as defined in new paragraph 27E(4) and (5) of Schedule 28 (as inserted by

paragraph 3 of Schedule 2) but only where the member dies before reaching age 75.

***Part 4 – Income tax on beneficiaries’ income withdrawal***

257. Paragraph 25 amends ITEPA 2003.
258. Paragraph 25(2) and (3) amend sections 573 and 574 of ITEPA 2003, so that the tax treatment that applies to income withdrawal paid under a registered pension scheme (section 579CZA of ITEPA 2003) will apply where an equivalent pension is paid from a non-UK scheme as defined in section 574(1)(ba) or (bb) of ITEPA 2003.
259. Paragraph 25(2) inserts new subsections (2A) to (2D) into section 573.
260. New subsection (2A) provides an exemption from the current rules that all payments of foreign pension to a UK resident are included in the recipient’s taxable income. It provides that where an amount is paid from a non-UK pension scheme that is the equivalent of dependants’ or nominees’ income withdrawal in respect of a deceased member who had not reached age 75 at death, and no payments of pension had been made from that fund before 6th April 2015, the payment is not to be included in the recipient’s taxable income.
261. New subsection (2B) provides that the exemption from tax will also apply to a pension within section 574(1)(bb) (that is, the equivalent of successors’ income withdrawal paid from a non-UK pension scheme) in respect of an individual who had not reached age 75 at death.
262. New subsection (2D) provides that the tax charge in section 574 will nevertheless apply where a member dies before age 75, and designation to drawdown is not made within the two-year period.
263. Paragraph 25(3) inserts new section 574(1)(ba) and (bb) which extend the meaning of foreign pension to include amounts paid that would be dependants’, nominees’ or successors’ income withdrawal if paid from a registered pension scheme.
264. Paragraph 25(5) inserts new section 579CZA that provides exemptions from the current rules that all payments of pension from a registered pension scheme are included within the recipient’s taxable income. New section 579CZA(1) provides that where there is a payment of income withdrawal from a dependant’s or nominee’s drawdown fund, then this payment is not included in the recipient’s taxable income. However this exemption only applies where the member had not

reached age 75 at the date of their death and the funds are designated into drawdown within a two-year period.

265. New section 579CZA(2) provides a similar exemption for payments of income withdrawal from a successor's flexi-access drawdown fund where the previous beneficiary died before reaching age 75 and the funds are designated into drawdown within the two-year period in relation to the previous beneficiary's death.
266. New section 579CZA(4) and (5) provide that subsection (1) and (2) doesn't exempt any payments of income withdrawal on or after 6th April 2015 if prior to this date there has been a drawdown payment from the funds concerned.
267. New section 579CZA(6) provides that subsection (1) doesn't exempt relevant unused uncrystallised funds designated into the dependant's or nominee's flexi-access drawdown fund outside the two-year period.
268. New sections 579CZA(7) to (9) provide various definitions for the purposes of new section 579CZA.
269. Paragraph 25(7) provides that the amendments made by Paragraph 25(2) to (5) only apply to pension paid on or after 6th April 2015.

## **FINANCIAL IMPACTS OF THE BILL**

270. A summary of the financial effects of the Bill is provided below. Further detail is contained in the summary of impacts in the Tax Information and Impact Note.
271. As a result of the changes in this Bill, some individuals are expected to access a greater amount of their pension savings sooner than they would have otherwise.
272. The Exchequer impacts from the Budget 2014 announcement on pensions flexibility were certified by the Office for Budget Responsibility and were set out in Table 2.1 of the Budget document as follows
  - 2015-16           +£320m
  - 2016-17           +£600m
  - 2017-18           +£910m
  - 2018-19           +£1,220m



- 2019-20       +£810m

273. Following a consultation period the government decided that:

- Individuals with funded Defined Benefit schemes will continue to be allowed to transfer their pots to DC schemes.
- Those who choose to flexibly access their Defined Contribution pension savings will have their Annual Allowance reduced. Existing rules on small pots will continue.
- The tax treatment of pension death benefits and payments from joint life and guaranteed annuities will change.

