

# PENSION SCHEMES BILL [HL] [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Pension Schemes Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 5).

- These Explanatory Notes have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 Measures in this Bill make provision in four areas:
  - Collective money purchase benefits
  - The Pensions Regulator
  - Pensions dashboards
  - Further provision relating to pension schemes

## Policy background

### Collective Money Purchase Benefits

- 2 Collective money purchase is the legislative term for collective defined contribution (“CDC”) schemes where contributions into the scheme are pooled and invested with a view to delivering an aspired benefit level. An important principle of CDC schemes is that contributions into the scheme are fixed, and the benefit level offered can only ever be a target or an estimate. It is not guaranteed by the employer and members should recognise from the outset that the benefit levels aspired to may not be achieved and that the level at which pensions are paid may fluctuate.
- 3 The Government published a consultation on delivering CDC schemes in October 2018<sup>1</sup>.
- 4 Following the consultation, the Government committed to legislate to allow CDC schemes to operate in the United Kingdom (UK).
- 5 Part 1 of the Bill provides the legislative framework to establish and operate CDC schemes. The Bill refers to CDC benefits and CDC schemes using the terms Collective Money Purchase Benefits and Collective Money Purchase Schemes. It takes this approach to be consistent with existing terminology in pensions legislation.
- 6 Part 1 includes provision for CDC schemes to be authorised and supervised by the Pensions Regulator and requirements to disclose certain information to members to ensure that there is appropriate communication and transparency about how the scheme operates.

### The Pensions Regulator’s powers

- 7 The Pensions Regulator is the independent UK regulator of work-based pensions. Its statutory objectives are set out in the Pensions Act 2004, one of which is to protect the benefits of members of occupational pension schemes. To do so, it works with trustees, employers, and business advisers of occupational pension schemes in the private and public sectors, to help them understand their legal duties and the standards expected.
- 8 However, the Regulator also has an enforcement role where it can investigate both breaches of regulations and action by sponsoring employers and other related entities which may have a detrimental effect on schemes. It can impose civil penalties, undertake criminal prosecutions, or order relevant individuals to make payments into the scheme.

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<sup>1</sup> <https://www.gov.uk/government/consultations/delivering-collective-defined-contribution-pension-schemes>

- 9 The Bill builds on the Government commitment to tighten the rules of abuse against pension schemes by improving the Pensions Regulator's powers so that they:
- can be more proactive and get involved earlier when sponsoring employers make changes which could impact the pension scheme;
  - have the necessary powers to be able to obtain the right information about a scheme and its sponsoring employer in a timely manner;
  - are able to gain redress for a pension scheme and its members when things go wrong; and
  - can deter reckless behaviours.
- 10 In March 2018, the Government published the White Paper '*Protecting Defined Benefit Pension Schemes*'.<sup>2</sup> The White Paper stated that the existing system of protection is working well for the majority of Defined Benefit pension schemes, members, trustees and sponsoring employers, but that there were ways in which the system could be improved further.
- 11 In June 2018, the Government published the consultation: '*Protecting Defined Benefit Pension Schemes - A Stronger Pensions Regulator*', which set out the Government's proposals to improve and amend the Regulator's existing powers, including establishing new Criminal Offences and Financial Penalties, and changes to the Contribution Notice (CN), Financial Support Direction (FSD), and Corporate Transaction Oversight regimes.<sup>3</sup> Stakeholders were generally supportive of the Government's proposals, seeing them as a positive step towards ensuring the security of Defined Benefit scheme members' savings.
- 12 In February 2019, the Government published its response to the consultation, outlining the proposals it would take forward.<sup>4</sup> This response also included measures that the Government would take forward to improve the Regulator's Information Gathering powers.
- 13 Cumulatively, the improvements to the Regulator's powers in this Bill will help the Regulator to meet their aim of being "clearer, quicker, and tougher", and, in turn, will afford increased protection for Defined Benefit scheme members' savings.

#### Criminal and Civil Sanctions

- 14 To support its enforcement role, the Regulator can impose criminal offences and financial penalties on sponsoring employers and other related entities who engage in wrongdoing in relation to their defined benefit pension scheme. However, existing offences target a limited list of breaches only, and current penalty amounts are not an effective deterrent to more serious breaches.
- 15 The measures in the Bill will strengthen the existing sanctions regime by introducing three new criminal offences, and a new power to issue civil penalties of up to £1 million.
- 16 The new offences and penalty will create a stronger and more comprehensive sanctions regime. They will provide additional deterrents for unscrupulous behaviours and, will enable

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<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/693655/protecting-defined-benefit-pension-schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693655/protecting-defined-benefit-pension-schemes.pdf)

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/719779/protecting-defined-benefit-pension-schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719779/protecting-defined-benefit-pension-schemes.pdf)

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777758/response-protecting-defined-benefit-pension-schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777758/response-protecting-defined-benefit-pension-schemes.pdf)



the Regulator to punish abuse and wrongdoing within the occupational pensions industry appropriately.

#### Contribution Notices (CNs)

- 17 In order to safeguard Defined Benefit pension scheme members' benefits, and to minimise the risk of a call on the Pension Protection Fund, the Regulator has a range of powers, including the power to issue CNs to recover any losses caused to a Defined Benefit pension scheme as a result of avoidance behaviours.
- 18 The Regulator's CN regime is generally fit for purpose. However, following a small number of cases, it has become apparent that changes are necessary to update and strengthen the regime.
- 19 The measures in this Bill amend the CN regime, and in doing so, will ensure that the industry has greater clarity around the meaning of the current legislation, and will enable the Regulator to take effective and efficient action as appropriate.

#### Corporate Transaction Oversight

- 20 The provisions in the Bill will require certain persons involved in a corporate transaction to make a statement setting out information about the event and how any detriment to a Defined Benefit pension scheme, as a result of this event, is to be mitigated.

#### Gathering Information

- 21 One of the Pensions Regulator's powers is to investigate potential breaches of pension legislation. To do this, they have a range of information gathering powers which enable them to inspect premises and the records held there, interview individuals, and issue formal written requests for information. The Regulator can also impose civil penalties or instigate criminal proceedings for non-compliance where they are investigating a potential breach of pension legislation.
- 22 However, these information gathering powers vary depending on the particular function the Regulator undertakes, or the type of pension scheme it is investigating. The fact that the Regulator has the power to undertake inspections only in some circumstances, interviews in others, or issue civil penalties in different specified circumstances, can hinder investigations and cause confusion among those being regulated.
- 23 Therefore, the measures in the Bill will give the Regulator a more coherent set of information gathering powers.

## **Pensions Dashboards**

- 24 Pensions dashboards build on the Government's commitment to help people with better planning for retirement and to achieve financial security in their later life. Pensions dashboards are online services which will allow people to access their pension information in a clear and simple form. They will bring together an individual's savings from multiple pensions, including State Pension, in a single place online. The Money and Pensions Service will bring together industry to lead the development and delivery of dashboards and Government has committed to facilitate this, including to provide an appropriate legislative framework and safeguard the interests of consumers. The Money and Pensions Service will also provide a non-commercial dashboard service.
- 25 The Government sought views on making it a legal requirement for pension schemes to provide data via dashboards, in our consultation *'Pensions dashboards: Working together for the*

*consumer*<sup>5</sup>, published on 3 December 2018. Overall there was consensus that this is crucial for the successful delivery of dashboards. The *'Government response to the consultation'*<sup>6</sup>, published on 4 April 2019, confirmed the Government's commitment to enact the necessary requirements.

## Defined Benefit schemes: funding

- 26 The scheme funding provisions deliver the Government's commitments in the White Paper *'Protecting Defined Benefit Pension Schemes'*<sup>7</sup> to improve the system and to ensure it continues to protect members' Defined Benefit pensions in a maturing landscape. With most schemes closed, comprising fewer contributing members, or reaching a phase where pension scheme benefits only are being paid out, it is important trustees manage their funding and investment decisions with a clear strategy for ensuring pensions and other benefits can be provided over the long term. Although the White Paper showed most sponsors and trustees work well together and use the flexibilities of the current system reasonably, good practice is not universal. The new scheme funding provisions seek to help trustees to improve their scheme funding and investment decision-making and to strengthen the Pensions Regulator's ability to take stronger, more effective, action to protect members' pensions.
- 27 The provisions:
- require trustees to have a scheme specific funding and investment strategy, and for the Statutory Funding Objective to be achieved in the context of this strategy. The White Paper describes this as a long term objective, which could be to 'run on' with minimal employer support; to buy out with an insurer, or to enter a consolidator;
  - require trustees to explain to the Regulator their approach to achieving the strategy in a statement of strategy, including information on mitigating risks, submitted with the actuarial valuation - described as a Defined Benefit Chair's Statement in the White Paper;
  - require the trustee board to appoint a Chair, who is responsible for signing the statement on behalf of the Board;
  - strengthen the Regulator's scheme funding enforcement powers, enabling them to direct trustees to have an alternative funding and investment strategy which is more suitable for the scheme.
- 28 New regulation-making powers, to be used with existing regulation-making powers, will ensure there is sufficient detail in the system to support trustees and their sponsoring employers be clear about what they are required to do.

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<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/760659/pensions-dashboards-working-together-for-the-consumer.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/760659/pensions-dashboards-working-together-for-the-consumer.pdf)

<sup>6</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792303/government-response-pensions-dashboards.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792303/government-response-pensions-dashboards.pdf)

<sup>7</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/693655/protecting-defined-benefit-pension-schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693655/protecting-defined-benefit-pension-schemes.pdf)

## Transfers of rights

- 29 These clauses amend existing legislation to permit regulations to be made to stipulate the destinations and circumstances under which a pension scheme member will have a right to transfer their pension savings to another pension scheme. This will protect members from pension scams by helping trustees of occupational pension schemes ensure transfers of pension savings are made to safe and not fraudulent schemes.

## Pension Protection Fund

- 30 The Pension Protection Fund (PPF) pays compensation to members of eligible occupational pension schemes, where the sponsoring employer has become insolvent and the scheme's assets are insufficient to meet its pension commitments. The policy intention is that an individual's relevant fixed pension and any other pensionable service within the scheme should be added together for the purposes of determining their PPF compensation payment, and applying the cap, where relevant.
- 31 A High Court ruling (*Anthony Beaton v the Board of the PPF*<sup>8</sup>) determined that where an individual has benefits derived from a fixed pension transfer, such benefits are not attributable to pensionable service and thus cannot be aggregated with the individual's other pension benefits for the purposes of applying the compensation cap.
- 32 To ensure that the PPF could continue to administer the compensation regime as intended the Pension Protection Fund (Compensation) Regulations 2005<sup>9</sup> and the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations<sup>10</sup> were amended prospectively to enable a fixed pension to be treated as pensionable service for the purposes of calculating PPF compensation, except when aggregating benefits for the cap. Clause 125 provides for those amendments to be treated as if they had always applied, so that the legislation supports the policy intent and past practice.

## Administration Charges

- 33 In March 2014, the Government published Better workplace pensions: further measures for savers (Cm 8840)<sup>11</sup> which detailed a range of measures to tackle pension charges to protect employees in workplace Defined Contribution pension schemes.
- 34 The scope of these and subsequent measures rely on how an administration charge is defined. The Government has received a number of informal queries over whether particular costs or charges are covered by the definition of "administration charge" as currently drafted. The measure will update the definition to make clear which costs are in scope of the overarching definition.
- 35 There are existing measures in secondary legislation which rely on the definition of "administration charge". These include, charge caps for stakeholder pension schemes and schemes used for automatic enrolment. It is not the intention to change the effect of any of those measures. Corresponding changes will be made to the relevant secondary legislation to retain the existing policy.

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<sup>8</sup> [2017] EWHC 2623

<sup>9</sup> SI 2005/670

<sup>10</sup> SI 2005/441

<sup>11</sup> [Gov.uk/better-workplace-pensions-march-2014](http://Gov.uk/better-workplace-pensions-march-2014)

## Legal background

- 36 The following notes give a brief overview of significant existing legislation that is referenced by this Bill. Further explanation, if required, is given in the clause-by-clause commentary.
- 37 The Pension Schemes Act 1993 is a consolidation Act that sets out various provisions in relation to classification of pension schemes, contracting out, early leavers (including preservation, revaluation and the right to take a transfer), the Pensions Ombudsman and other miscellaneous requirements.
- 38 The Pensions Act 1995 contains provisions relating to the Pensions Regulator, as well as provisions relating to the role and responsibilities of trustees, professionals and employers. It also provides requirements in respect of scheme administration, indexation of pensions in payment, protection against detrimental modifications, employer debt and winding up.
- 39 The Welfare Reform and Pensions Act 1999 makes provision for pension sharing on divorce and controlling charges in relation to stakeholder pension schemes, as defined in section 1 of that Act.
- 40 The Financial Services and Markets Act 2000 makes provision for the Financial Conduct Authority (FCA) and for a regulatory framework for financial services and markets. Amongst other things, the Authority is responsible for authorising and regulating the operation of contract-based personal pension schemes and certain stakeholder pension schemes.
- 41 The Pensions Act 2004 makes provision with regard to the Pensions Regulator and the Pension Protection Fund. It also makes provision in relation to scheme funding, and contains other miscellaneous provisions applying to pension schemes including internal controls, pension protection where there is a TUPE transfer and employer consultation requirements.
- 42 The Pensions Act 2008 makes provision for automatic enrolment, under which employers are required to enrol qualifying employees into a suitable pension scheme and to make pension contributions on their behalf.
- 43 The Public Service Pensions Act 2013 makes provision for the reform of public sector pensions.
- 44 The Pensions Act 2014 makes provision for restricting charges and imposing requirements in relation to pension schemes.
- 45 The Pension Schemes Act 2015 makes provision allowing members to access their pension savings flexibly on retirement. It also makes provision in relation to defined ambition schemes and collective benefits.
- 46 The Pension Schemes Act 2017 makes provision for an authorisation and supervision regime for Master Trusts.
- 47 The Money and Pensions Service was established by the Financial Guidance and Claims Act 2018. Its objectives include improving the ability of people to make informed financial decisions. One of its functions is to provide free and impartial information and guidance relating to occupational and personal pensions.
- 48 Northern Ireland has separate but corresponding legislation to the Acts listed in paragraphs 37 to 39 and 41 to 44 and to provisions of the Act cited in paragraph 45.

## Territorial extent and application

- 49 Clause 129 in Part 6 sets out the territorial extent of the Bill.
- 50 The provisions of this Bill extend to England and Wales and Scotland only, subject to the following exceptions:
- Part 2, clauses 117, 120, and 128, and Schedules 4, 6, 8, 9 and 11 extend to Northern Ireland; and
  - Part 6 and clause 125(2) extend to England and Wales, Scotland and Northern Ireland.
- 51 The Bill also contains amendments to certain Acts that extend and apply to England and Wales, Scotland and Northern Ireland, including the Building Societies Act 1986, the Financial Services and Markets Act 2000 and the Financial Guidance and Claims Act 2018.
- 52 The Bill does not contain any provisions which gives rise to the need for a Legislative Consent Motion in the Scottish Parliament or the National Assembly for Wales. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of any of the devolved legislatures without the consent of the legislature concerned. If there are amendments relating to such matters that fall within the convention, the consent of the Scottish Parliament or National Assembly for Wales as appropriate will be sought for them. The Bill contains provisions which will require a Legislative Consent Motion in the Northern Ireland Assembly.
- 53 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of Bill

## Part 1: Collective Money Purchase Benefits

### Definitions

#### Clause 1: Collective money purchase benefits and schemes

- 54 This clause defines the terms ‘collective money purchase benefit’ (CMPB) and ‘collective money purchase scheme’. The definitions refer to the terms “qualifying scheme” and “qualifying benefit” which are defined in subsequent sections. References to “collective money purchase scheme” mean a qualifying scheme or a section of a qualifying scheme, where all of the benefits provided under the scheme or section are qualifying benefits. To be a CMPB the benefit must be a qualifying benefit provided by a qualifying scheme.

#### Clause 2: Qualifying benefits

- 55 This clause defines what is a qualifying benefit. Subsections (1)(a) and (1)(b) provide that to be a qualifying benefit the rules of the scheme must provide for the rate or amount of the benefit to be variable so as to achieve a balance between the available assets of the scheme and the “required amount”, which is the projected costs of paying benefits under the scheme. The benefit must also be paid out of the available assets of the scheme. This makes it clear that qualifying benefits are not subject to any guaranteed level and that the employer is consequently not liable for any deficit.
- 56 Subsection (1)(c) allows for benefits specified in regulations to be excluded from being categorised as qualifying benefits. This power is intended to ensure that benefits not intended to be CMPB do not inadvertently fall within the definition. For example, regulations could be made under this clause to exclude non-money purchase benefits in the event a risk arises that they might be reclassified in law as CMPB and, therefore, removed from scheme funding requirements and eligibility for entry to the PPF.
- 57 Subsection (2) defines the terms “available assets of the scheme” and “the required amount”. The available assets do not include deductions for administrative expenses or commission. The definition of “the required amount” makes it clear that the calculation involves the application of actuarial assumptions and relates to the cost of providing benefits under the scheme on a collective basis.
- 58 Where an occupational pension scheme is divided into sections, subsection (4) enables the provisions in this clause to be read as if they referred to a section of the scheme.

#### Clause 3: Qualifying schemes

- 59 This clause sets out the requirements for schemes to be qualifying schemes, and so able to provide CMPB.
- 60 Subsection (2) requires all qualifying schemes to be occupational pension schemes set up under trust by an employer or group of connected employers. Subsection (3) limits qualifying schemes to those schemes used by a single employer or group of connected employers. Subsection (4) prevents public service pension schemes from providing CMPBs.
- 61 Subsection (5) requires qualifying schemes to provide a pension income in retirement.
- 62 Where a scheme offers both qualifying and other benefits, subsection (6) provides that there must be appropriate separation of the qualifying benefits. Subsection (7) provides that there is appropriate separation only if the scheme is divided into separate sections and that a section

providing qualifying benefits cannot provide any other types of benefits. Payments of qualifying benefits under a section must also be allocated to that section, and the assets attributable to each section cannot be used for any other section.

- 63 Where a scheme offers more than one kind of CMPB, in a way to be described in regulations, subsections (8) and (9) require that the different types of CMPB must be provided under different sections. Payments of qualifying benefits under a section must be allocated to that section and the assets attributable to each section cannot be used for any other section.

#### Clause 4: Qualifying schemes: supplementary

- 64 This clause sets out what constitutes a public service pension scheme for the purpose of subsection (4) of clause 3.

#### Clause 5: Schemes divided into sections

- 65 Subsection (1) provides for regulations to specify when a qualifying scheme offering CMPBs is to be classed as being divided into sections.
- 66 Subsection (2) allows regulations to provide that authorised status may apply to newly created sections within a previously authorised qualifying scheme where these sections satisfy certain conditions.
- 67 Subsection (3) provides that each section of a qualifying scheme which is divided into separate sections and which provides CMPBs is treated as separate scheme, but that the overall ‘umbrella’ scheme is not treated as a collective money purchase scheme.