274. These subsequent decisions are expected to have the following exchequer impact.

- 2015-16       +£60m
- 2016-17       -£25m
- 2017-18       -£25m
- 2018-19       +£30m
- 2019-20       -£10m

## **SUMMARY OF THE IMPACT ASSESSMENT**

275. In view of the subject-matter of the Bill, a full Impact Assessment is not necessary. A summary of the impacts is provided below. Further detail is contained in the summary of impacts in the Tax Information and Impact Note.

276. The provisions included in this Bill are expected to raise £3,860m between 2015-16 and 2019-20. The additional costs for HM Revenue and Customs in implementing the provisions are estimated to be £3m for staff resources and changes to IT systems.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS**

277. 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 in the Bill with the Convention rights (as defined by section 1 of that Act).

278. Lord Newby has made the following statement:

*“In my view the provisions of the Taxation of Pensions Bill are compatible with the Convention rights.”*

279. A number of provisions in the Bill engage Article 1 of Protocol 1 (“A1P1”) to the Convention, taken alone or with Article 14 (“A14”), and Article 8 (“A8”).

**Article 1 Protocol 1**

280. A1P1 protects the enjoyment of possessions and is inevitably engaged where taxation is in point because taxation deprives the person concerned of a possession, namely the amount of money that must be paid by way of tax. Taxation is however expressly provided for in the second paragraph of A1P1.

281. Further, the Courts have recognised that a State is entitled to a wide margin of appreciation when it comes to general measures of economic or social strategy. The margin is broader when Parliament creates primary legislation than when a Minister of State uses a power to create secondary legislation.<sup>5</sup>

282. The rationale for this wide margin of appreciation in deciding how to make macro-economic decisions of that nature is that *“Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation”.*”<sup>6</sup>

283. This means that the Court will allow a wide discretion to the State in how it designs its taxation systems, and only interfere where an individual’s rights are clearly breached. In ascertaining whether there has been such a breach, the Court will look at the aim of the measure, and then consider whether the measure is a proportionate way to achieve that aim. In doing so the Court will seek to discover whether a fair balance has been struck between interests of the community and protection of individual rights, and whether the measure imposes an excessive or individual burden.<sup>7</sup> Within this wide margin of appreciation, States must still ensure that taxation is imposed according to the law, that the measures pursue a legitimate purpose and that the means employed are not disproportionate to the ends involved.

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<sup>5</sup> *R (Sinclair Collis) v Secretary of State for Health* [2011] EWCA Civ 437, paragraphs 22 and 23.

<sup>6</sup> *Stec and others v the United Kingdom* (2006) 43 EHRR 1017, paragraph 52.

<sup>7</sup> For a recent summary of the Court’s position in the area of taxation see paragraphs 62 and 63 of *Bulves AD v Bulgaria* (Application no. 3991/03), judgment of 22 January 2009.

***Part 1 of Schedule 1 to the Bill: flexi-access drawdown***

284. Part 1 of Schedule 1 imposes a charge to tax on sums paid from flexi-access drawdown funds. Part 1 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1. Part 1 does not increase the tax paid on pension income and benefits arising under a money purchase arrangement. Part 1 ensures that flexibly accessed pension income and benefits will be subject to tax at the same rates which currently apply to pension income and benefits arising from money purchase arrangements.

***Part 3 of Schedule 1 to the Bill: uncrystallised funds pension lump sum***

285. Part 3 of Schedule 1 imposes a charge to tax on 75% of an uncrystallised funds pension lump sum ("UFPLS"). Part 3 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1. Part 3 ensures that 75% of pension funds accessed by way of a UFPLS will be subject to income tax at the individual's marginal rate, as is the case for pension income currently arising from money purchase arrangements.

***Part 4 of Schedule 1 to the Bill: annual allowance charge***

286. Part 4 of Schedule 1 applies a £10,000 annual allowance to contributions made to a member's money purchase pension savings after they have flexibly accessed their pension savings. The effect is to increase the tax that is potentially payable by such a member.