#### Clause 6: Amendment of definitions of “money purchase benefits” etc

- 68 This clause introduces Schedule 1 which makes amendments to existing definitions of “money purchase benefits” set out in legislation to insert CMPBs as a type of money purchase benefit. It also amends section 32 of the Pensions Act 2011, which contains a power to amend by regulations the definitions of money purchase benefits in legislation, so that regulations made under section 32 may also amend the definition of CMPBs in this Act and other legislation.

#### Schedule 1: Money purchase benefits

- 69 This Schedule inserts the term “collective money purchase benefits” as defined by this Act into other relevant legislation as a subset of “money purchase benefit” for the purposes of the legislation.

### Authorisation

#### Clause 7: Authorisation of collective money purchase schemes

- 70 This clause sets out a general prohibition – that a person cannot operate a collective money purchase scheme unless that scheme is authorised. A person operates a collective money purchase scheme, if in relation to the scheme, the person accepts money from members or prospective members, or money from employers or prospective employers in respect of contributions, fees, charges or anything else (although trustees may receive money paid by an employer in advance of authorisation where this is to meet the costs of setting up the scheme) (subsection (5)). To become authorised the Pensions Regulator must be satisfied that the scheme meets certain criteria which are set out in clause 9.
- 71 Subsection (2) provides that if a person does operate a collective money purchase scheme that is not authorised, they may be subject to a civil penalty under section 10 of the Pensions Act 1995.
- 72 Subsections (3) and (4) provide that where the Regulator becomes aware that a collective money purchase scheme is operating without authorisation, it is required to notify the trustees

that the scheme is not authorised. The notification must explain that the notification is a triggering event (see clause 31) and include an explanation of the trustees' duties under clauses 31 to 45.

### Clause 8: Application for authorisation

- 73 This clause makes provision regarding the application for authorisation of a collective money purchase scheme, which is to be made to the Pensions Regulator, and the information which must be included in the application. Under subsection (1), the trustees of the scheme may apply to the Pensions Regulator; the application will need to be made in the manner and form specified by the Regulator (subsection (2)).
- 74 Subsection (3) provides that an application must include the scheme's viability report and viability certificate (see clause 13), and continuity strategy (see clause 17).
- 75 Subsection (4) provides a power for the Secretary of State to make regulations setting out other information to be provided in an application and prescribing an application fee payable to the Regulator.
- 76 Subsection (5) provides that in considering an application, the Regulator may take into account any matters it considers appropriate including additional information provided by the applicant and subsequent changes to the application or information provided by the applicant.

### Clause 9: Decision on application

- 77 This clause sets out that where an application is made for authorisation, the Pensions Regulator must make a decision regarding authorisation within six months of the date of receiving the application. The Regulator will need to decide if it is satisfied that a collective money purchase scheme has met the six authorisation criteria set out in subsection (3), which are detailed in later sections of the Bill. The criteria relate to: the individuals who are involved in the scheme; the soundness of the scheme's design, the sustainability of the scheme's financial position; the scheme's systems and processes for communicating with members and others; the scheme's systems and processes used in running the scheme; and the scheme's continuity strategy if a triggering event occurs. All of the authorisation criteria must be met for a collective money purchase scheme to be authorised, and they must continue to be met for it to remain authorised. Clauses 11 to 17 set out further detail about each of the criteria and the matters that the Regulator must take into account when satisfying itself as to whether the scheme meets the authorisation criteria.
- 78 Where the Pensions Regulator is satisfied that the authorisation criteria have been met, it is required to authorise the scheme and notify the trustees of its decision. The scheme will also need to be included on the Regulator's published list of authorised collective money purchase schemes (see clause 26).
- 79 If the Regulator is not satisfied that the criteria have been met, it must refuse to grant the authorisation and must notify the trustees of its decision, the reasons for it and details of the right of referral to the First-tier Tribunal or Upper Tribunal (see clause 10).

### Clause 10: Reference to Tribunal of refusal to grant authorisation

- 80 This clause provides that a decision to refuse to grant authorisation to a collective money purchase scheme by the Pensions Regulator can be referred to the First Tier or Upper Tier Tribunal in accordance with Tribunal Procedure Rules.
- 81 A referral to the Tribunal can be made by the trustees of the scheme, or any other person who appears to the Tribunal to be directly affected by the Regulator's decision to refuse authorisation.



## Authorisation criteria

### Clause 11: Fit and proper persons requirement

- 82 This clause applies for the purposes of enabling the Pensions Regulator to decide if key individuals involved with the scheme are fit and proper to act in their roles in relation to the scheme. Subsection (2) sets out that the people who must be assessed for these purposes to act in relation to the scheme in the capacity mentioned are: the person who establishes the scheme, a trustee of the scheme, persons who have the power to appoint or remove trustees, persons who have the power to vary the scheme's provisions (i.e. trust deed or scheme rules) and persons acting in a capacity specified in regulations by the Secretary of State.
- 83 Under subsection (3)(a), in assessing whether a person is fit and proper to act in that person's role, the Regulator must take into account any matters specified in regulations. Under subsection (3)(b) the Regulator may also take into account other matters as it considers appropriate, including matters relating to a person who is connected with the person being assessed. The circumstances in which persons are connected for these purposes are set out in subsection (5), in line with definitions set out in sections 251 and 453 of the Insolvency Act 1986. They include individuals who are directors, or shadow directors, of the same company or where a trustee is able to exercise a power under the trust to benefit a specific individual.

### Clause 12: Scheme design requirement

- 84 This clause applies for the purposes of enabling the Pensions Regulator to decide whether it is satisfied that the design of a collective money purchase scheme is sound.
- 85 Subsection (2) provides that in deciding whether the design of the scheme is sound, the Regulator must take into account the scheme's viability report and viability certificate (see clause j4018A), and any matters specified in regulations made by the Secretary of State (these regulations may include provision requiring specified information to be provided to the Regulator (subsection (3))).

### Clause 13: Viability report

- 86 This clause requires the trustees of a collective money purchase scheme to produce a document (a viability report) explaining the design of the scheme and why they consider that design to be sound. They must also obtain a certificate from the scheme actuary (a viability certificate) certifying that, in the actuary's opinion, the scheme design is sound.
- 87 Under subsection (2) a viability certificate cannot be provided by the scheme actuary unless the scheme actuary is satisfied that the scheme has rules that are compliant with the requirements imposed by clause 18 (Calculation of benefits) and any regulations under that clause.
- 88 Subsection (3) provides a power for the Secretary of State to make regulations, amongst other things, regarding the information to be included in a viability report, how the report and the certificate must be prepared and making provision about additional information or documents to be prepared or obtained in connection with a report.
- 89 The trustees are also required at least annually to review the most recent viability report; if appropriate, revise it; and obtain a new viability certificate (subsection (4)). The trustees must also revise the report and obtain a new viability certificate in respect of the revised report, if the most recent viability report becomes inaccurate or incomplete to any significant extent (subsection (5)).
- 90 The most recent viability report, viability certificate and any additional information or documents specified by regulations under subsection (3), must be submitted to the Regulator

when applying for authorisation; within three months of revising the viability report and at any other time on request by the Regulator (subsection (6) and (7)).

#### Clause 14: Financial sustainability requirement

- 91 Clause 14 applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme is financially sustainable. In order to be satisfied of this, the Regulator must be satisfied that the scheme has sufficient financial resources to meet the costs (a) of setting up and running the scheme, and, (b) in the event of a triggering event occurring, of complying with requirements under clauses 31 to 45 and of continuing to run the scheme for a period as the Regulator thinks appropriate for the scheme (which must be at least 6 months and no more than two years) (subsection (2)).
- 92 Subsection (3) provides a power for the Secretary of State to make regulations setting out matters that the Regulator must take into account in deciding if it is satisfied that a scheme has sufficient financial resources to meet these costs, which may include provision requiring specified information to be provided to the Regulator or specifying financial requirements to be met by the scheme (subsection (4)).

#### Clause 15: Communication with members requirement

- 93 This clause applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme has adequate systems and processes for communicating with members and others. The Regulator must be satisfied that the scheme has adequate systems and processes for providing information in relation to the scheme to the persons set out in subsection (3) and for securing that information provided to those persons is correct and not misleading.
- 94 Subsections (4) provides a power for the Secretary of State to make regulations setting out the matters that the Regulator must take into account in deciding whether this criterion is met. A non-exhaustive list of the matters which the Secretary of State may address in those regulations is set out in subsection (5). In making its decision, subsection (4) states that the Pensions Regulator may also take into account any communications made using the systems and processes referred to in subsection (2).

#### Clause 16: Systems and processes requirements

- 95 This clause applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme has sufficient systems and processes to ensure it is run effectively. It provides a power for the Secretary of State to make regulations specifying matters that the Pensions Regulator must take into account (subsection (2)) in deciding if this criterion is met.
- 96 Subsection (3) provides a non-exhaustive list of the matters concerning systems and processes about which the Secretary of State may make regulations. These include, but are not limited to, the standards, functions and maintenance of IT systems, and processes relating to the appointment and removal of trustees.

#### Clause 17: Continuity strategy requirement

- 97 This clause applies for the purposes of enabling the Pensions Regulator to decide whether a collective money purchase scheme has an adequate continuity strategy. It requires the trustees of a collective money purchase scheme to prepare a document – (a continuity strategy) - which sets out how the interests of members are to be protected if the scheme experiences a triggering event. Triggering events are set out in clause 31.
- 98 A continuity strategy must include a section setting out the levels of administration charges that apply in relation to members of the scheme. Regulations are to specify the manner in which the administration charge levels must be set out in the strategy (subsection (3) and (4)).

- 99 Subsection (5) provides a power for the Secretary of State to make regulations requiring other information to be included in a strategy and how the strategy must be prepared.
- 100 The trustees of a collective money purchase scheme are required to keep the continuity strategy under review and to revise it as appropriate (subsection (6)).
- 101 The continuity strategy must be submitted to the Regulator by the trustees when applying for authorisation, within three months of revising the strategy, and at any other time on request by the Regulator (subsection (7)).
- 102 The Regulator, when determining whether a continuity strategy is adequate, must take into account any matters which the Secretary of State may specify in regulations. Those regulations may require specified information to be provided to the Regulator (subsections (8) and (9)).

## Valuation and benefits adjustment

### Clause 18: Calculation of benefits

- 103 This clause sets legal requirements on how benefits under a collective money purchase scheme must be calculated and adjusted.
- 104 Subsections (1) and (2) require that the method for calculating the rate or amount of benefits must be set out in the scheme's rules. This must include rules on how the assets of the scheme are identified and valued, how the amount expected to be required for providing benefits under the scheme is to be determined, and rules about how the rate or amount of benefits is to be adjusted. Regulations made under subsections (4), (5) and (6) can make provision about the matters which must be included in the rules, including how adjustments are to be treated, and assumptions and methods underpinning the benefit calculation.
- 105 Subsection (7)(a) makes it clear that the regulations made under subsection (4) of this clause can apply to both future benefits and to benefits which have already accrued in the scheme, ensuring that future adjustments of benefits accrued before the regulations came into force will be in accordance with the regulations.
- 106 Subsection (7)(b) allows regulations made under this clause to override scheme rules where there is a conflict.

### Clause 19: Advice of scheme actuary

- 107 This clause requires collective money purchase scheme trustees to take the advice of the scheme actuary before deciding which methods or assumptions are to be used for the calculation of benefits. Subsection (2) allows regulations to prescribe requirements which the scheme actuary must comply with when advising trustees about this. Subsection (3) provides that the regulations may require the scheme actuary to take account of guidance issued by prescribed persons.
- 108 Subsection (4) makes provision for financial penalties under section 10 of the Pensions Act 1995 (civil penalties) to apply in cases where trustees have failed to take all reasonable steps to obtain the advice of the scheme actuary as required under subsection (1).

### Clause 20: Actuarial valuations

- 109 This clause requires the trustees of a collective money purchase scheme to instruct the scheme actuary to prepare actuarial valuations of the scheme. An actuarial valuation of a collective money purchase scheme will form the basis of the calculation of the rate or amount of benefits to be provided under the scheme.

110 Subsection (2) sets out what should be included in such a valuation – the actuary must report on:

- (a) the scheme assets and their value;
- (b) the amount expected to be required to provide benefits under the scheme; and
- (c) whether the rate or value of the benefits need to be adjusted under the rules of the scheme.

111 Subsection (4) provides that the scheme actuary must prepare the actuarial valuation in accordance with the scheme rules.

112 Subsection (5) gives power to the Secretary of State to make regulations about the actuarial valuations, including the information and statements they must contain, when the report must be prepared, and when it must be submitted to the Pensions Regulator.

113 Subsection (6) set out that where regulations have not been made to specify the frequency of the actuarial valuation, trustees are required to obtain an actuarial valuation within the period of one year beginning with the date the qualifying scheme is established and on an annual basis thereafter.

114 Subsection (7) provides that where regulations have not been made to specify the date by reference to which the actuarial valuation is to be prepared, the date is to be the effective date.

115 Subsection (8) makes provision for financial penalties under section 10 of the Pensions Act 1995 (civil penalties) to apply in cases where trustees have failed to take all reasonable steps to obtain an actuarial valuation.

### Clause 21: Certificate that actuarial valuation prepared in accordance with scheme rules

116 This clause requires the scheme actuary, when preparing an actuarial valuation in respect of a qualifying scheme, to certify that the actuarial valuation have been prepared in accordance with the scheme rules.

### Clause 22: Benefits adjustments

117 This clause applies where an adjustment to the rate or amount of benefits is required in accordance with the scheme rules. Subsection (2) provides that the trustees of a collective money purchase scheme must report to the Pensions Regulator as soon as reasonably practicable if an adjustment to benefit values is required in accordance with the scheme rules, and the adjustment has either not been made in accordance with the most recent actuarial valuation or has been made in a way that is different to that set out in the scheme rules. Subsection (3) requires that the Regulator must be given a clear statement of why the adjustment has been made in a different way as well as any other information prescribed by the Secretary of State.

118 Subsection (4) applies section 10 of the Pensions Act 1995 (civil penalties) to a trustee if they do not take all reasonable steps comply with the requirements under this clause.

### Clause 23: Powers of the Pensions Regulator

119 This clause gives the Pensions Regulator powers to direct trustees to take actions, where the trustees have without good reason failed to (i) obtain an actuarial valuation as required by the legislation or (ii) adjust the benefits in accordance with the most recent valuation and / or the scheme rules. Subsections (2) and (3) permit the Regulator to direct the trustees to obtain an actuarial valuation, specifying the reference date and period within which the actuarial valuation must be obtained (and any other information as prescribed by the Secretary of State), or to take any steps the Regulator considers appropriate to mitigate the failure.

120 Subsection (4) requires the Regulator to have regard to specified requirements in regulations when exercising their power to issue directions under this clause.

121 Subsection (5) imposes the financial civil penalty under section 10 Pensions Act 1995 on any trustees who fail to take all reasonable steps to comply with a direction issued by the Regulator.

## Members' Rights

### Clause 24: Rules about modifying schemes

122 The subsisting rights provisions ensure that members of occupational pension schemes have a legal right to their benefit entitlement. In a collective money purchase scheme, members will not have a right to a certain value of CMPB, but will have a right to a variable amount or rate of benefit calculated according to scheme rules and paid as a pension income for life. This clause amends the existing legislation around subsisting rights in sections 67 and 67A of the Pensions Act 1995 (1995 Act) to ensure that rights under collective money purchase schemes are included.

123 Subsection (2)(a) inserts new subsection (1A) into section 67 of the 1995 Act which makes any exercise of a power to make a prohibited modification avoid. Subsection (2)(b) amends subsection (2)(a)(i) of section 67 of the 1995 Act to make modifications to a collective money purchase scheme a "prohibited modification". Subsection (2)(e) inserts a new subsection (3A) to section 67 of the 1995 Act which provides for regulations to disapply the subsisting rights provisions in prescribed cases. This would, for example, enable the Secretary of State to make regulations if needed, to remove any ambiguity around the application of the subsisting rights provisions to a CMPB.

124 Subsections (3) and (4) amend Section 67A of the 1995 Act so as to prohibit a modification of a pension scheme which would or might result in a member or survivor who is entitled to non-money purchase benefits under a scheme having those benefits converted to or replaced by collective money purchase benefits.

125 Subsections (5) amends section 67A of the 1995 Act to introduce the concept of "relevant transformation of a subsisting right" and applies a requirement for individual members to give consent before such transformation may take place. Subsection (6) inserts subsection (3A) and defines "relevant transformation of a subsisting right" as (a) conversion of non-money purchase benefits into any form of money purchase benefits other than a CMPB; (b) conversion of other money purchase benefits into CMPB; and (c) conversion of CMPB into other money purchase benefits.

126 Subsection (7) amends section 67A(4) of the 1995 Act to exclude "prohibited modifications" from the definition of "detrimental modification" for the purposes of the subsisting rights provisions.

127 Subsection (8) amends subsection (9) of section 67A of the 1995 Act, which provides that references in the subsisting rights provisions to scheme rules include legislative provisions which override the scheme rules, so as to include such provisions which are in this Bill.

### Clause 25: Transfer rights

128 This clause provides members with CMPBs the right to transfer their accrued pension rights to another pension scheme. This right is principally set out in Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 (sections 93-101).

129 Subsection (2)(a) amends Section 93(7)(b) of that Act so that it does not apply to CMPBs. Subsection (2)(b) inserts new subsection (10A) into that Act. This states that where a pension

scheme is divided into sections, each section of the scheme that relates to CMPBs is to be treated as a separate scheme for the purposes of the transfer provisions in Chapter 1 of Part 4ZA of the Pension Schemes Act 1993.

130 Subsection (3) inserts new subsection 3ZA into section 97 of the Pension Schemes Act 1993. This provides that if the six-month deadline for facilitating a CMPB transfer (at section 99(2)(b) of the Pension Schemes Act 1993) is extended to a period which is longer than six months, the reference to six-months in section 97(3)(b) should be read as if it were the period to which the deadline has been extended.

131 Subsection 4 amends section 99(2) of the Pension Schemes Act 1993 to make clear that the deadline for facilitating CMPB transfers is six months from the date of application or such longer period as may be prescribed in regulations. For example, operational issues may emerge once these new schemes are bedded in that may necessitate a longer period to facilitate these transfers.

132 Subsection (5) inserts new section 99A into the Pension Schemes Act 1993, which places further duties on trustees when they are dealing with an application to transfer a member's CMPBs. It requires the trustees to notify the member in writing of their cash equivalent. It also stipulates that the trustees cannot facilitate the transfer of the cash equivalent without the written consent of the member for a period of three weeks commencing from the day after the date the trustees notified the member of their cash equivalent. If the trustees fail to comply with this requirement, any agreement reached with a third party regarding the transfer of the member's cash equivalent is deemed to be void.

133 Subsection (6) provides for minor and consequential amendments to be made to section 100B(2) of the Pension Schemes Act 1993.