287. Part 4 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1.

288. Currently a £40,000 annual allowance is available in respect of all a member's (money purchase and defined benefit) pension savings. Where pension savings are accessed flexibly there will be an increased risk of avoidance involving the 'recycling' of, or diversion of earnings into, the pension commencement lump sum. The reduced annual allowance will reduce the scope for such avoidance and is proportionate in that it goes no further than is necessary for the policy objective of tackling avoidance behaviour.

***Part 5 of Schedule 1 to the Bill: miscellaneous amendments***

289. Paragraph 76 in Part 5 of Schedule 1 introduces an alternative method for valuing early lifetime annuities for the purposes of the lifetime allowance charge. The effect is to increase the tax that is potentially payable by members who have taken an early lifetime annuity.

290. Paragraph 76 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1. Currently early lifetime annuities are valued by reference to the amount being paid by the annuity when the member reaches normal minimum pension age ("NMPA"). Under the Bill annuities will be able to decrease. This means that there will be an increased risk of avoidance involving the manipulation of the amount being paid by the annuity at NMPA. The alternative method of valuation will prevent such avoidance and is proportionate in that it goes no further than is necessary for the policy objective of tackling avoidance behaviour.
291. Paragraphs 80 to 84 in Part 5 of Schedule 1 extend the temporary non-residence rules in Chapter 4 of Part 9 of the Income Tax (Earnings and Pensions) Act 2003 so that they apply to the new ways in which members and dependants may receive payments from pension funds under the Bill. The effect is that tax is potentially payable in respect of such payments, but only where the payments received by a member during a temporary period of non-residence exceed a threshold of £100,000 introduced by those paragraphs.
292. Paragraphs 80 to 84 are compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1. The temporary non-residence rules prevent avoidance behaviour. Extending those rules to apply to the new ways in which members and dependants may receive payments from pension funds under the Bill will reduce the scope for such avoidance and is proportionate in that it goes no further than is necessary for the policy objective of tackling avoidance behaviour. That proportionate approach is in particular reflected in the introduction of a £100,000 threshold below which no tax will be payable.

***Part 7 of Schedule 1 to the Bill: overseas pensions***

293. Paragraph 95(2) and (3) in Part 7 of Schedule 1 imposes a charge to tax on 75% of any payment made by an overseas pension scheme that would be a UFPLS (under Part 3 of Schedule 1) if the payment were made by a registered pension scheme. Paragraph 95(4) brings specified payments by overseas pension schemes within the scope of the temporary non-residence rules referred to in paragraphs 290 and 291 above, subject to a deduction in paragraph 95(5) for any overseas tax that has been paid. Paragraph 95 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1. Paragraph 5 ensures that the payment of a UFPLS and an equivalent payment by an overseas pension scheme are subject to the same tax treatment, and that the temporary non-residence rules will apply in appropriate circumstances.

***Part 2 of Schedule 2 to the Bill: lump sum death benefits***

294. Paragraph 17 in Part 2 of Schedule 2 imposes the special lump sum death benefits charge where specified lump sum death benefits are not paid within the prescribed two year period. Part 2 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1.
295. Part 2 of Schedule 2 does not increase the tax paid on lump sum death benefits. Part 2 ensures that the tax treatment of the new categories of lump sum death benefits introduced by the Bill is similar to the tax treatment of the existing categories of lump sum death benefits.

***Part 3 of Schedule 2 to the Bill: uncrystallised rights at member's death***

296. Paragraph 21 in Part 3 of Schedule 2 introduces a new test against the lifetime allowance for pension funds that were uncrystallised at the time of the member's death. If the lifetime allowance is exceeded the lifetime allowance charge will be applied to any excess. Part 3 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1.
297. To ensure that unlimited amounts of tax-relieved funds cannot be passed on entirely tax-free, Part 3 of Schedule 2 provides that where the Bill enables uncrystallised funds to be paid tax-free to a dependant or nominee, those funds will be tested against the member's lifetime allowance.

***Part 4 of Schedule 2 to the Bill: income tax on beneficiaries' income withdrawal***

298. Part 4 of Schedule 2 brings the categories of beneficiaries' income withdrawal introduced by the Bill within the scope of the charge to tax, but provides that withdrawals can be paid tax-free where the preceding member, dependant, nominee or successor dies before age 75. Part 4 is compatible with Convention rights because the interference with taxpayers' property rights under A1P1 is justified as being necessary to secure the payment of taxes under the second paragraph of A1P1.
299. Part 4 ensures that the tax treatment of beneficiaries' income withdrawal is similar to the tax treatment of lump sum death benefits under Part 2 of Schedule 2.