## Ongoing supervision

### Clause 26: List of authorised schemes

134 This clause places a requirement on the Pensions Regulator to publish and maintain a list of collective money purchase schemes that have been authorised. The list must include the name of the scheme and may include other information the Regulator considers appropriate.

### Clause 27: Requirement to submit supervisory return

135 This clause enables the Pensions Regulator to issue a notice requiring trustees of a collective money purchase scheme to submit a supervisory return to the Pensions Regulator. Subsection (2) provides a power for the Secretary of State to make regulations setting out the information that may be required in a supervisory return.

136 Subsection (3) makes provision for what must be included in the notice. Subsection (4) specifies that a supervisory return may not be required more frequently than once in any 12-month period. Subsection (5) provides that a civil penalty under section 10 of the Pensions Act 1995 applies to a trustee who fails to submit a return when required to do so.

### Clause 28: Duty to notify the Pensions Regulator of significant events

137 This clause creates a requirement for specified persons to notify the Pensions Regulator of significant events, in writing, as soon as reasonably practicable after the person becomes aware such an event has occurred in relation to an authorised collective money purchase scheme.

138 Subsection (2) sets out the people who are required to notify the Regulator of significant events. They are: trustees of the scheme, employers in relation to the scheme, persons who

have power to appoint or remove a trustee or vary a provision of the scheme, persons who provide legal, financial or actuarial advice to the scheme, the manager of the scheme administration services and persons acting in a capacity specified in regulations.

- 139 Subsection (3) sets out that the Secretary of State must make regulations setting out the significant events that are required to be reported.
- 140 Subsection (4) provides that the Secretary of State may make regulations specifying further information that is to be provided by a person required to give notice of a significant event.
- 141 Subsection (5) sets out that the disclosure of information under this clause does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed). However, subsection (6) provides that nothing in this clause authorises a disclosure of information which, although in compliance with a duty imposed by or under this clause, would contravene data protection legislation. Under subsection (7), a person is not required by this clause to disclose anything in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.
- 142 Subsection (8) provides that a civil penalty under section 10 of the Pensions Act 1995 applies where there is a failure to comply with a requirement imposed by or under this section.

## Clause 29: Risk notices

- 143 If the Pensions Regulator considers that there is an issue of concern in relation to a collective money purchase scheme which will, or is likely to lead to, a breach of the authorisation criteria if the issue is not resolved, this clause provides that it may issue a risk notice requiring the trustees to submit a resolution plan to the Regulator setting out proposals for resolving the issue of concern (see subsections (1) and (2)).
- 144 Under subsection (3), a risk notice must specify the issue of concern and the date by which the resolution plan is to be submitted. It must also contain any other information required by regulations made by the Secretary of State under subsection (10).
- 145 The Regulator may give a further notice requiring the submission of a revised resolution plan if it is not satisfied with the original submitted resolution plan (subsection (4)).
- 146 Subsections (5) and (7) provide that where a resolution plan (including any revised plan) is approved by the Regulator, the trustees must implement the plan as agreed, and submit reports to the Regulator on their progress (progress reports) in resolving the issue of concern. The time period within which the first report must be submitted is to be specified in regulations, whilst the timing for submission of subsequent reports is to be specified by the Regulator.
- 147 The resolution plan and progress reports submitted by the trustees must be provided in the manner and form specified by the Regulator (subsection (8)).
- 148 Where trustees fail to implement the proposals contained in a resolution plan that has been agreed by the Regulator, it may direct them to do so (subsection (6)).
- 149 Subsection (11) makes provision for the imposition of a civil penalty under section 10 of the Pensions Act 1995 (civil penalties) in cases where a trustee fails to comply with a risk notice issued under subsection (1) or a further notice issued under subsection (4) or a requirement in respect of a progress report under subsection (7), or fails to comply with a direction to implement a resolution plan under subsection (6).

## Clause 30: Withdrawal of authorisation

150 This clause provides that where the Pensions Regulator is no longer satisfied that an authorised collective money purchase scheme meets the authorisation criteria it may decide to withdraw the scheme's authorisation.

151 Subsection (2) provides that when the Regulator either issues a warning notice under its standard procedure or a determination notice under its special procedure in relation to a decision to withdraw authorisation, the notice must explain that the issue of the notice is a triggering event together with an explanation of the trustees' duties under clauses 31 to 45.

152 Subsection (3) sets out that where a collective money purchase scheme's authorisation is withdrawn the Regulator must notify the trustees of this and remove the scheme from its list of authorised collective money purchase schemes.

## Triggering events and continuity options

### Clause 31: Triggering events

153 Subsection (1) and the table in subsection (4) set out the triggering events and when they occur.

154 Subsection (2) provides that where an event falling within items 4 to 9 in the table occurs within an existing triggering event period for the scheme (see clause 32), it is not a triggering event.

155 An event within items 1, 2 or 3 of the table at subsection (4), is a triggering event even if it occurs within an existing triggering event period. Item 1 is the issue of a warning notice by the Regulator under its standard procedure in respect of a decision to withdraw the scheme's authorisation. Item 2 is a determination notice issued by the Pensions Regulator under its special procedure in respect of a decision to withdraw authorisation. Item 3 is where the Regulator gives a notification under clause 7(3) (scheme not authorised).

### Clause 32: Triggering event periods

156 Subsection (1) defines a 'triggering event period' as the period starting with the date on which the triggering event occurs and ending on the earliest of the dates set out under subsection (2). These are the dates on which:

- the trustees receive notification from the Pensions Regulator under clause 37(4) (that the Regulator is satisfied that the triggering event is resolved), or
- the trustees receive the notification under clause 38(4) (that the Regulator is satisfied that preparations for conversion to a closed scheme are complete and that the conversion will resolve the relevant events), or
- the date on which the scheme is wound up, or
- in the case of an item 1 or 2 triggering event, the date upon which it becomes clear that authorisation is not to be withdrawn.

157 Subsection (3) and the table at subsection (4) set out when it becomes clear authorisation is not to be withdrawn, for the purposes of subsection (2)(c).

### Clause 33: Notification of triggering events

158 Subsections (1) to (9) sets out who has responsibility for notifying the Pensions Regulator of the occurrence of triggering events (set out in the table under clause 31 (4)) and who has



responsibility for notifying other persons of this and of such other matters as may be specified in regulations.

159 Regulations under subsection (10) are to set out the time periods within which notifications under this section must be made.

160 Subsection (11) sets out that the disclosure of information under this clause does not breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed). However, subsection (12) provides that nothing in this clause authorises a disclosure of information which, although in compliance with a duty imposed by order the clause, would contravene data protection legislation. Under subsection (12) a person is not required by this clause to disclose anything in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

161 Subsection (13) provides that a civil penalty under section 10 of the Pensions Act 1995 applies where there is a failure to notify as required under this section.

### Clause 34: Continuity options

162 Subsection (1) and (2) provides that where a qualifying scheme has a triggering event, the trustees must pursue a continuity option following that event. Continuity options are a series of actions to be followed by the trustees depending on the event in question.

163 There are 3 continuity options available:

- continuity option 1 (discharge of liabilities and winding up) which allows the qualifying scheme's collective money purchase liabilities to be discharged (that is moved from the scheme to another pensions arrangement or securing them by some other means as specified in regulations) and the qualifying scheme to be wound up (see clause 36);
- continuity option 2 (resolving triggering event) – which allows for the triggering event to be resolved and the qualifying scheme to continue to operate (see j4024); and
- continuity option 3 (conversion to closed qualifying scheme) – which allows for conversion to a closed scheme (see clause 38). A closed scheme either does not admit new members or does not allow members to build up further benefits or both.

164 The continuity options are required elements of the implementation strategy outlined in clause 39 and clause 40. Trustees must specify a continuity option when setting out their implementation strategy.

165 Subsections (3) and (4) set out when trustees must pursue continuity option 1 – i.e. where an item 1, 2 or 3 triggering event has occurred trustees are compelled to follow continuity option 1.

166 Subsection (5) sets out that trustees may only pursue continuity option 3 where conversion to a closed qualifying scheme is permitted within the scheme rules, and that subject to that, provides that this clause overrides any provision of the qualifying scheme to the extent there is a conflict.

167 Subsection (6) applies the civil penalty under section 10 Pensions Act 1995 to anyone who fails to act as required by this clause.

### Clause 35: When a decision to withdraw authorisation becomes final

168 This clause determines the date on which a decision to withdraw authorisation becomes final for the purposes of a triggering event within item 1 or 2 of the table in clause 31. The date on

which it becomes final is set out in the table under subsection (2) in the third column, for the circumstances set out in the second column.

### Clause 36: Continuity option 1: discharge of liabilities and winding up

- 169 This clause makes provision for continuity option 1 under which trustees must discharge the liabilities of the qualifying scheme and then wind up the remaining structure of the scheme. Winding up will mean that the scheme will cease to exist.
- 170 Subsection (1) requires trustees to establish the individual values of beneficiaries' accrued rights to benefits under the scheme, to identify proposed arrangements for discharging these liabilities and to notify employers and beneficiaries of these proposed options, and such other matters as may be prescribed in regulations.
- 171 Subsection (2) sets out how trustees may discharge the liabilities of the scheme. These are, transferring the value of beneficiaries' accrued rights to benefits to another collective money purchase scheme, a Master Trust scheme, or an alternative scheme with the characteristics specified in regulations; or some other way of securing the benefits ('an alternative payment arrangement') as specified in regulations.
- 172 Subsection (3) provides that a transfer proposal may deal with the entitlements of different descriptions of beneficiaries in different ways.
- 173 Subsection (4) makes it clear that beneficiaries (scheme members and survivors) retain their right to take a cash equivalent transfer instead of the trustee's proposed discharge mechanism.
- 174 Subsection (5) allows for regulations which will set out the way in which the notification in subsection (1)(c) must be made, and the timing of the notification.
- 175 Subsection (6) allows for regulations to set out how continuity option 1 is to be given effect and provides a non-exhaustive list of other matters which may be covered by regulations under this subsection.
- 176 Subsection (7) provides a list of the matters about which the Secretary of State must make regulations under subsection (6). These include how the rights of beneficiaries are to be quantified, how pensioner beneficiaries who are receiving a periodic income are to be dealt with during the wind up period, the conditions that should be met by a pension scheme or alternative payment arrangement and provision about winding-up.
- 177 Subsection (8) defines "beneficiary" and "pensioner beneficiary" for the purposes of this part.
- 178 A financial penalty under section 10 of the Pensions Act 1995 applies to anyone who fails to comply with any requirement imposed by this clause (subsection (9)) and regulations may also make provision for the application of Section 10 of the Pensions Act 1995 to a person failing to comply with requirements in the regulations (subsection (10)).

### Clause 37: Continuity option 2: resolving triggering event

- 179 This clause sets out continuity option 2. Where the trustees decide to pursue this option they must attempt to resolve the triggering event.
- 180 The trustees are required to notify the Pensions Regulator (subsection (2)) when they consider the triggering event has been resolved. They must also set out how they consider that it has been resolved (subsection (3)). The Regulator is then required (subsection (4)) to notify the trustees of whether it is satisfied that the triggering event has been resolved.
- 181 Under subsection (5), the Regulator must also be satisfied that any other event within the table at clause 31 that has occurred in relation to the qualifying scheme since the occurrence of the triggering event has also been resolved.

182 Subsection (6) provides that where a trustee fails to comply with a requirement imposed by this clause a financial penalty under Section 10 of the Pensions Act 1995 applies.

### Clause 38: Continuity option 3: conversion to closed scheme

183 This clause makes provision for continuity option 3 under which trustees decide to convert the scheme so that it continues to operate but on a closed basis. A closed scheme is one where either no new contributions are made but the scheme continues to operate in relation to benefits built up prior to closure; or where no new members are admitted to the scheme but existing members can continue to build up new benefits; or both.

184 Trustees must notify the Pensions Regulator when they consider that preparations for conversion to a closed scheme are complete. (subsection (2)).

185 Subsection (3) allows regulations to set out the timings for notification under subsection (2).

186 Subsection (4) sets out the conditions to be met in order for the Regulator to be satisfied that a scheme can commence operating on a closed basis, and that this will resolve the triggering event (and any other triggering event that may have subsequently occurred), and requires the Regulator to notify the trustees of this.

187 Subsections (5) and (6) provide that a closed scheme option may only be pursued in accordance with the provisions of the scheme, and that a scheme may only convert to a closed scheme – i.e. begin to operate as one – once the trustees have been notified by the Regulator under subsection (4).

188 Once a conversion to a closed scheme has taken effect, trustees may not later reverse the action (subsection (7)).

189 Subsection (8) applies financial penalties under section 10 Pensions Act 1995 to a trustee who does not comply with the requirements and restrictions of this clause.

190 Subsection (10) provides a definition of ‘closed scheme’.

### Clause 39: Implementation strategy

191 This clause requires the trustees of a qualifying scheme to submit an implementation strategy to the Pensions Regulator for approval. This is a document setting out how the interests of members of the qualifying scheme are to be protected following the occurrence of a triggering event, and how that event will be resolved.

192 Under subsection (2), if a triggering event within item 1, 2 or 3 of the table in clause j4015 occurs within an existing triggering event period, the trustees need only submit an implementation strategy in relation to the most recent triggering event. Any implementation strategy which has already been approved for an earlier triggering event ceases to have effect when a later triggering event occurs.

193 Under subsection (3)(a), in relation to items 1 and 2 triggering events, the implementation strategy is only required to be submitted if the decision to withdraw authorisation has become final. Under subsection (3)(b), where it becomes clear that authorisation is not to be withdrawn the override in respect of the original triggering event and implementation plan provided under subsection (2), no longer applies.

194 The Regulator may direct the trustees to comply with the requirements of this clause (subsection (4)).

195 Where a person fails to comply with a direction under subsection (4), a financial penalty under section 10 of the Pensions Act 1995 may apply (subsection (5)).

196 Subsection (6) provides that this clause overrides any provision of the scheme to the extent there is a conflict.

#### Clause 40: Approval of implementation strategy

197 Under subsection (1) of this clause the Pensions Regulator may approve the implementation strategy only if it is satisfied that it is adequate.

198 The implementation strategy must include a section setting out the levels of administration charges that apply in relation to members of the qualifying scheme (subsections (3 and 4)). This relates to the prohibition on increasing levels of charges during a triggering event period at clause 45.

199 Subsection (5) provides that the implementation strategy must set out the continuity option that is being pursued as well as other information specified relating to the continuity option being pursued.

200 The implementation strategy must, further, include other information specified in regulations and be prepared in accordance with regulations (subsection (6)).

#### Clause 41: Trustees' duties once implementation strategy approved

201 This clause requires that when the Pensions Regulator has approved the implementation strategy, the trustees must pursue the continuity option identified in the strategy and take the steps set out in the implementation strategy to carry out the continuity option (subsection (1)). If they fail to do so, the Regulator has the power to direct the trustees to pursue the continuity option identified in the strategy and take the steps identified in the strategy to carry it out (subsection (4)). A financial penalty for failure to comply under section 10 of the Pensions Act 1995 applies to anyone who fails to comply with a direction made by the Pensions Regulator (subsection 5).

202 Regulations under subsection (2) may require the trustees to make the implementation strategy available to employers and relevant former employers by a specified time.

203 Subsection (3) provides that where an item 1, 2 or 3 triggering event occurs within the triggering event period for an earlier triggering event, trustees cease to be obliged to comply with the requirements of subsection (1) and any regulations under subsection (2) in respect of the original triggering event. However, if it becomes clear that authorisation is not to be withdrawn in relation to an item 1 or 2 triggering event, the trustees are subject to those requirements again from the date on which that becomes clear.

204 Subsection (6) provides that this clause overrides any provisions of the qualifying scheme or any contracts that the scheme has entered into, to the extent that there is a conflict.

#### Clause 42: Prohibition on winding up except in accordance with continuity option 1

205 This clause provides that a collective money purchase scheme can only be wound up in accordance with continuity option 1.

206 Subsection (2) provides that this clause overrides any provisions of the scheme to the extent there is a conflict.

207 Subsection (3) provides that where a person fails to comply with this clause a financial penalty under section 10 of the Pensions Act 1995 applies.

#### Clause 43: Periodic reporting requirements

208 This clause requires that during a triggering event period the trustees of a collective money purchase scheme must submit periodic reports to the Pensions Regulator

209 The time period within which the first report must be submitted is to be specified in regulations. The timing for submission of subsequent reports is to be specified by the Regulator (subsections (2) and (3)), as is the form and manner in which they should be made (subsection (4)(d)).

210 Under subsection (4), the reports must report on progress in carrying out the implementation strategy, and regulations may set out further detail of other content required in the report.

211 A civil penalty under section 10 of the Pensions Act 1995 applies to any person who fails to comply with the requirements imposed by this section (subsection 5).

#### Clause 44: Pause orders

212 This clause enables the Pensions Regulator to pause certain activities once a collective money purchase scheme has experienced a triggering event. Subsections (2) to (4) state that a pause order may be made if the Regulator is satisfied it will help the trustees carry out their implementation strategy (see clause 39), or if the Regulator believes that doing so is necessary to protect the interests of the generality of the scheme members and that there is, or there is likely to be, an immediate risk to the interests of members of the scheme or the assets of the scheme if an order is not made.

213 A pause order is an order containing one or more directions that prevent a scheme from carrying out any or all of a number of actions which are specified in subsection (5) whilst the order has effect. These include:

- accepting new members;
- making payments towards the scheme;
- making transfers out of the scheme; and
- paying benefits (or specified benefits).

214 The pause order may relate to all such actions, or those related to specified members, employers, payments or groups of such actions.

215 Subsection (6) provides that where a direction in subsection (5)(b) is made (preventing payments from being made towards the scheme), it does not include payments due to be made before the order takes effect. It does include payments in respect of pension credits where the person entitled to the credit is a member of the scheme.

216 Subsection (7) relates to a direction under subsection (5)(e) that no transfers or transfer payments are to be made out of the scheme of, or in respect of, a member's rights. It states that the direction may provide that these transfers or transfer payments cannot take place unless specified conditions are met and the amounts paid out in respect of these transfers are determined in a specified manner.

217 A pause order may require the trustees to obtain an actuarial valuation within a specified period (subsection (8)). An order containing such a requirement must (subsection (9)) specify the date by reference to which the matters to be set out in the valuation must be determined, the information and statements it must contain and any other requirements the valuation must satisfy.

218 There is further provision about pause orders in Schedule 2.

#### Schedule 2: Pause orders

219 Paragraph 1 of Schedule 2 sets out the consequences of a pause order. Sub-paragraph (1)

states that any action taken in breach of a pause order is void, that is, it has no legal effect (except to the extent that the action is validated under paragraph 3 of Schedule 2).

220 Sub-paragraph (2) includes a provision that if a pause order prevents a scheme from accepting any payments then affected payments are treated as if they do not fall due and as if any obligation to make them does not arise. The pause order may include provisions under subsection (5)(c) of clause 44 that where such payments have already been deducted from pay, they are to be repaid to affected scheme members.