***Article 14 taken with Article 1 Protocol 1***

300. A14 provides that Convention rights shall be secured without discrimination on any ground such as sex, race, national or social origin, or any other status. A14 does not provide a free-standing right but only applies if another Convention right is engaged: A1P1 in the case of the Bill.

301. Consideration was given to whether A1P1 was engaged when taken with A14, if being a member of a money purchase pension arrangement, or a defined benefit pension arrangement, can be said to be a “status” for the purposes of A14.
302. Arguments could potentially be made that Parts 1, 3 and 5 of Schedule 1 and Parts 2, 3 and 4 of Schedule 2 to the Bill, which impose taxation on sums accessed flexibly from money purchase arrangements, treat a member of one type of arrangement differently to a member of the other type of arrangement.
303. The Department does not consider that grounds for protection could be established or that the article is engaged. But if the article is engaged, the Department’s view is that a claim in conjunction with A1P1 would not succeed on the basis that pension income and benefits arising under money purchase arrangements and defined benefits arrangements will be taxed at the same rates.
304. Furthermore, any difference in treatment is justified and proportionate. There is a wide margin of appreciation in relation to tax matters. The different investment risks and pension choices associated with money purchase arrangements and the impact that flexible access might have on defined benefit pension schemes is sufficient justification to limit flexible access to money purchase arrangements.

***Article 8***

305. A8(1) protects a person’s right to respect for their private and family life, home and correspondence. Interference with that right in the interests of the economic well-being of the country is however expressly provided for in A8(2).<sup>8</sup>

***Part 6 of Schedule 1 to the Bill: provision of information***

306. Paragraph 87 in Part 6 of Schedule 1 requires an individual, in certain circumstances, to provide information about their pension savings to the scheme administrator of a pension scheme of which they are a member. The information to be provided is the occurrence and timing of the individual’s flexible access to their pension rights. A8 is likely to be engaged in respect of requiring the provision of personal information relating to individuals. In principle that involves an interference with a person’s right to keep their financial affairs private.
307. Paragraph 87 is compatible with the Convention rights because to the extent to which there is any interference, this is justified as being in the interests of the economic well-being of the country, namely ensuring the proper collection of tax.

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<sup>8</sup> In rejecting the individual’s complaint in *X (Hardy-Spirlet) v Belgium* (Application no. 8904/82) the Commission of Human Rights stated in its decision of 7 December 1982 that a State can justify the collection of information for tax purposes if it is in accordance with law and is not disproportionate.

308. The relevant information requirements will reduce the scope for avoidance or evasion and are proportionate in that they go no further than is necessary for the policy objective of ensuring the proper collection of tax.

***Part 7 of Schedule 1 to the Bill: overseas pensions***

309. Paragraphs 92 and 93 in Part 7 of Schedule 1 insert powers which enable HMRC to make regulations that require a scheme manager of a qualifying recognised overseas pension scheme and a scheme manager of a registered pension scheme to provide prescribed information. The effect of exercising those powers would be to require the provision of personal information relating to individuals. In principle that involves an interference with a person's right to keep their financial affairs private.
310. Paragraphs 92 and 93 are compatible with the Convention rights because to the extent to which there is any interference, this is justified as being in the interests of the economic well-being of the country, namely ensuring the proper collection of tax.
311. Any information requirements imposed under the powers will reduce the scope for avoidance or evasion and will be proportionate in that they will go no further than is necessary for the policy objective of ensuring the proper collection of tax.

**COMMENCEMENT DATES**

312. The provisions set out in the Bill have effect either from Royal Assent or from 6th April 2015.

# TAXATION OF PENSIONS BILL

## EXPLANATORY NOTES

*These notes refer to the Taxation of Pensions Bill  
as brought from the House of Commons on 3rd December 2014  
[HL Bill 66]*

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