221 Sub-paragraph (3) states that where a pause order contains a direction that no benefits or specified benefits are to be paid and an amount of benefit under the scheme rules was not paid as a result of the direction, the direction does not affect any entitlement to those benefits, and that any benefits that have been paused to which the member, or a person in respect of a member, remains entitled at the end of the period for which the pause order has effect are due once the pause order ceases to have effect.

222 Sub-paragraphs (4) and (5) create exceptions to a pause order to allow schemes to follow the requirements of pension sharing and pension earmarking orders. These orders are placed on member assets following divorce, dissolution and nullity proceedings in accordance with the relevant pieces of legislation in England and Wales, Scotland and Northern Ireland.

223 Sub-paragraphs (6) and (7) allow the Secretary of State to make regulations modifying specified areas of existing legislation where there is a pause order preventing transfers of members rights to ensure that the existing legislation works as intended.

224 Sub-paragraphs (8) to (11) apply the civil penalties under section 10 of Pensions Act 1995 in relation to non-compliance with these provisions.

225 Paragraph 2 states that any pause order can take effect for a maximum of three months (sub-paragraph (1)), and can be extended for further periods of up to three months (sub-paragraph (2)). A pause order will automatically end if a triggering period ends while it is in force (sub-paragraph (3)).

226 Paragraph 3 allows the Pensions Regulator to make an order validating any action that is taken in contravention of a pause order on application from the trustees, or a person directly affected by the pause order.

227 Paragraph 4 provides for notifications between various parties in respect of a pause order, or an order made validating action in contravention of a pause order under paragraph 3. The Regulator is required to inform the trustees that the relevant order has been made as soon as is practicable (sub-paragraph (2)). The Regulator may also direct the trustees, by order, to inform employers and members that the relevant order has been made and of its intended effect within a specified time period (sub-paragraph (3)). This may relate to all employers (or certain relevant former employers) and members, or only those specified in the Regulator's order (sub-paragraph (3)).

228 Civil penalties under section 10 of Pensions Act 1995 apply to any trustee who has not taken all reasonable steps to ensure compliance with sub-paragraph (3).

229 Paragraph 5 allows pause orders to override any existing law or scheme rule to the extent that it is not unlawful under section 6(1) of the Human Rights Act 1998.

#### Clause 45: Prohibition on increasing charges etc during triggering event period

230 This clause places restrictions on trustees increasing or imposing administration charges when a scheme is in a triggering event period (clause 32). The trustees of a collective money purchase scheme must not impose administration charges on or in respect of members above

- the level set out in the implementation strategy (subsection (1)(a)) and must not impose new administration charges on or in respect of members (subsection (1)(b)). Further, trustees must not impose administration charges on or in respect of members in consequence of a member leaving or deciding to leave the scheme during the triggering event period (subsection (1)(c)).
- 231 Subsection (2) provides for corresponding prohibitions on the trustees of a collective money purchase scheme or a Master Trust pension scheme which receives a transfer of the value of accrued rights to benefits from a collective money purchase scheme which is pursuing continuity option 1, having been proposed by the trustees or employer of that transferring scheme as a scheme to which those rights should be transferred. The trustees of such a receiving scheme must not increase administration charges above the level set out in the document the scheme is to provide to the Regulator by regulations under clause 36 (6) and (7) and they must not impose any new charges on members, to meet costs set out under subsection (4). The costs set out under subsection (4) are the costs for which the receiving scheme is liable which were incurred by the transferring scheme or which relate directly to the transfer the value of accrued rights to benefits under the transferring scheme.
- 232 Subsection (3)(a) allows regulations to omit administration charges specified in regulations from the prohibition imposed by subsection (1) or (2), whilst subsection (3)(b) allows regulations to set how the levels of administration charges are to be calculated for the purposes of this section.
- 233 Subsection (5) provides that this section overrides a provision of a collective money purchase scheme, a Master Trust scheme and any contracts that such a scheme may have entered into with persons providing services in relation to the scheme, where there is a conflict with the requirements of this section.
- 234 By regulations under subsection (6) the Secretary of State may apply requirements of this section to other schemes who are able to act as a ‘receiving scheme’ by regulations under clause 36 (2)(b). A civil penalty under section 10 of the Pensions Act 1995 applies to a trustee who fails to comply with this clause (subsection (7)).
- 235 Subsection (8) defines “receiving scheme” to mean a pension scheme that receives a transfer of the value of accrued rights from a transferring scheme to benefits under the receiving scheme during a triggering event period and which was a scheme that the trustees or employer of the transferring scheme proposed should receive the transfer. It also defines “transferring scheme” to mean a collective money purchase scheme in respect of which the trustees are pursuing continuity option 1 (see clause 36) as a result of a triggering event.

## Publication of information

### Clause 46: Publication of information

- 236 This clause allows regulations to set out in detail what information trustees of collective money purchase schemes will be required to publish. This is intended to engender trust and enable transparency to ensure a clear understanding of the soundness of the scheme design, how the scheme is working and how members’ interests are to be protected. Publication will allow for wider scrutiny, challenge and comparisons across similar schemes.
- 237 Subsection (2) makes provision for other matters which can be included in the regulations. These include, that information be made available free of charge and that information be provided in the form specified. The regulations may require or permit specified information to be excluded from the published information.
- 238 Subsection (3) requires that trustees publishing information required by regulations made under subsection (1) must also have regard to any guidance prepared by the Secretary of

State. The guidance will set out the manner the information should be published, any restrictions and how accessibility issues should be considered,

239 A financial penalty under section 10 of the Pensions Act 1995 applies to a trustee who fails to take all reasonable steps to comply with this clause (subsection (4)).

## **Powers to make further provision**

### **Clause 47: Powers to extend definition of qualifying schemes**

240 The Bill currently restricts the definition of “qualifying schemes” to schemes established by one or more employers and intended to be used by a single employer or group of connected employers. This clause permits regulations to disapply these requirements.

241 Subsections (3) to (5) allow regulations to make further provision about this, including provision which modifies, amends, repeals or revokes provisions in Part 1 of the Bill and other enactments. Subsection (4) allows regulations to apply the provisions set out in Part 1 of the Pension Schemes Act 2017 to facilitate the provision of CMPB by schemes where some or all of the employers are not connected.

## **Supplementary**

### **Clause 48: Minor and consequential amendments**

242 This clause introduces Schedule 3 which makes consequential amendments.

### **Schedule 3: Collective money purchase benefits minor and consequential amendments**

243 This schedule makes minor and consequential amendments to other relevant legislation in respect of collective money purchase benefits.

### **Clause 49: Interpretation of Part 1**

244 The definition of various terms used in Part 1 of the Bill are given in this clause.

### **Clause 50: Index of defined expressions**

245 This clause lists provisions which define terms used in Part 1 of the Bill.

### **Clause 51: Regulations**

246 This clause makes general provision regarding regulations made under Part 1 of the Bill.

## **Part 2: Collective Money Purchase Benefits: Northern Ireland**

### **Definitions**

#### **Clause 52: Collective money purchase benefits and schemes**

247 This clause makes provision for Northern Ireland similar to that made by clause 1.

#### **Clause 53: Qualifying benefits**

248 This clause makes provision for Northern Ireland similar to that made by clause 2. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.



## Clause 54: Qualifying schemes

249 This clause makes provision for Northern Ireland similar to that made by clause 3. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Clause 55: Qualifying schemes: supplementary

250 This clause makes provision for Northern Ireland similar to that made by clause 4.

## Clause 56: Schemes divided into sections

251 This clause makes provision for Northern Ireland similar to that made by clause 5. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Clause 57: Amendment of definitions of “money purchase benefits” etc

252 This clause makes provision for Northern Ireland similar to that made by clause 6. This clause introduces Schedule 4, which makes amendments to Northern Ireland legislation similar to the amendments made by Schedule 1. Schedule 4 makes amendments to existing definitions of ‘money purchase benefits’ set out in legislation to insert CMPBs as a type of money purchase benefit. It also amends section 30 of the Pensions Act (Northern Ireland) 2012, which contains a power to amend by regulations the definitions of money purchase benefits in legislation, so that regulations made under section 30 may also amend the definition of CMPBs in this Act and other legislation. In this case the power to make regulations vests in the Department for Communities in Northern Ireland.

## Schedule 4: Money purchase benefits: Northern Ireland

253 This Schedule makes provision for Northern Ireland similar to that made by Schedule 1.

## Authorisation

### Clause 58: Authorisation of collective money purchase schemes

254 This clause makes provision for Northern Ireland similar to that made by clause 7.

### Clause 59: Application for authorisation

255 This clause makes provision for Northern Ireland similar to that made by clause 8. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 60: Decision on application

256 This clause makes provision for Northern Ireland similar to that made by clause 9.

### Clause 61: Reference to Tribunal of refusal to grant authorisation

257 This clause makes provision for Northern Ireland similar to that made by clause 10.

## Authorisation criteria

### Clause 62: Fit and proper persons requirement

258 This clause makes provision for Northern Ireland similar to that made by clause 11. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 63: Scheme design requirement

259 This clause makes provision for Northern Ireland similar to that made by clause 12. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 64: Viability report

260 This clause makes provision for Northern Ireland similar to that made by clause 13. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 65: Financial sustainability requirement

261 This clause makes provision for Northern Ireland similar to that made by clause 14. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 66: Communication with members requirement

262 This clause makes provision for Northern Ireland similar to that made by clause 15. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 67: Systems and processes requirements

263 This clause makes provision for Northern Ireland similar to that made by clause 16. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 68: Continuity strategy requirement

264 This clause makes provision for Northern Ireland similar to that made by clause 17. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Valuation and benefit adjustment

### Clause 69: Calculation of benefits

265 This clause makes provision for Northern Ireland similar to that made by clause 18. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 70: Advice of scheme actuary

266 This clause makes provision for Northern Ireland similar to that made by clause 19. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 71: Actuarial valuations

267 This clause makes provision for Northern Ireland similar to that made by clause 20. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 72: Certificate that actuarial valuation prepared in accordance with scheme rules

268 This clause makes provision for Northern Ireland similar to that made by clause 21.

### Clause 73: Benefits adjustments

269 This clause makes provision for Northern Ireland similar to that made by clause 22. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 74: Powers of the Pensions Regulator

270 This clause makes provision for Northern Ireland similar to that made by clause 23. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Members' Rights

### Clause 75: Rules about modifying schemes

271 This clause makes provision for Northern Ireland similar to that made by clause 24.

272 Subsection (2) applies the consent requirements in the subsisting rights provisions to the exercise of powers to modify collective money purchase schemes and inserts into Article 67 of the Pensions (Northern Ireland) Order 1995 a delegated power to disapply the subsisting rights provisions in prescribed cases. This would, for example, enable the Department for Communities in Northern Ireland to make regulations if needed, to remove any ambiguity around the application of the subsisting rights provisions to a CMPB.

273 Subsection (8) amends paragraph (9) of Article 67A of that Order, which provides that references in the subsisting rights provisions to scheme rules include legislative provisions which override the scheme rules, so as to include such provisions which are in this Bill.

### Clause 76: Transfer rights

274 This clause makes provision for Northern Ireland similar to that made by clause 25. The power to make regulations contained in amendments made by this clause vests in the Department for Communities in Northern Ireland.

## Ongoing supervision

### Clause 77: List of authorised schemes

275 This clause makes provision for Northern Ireland similar to that made by clause 26.

### Clause 78: Requirement to submit supervisory return

276 This clause makes provision for Northern Ireland similar to that made by clause 27. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 79: Duty to notify the Pensions Regulator of significant events

277 This clause makes provision for Northern Ireland similar to that made by clause 28. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 80: Risk notices

278 This clause makes provision for Northern Ireland similar to that made by clause 29. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 81: Withdrawal of authorisation

279 This clause makes provision for Northern Ireland similar to that made by clause 30.

*These Explanatory Notes relate to the Pension Schemes Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 5)*

## Triggering events and continuity options

### Clause 82: Triggering events

280 This clause makes provision for Northern Ireland similar to that made by clause 31.

### Clause 83: Triggering event periods

281 This clause makes provision for Northern Ireland similar to that made by clause 32.

### Clause 84: Notification of triggering events

282 This clause makes provision for Northern Ireland similar to that made by clause 33. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 85: Continuity options

283 This clause makes provision for Northern Ireland similar to that made by clause 34.

### Clause 86: When a decision to withdraw authorisation becomes final

284 This clause makes provision for Northern Ireland similar to that made by clause 35.

### Clause 87: Continuity option 1: discharge of liabilities and winding up

285 This clause makes provision for Northern Ireland similar to that made by clause 36. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 88: Continuity option 2: resolving triggering event

286 This clause makes provision for Northern Ireland similar to that made by clause 37. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 89: Continuity option 3: conversion to closed scheme

287 This clause makes provision for Northern Ireland similar to that made by clause 38. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 90: Implementation strategy

288 This clause makes provision for Northern Ireland similar to that made by clause 39. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 91: Approval of implementation strategy

289 This clause makes provision for Northern Ireland similar to that made by clause 40. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 92: Trustees' duties once implementation strategy approved

290 This clause makes provision for Northern Ireland similar to that made by clause 41. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

### Clause 93: Prohibition on winding up except in accordance with continuity option 1

291 This clause makes provision for Northern Ireland similar to that made by clause 42.

## Clause 94: Periodic reporting requirements

292 This clause makes provision for Northern Ireland similar to that made by clause 43. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Clause 95: Pause orders

293 This clause makes provision for Northern Ireland similar to that made by clause 44.

294 There is further provision about pause orders in Schedule 5 which makes provision for Northern Ireland similar to that made by Schedule 2.

## Schedule 5: Pause orders: Northern Ireland

295 Schedule 5 makes provision for Northern Ireland similar to that made by Schedule 2. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Clause 96: Prohibition on increasing charges etc during triggering event period

296 This clause makes provision for Northern Ireland similar to that made by clause 45. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Publication of information

### Clause 97: Publication of information

297 This clause makes provision for Northern Ireland similar to that made by clause 46. However, in this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Powers to make further provision

### Clause 98: Powers to extend definition of qualifying schemes

298 This clause makes provision for Northern Ireland similar to that made by clause 47. In this case the power to make regulations is conferred on the Department for Communities in Northern Ireland.

## Supplementary

### Clause 99: Minor and consequential amendments

299 This clause makes provision for Northern Ireland similar to that made by clause 48. This clause introduces Schedule 6 which makes consequential amendments to Northern Ireland legislation similar to provision made by Schedule 3.

### Schedule 6: Collective money purchase benefits: minor and consequential amendments for Northern Ireland

300 This Schedule makes minor and consequential amendments to other relevant Northern Ireland legislation, similar to provision made by Schedule 3.

### Clause 100: Interpretation of Part 2

301 The definition of various terms used in Part 2 of the Bill are given in this clause, which makes provision for Northern Ireland similar to that made by clause 49.

## Clause 101: Index of defined expressions

302 This clause lists provisions which define terms used in Part 2 of the Bill. This clause makes provision for Northern Ireland similar to that made by clause 50.

## Clause 102: Regulations

303 This clause makes general provision regarding regulations made by the Department for Communities in Northern Ireland under Part 2 of the Bill, similar to that made by clause 51.

# Part 3: The Pensions Regulator

## Contribution notices where avoidance of employer debt etc

### Clause 103: Grounds for issuing a section 38 contribution notice

304 This clause amends section 38 of the Pensions Act 2004 to include two new tests to enable the Pensions Regulator to issue section 38 contribution notices – the “employer insolvency test” and the “employer resources test” and their respective statutory defences.

305 Subsection (3) of the clause inserts new sections 38C and 38D into the Pensions Act 2004 to provide the meaning of the “employer insolvency test” and the corresponding defence.

306 Subsection (4) of the clause inserts new sections 38E and 38F into the Pensions Act 2004 to provide the meaning of the “employer resources test” and the corresponding defence.

#### S38C: Section 38 contribution notice: meaning of “employer insolvency test”

307 Subsection (1) of new section 38C, the “employer insolvency test”, enables the Regulator to issue a contribution notice where it is of the opinion:

- that immediately after an act, or failure to act, the value of the assets of the scheme was less than the liabilities of the scheme, and
- that, if a debt under section 75(4) of the Pensions Act 1995 had fallen due immediately after the relevant time, the act or failure to act would have materially reduced the amount that could be recovered by the trustees or managers from the employer in the case of a hypothetical insolvency of the employer.

308 Subsection (2) sets out that the value or amount of (i) the assets of the scheme, (ii) the liabilities of the scheme, and (iii) the debt that would have fallen due under section 75(4) of the Pensions Act 1995, will be the Regulator’s estimate as at immediately after the relevant time.

309 Subsection (3) states that when estimating the value and the amounts referred to in subsection (2), the Regulator must take into account how the liabilities and assets of the employer are determined and calculated for the purposes of section 75(4) of the Pensions Act 1995.

310 Subsection (4) provides that any debts due under section 75 of the Pensions Act 1995 immediately after the relevant time are to be disregarded for the purpose of the test.

311 Subsection (5) defines “the relevant time”.

#### S38D: Section 38 contribution notice issued by reference to employer insolvency test: defence

312 New section 38D provides a defence in respect of new section 38C.

313 Subsection (1) of the new section 38D applies where the Regulator believes that the conditions of new section 38C have been met, and a warning notice in respect of a contribution notice under section 38 of the Pensions Act 2004 has been issued, wholly or partly because in its opinion the employer insolvency test has been met.

- 314 Subsections (2) and (3) provide that where a defence has been raised, a contribution notice must not be issued if the Regulator is satisfied that certain conditions under this section are met.
- 315 Subsections (4) to (6) set out the conditions A to C for the defence: this provides that the person who wishes to raise the defence must satisfy the Regulator that he or she has met conditions A and C, and where relevant condition B. Those conditions provide for a three-step process.
- 316 Condition A is that, before becoming a party to the act or failure, the person gave due consideration to the extent to which, if a debt under section 75(4) of the Pensions Act 1995 were to fall due immediately after the relevant time, the act or failure to act might materially reduce the amount of the debt that could be recovered from the employer when it so fell due.
- 317 Condition B is that where, as a result of the consideration as outlined under condition A, the person took all reasonable steps to eliminate or minimise the potential for the act or failure to act to have such an effect.
- 318 Condition C is that, having regard to all circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for the person to conclude that, if a debt under section 75(4) of the Pensions Act 1995 were to fall due immediately after the relevant time, the act or failure to act would not materially reduce the amount of that debt that could be recovered from the employer when the debt fell due.
- 319 Subsection (7) sets out condition D of the defence which provides that the person who wishes to raise the defence must satisfy the Regulator that immediately after the relevant time, the value of the assets of the scheme equalled or was more than the amount of the liabilities of the scheme immediately after the relevant time.
- 320 Subsection (8) gives further detail about what will be required in order for a person to be regarded as having given the consideration referred to in Condition A. This is that the person must have made enquiries and done the other acts that a reasonably diligent person would have made or done in the circumstances.
- 321 Subsection (9) sets out that the person's assessment of whether or not an act or failure to act might materially reduce the amount of debt that could be recovered from the employer in a hypothetical insolvency situation, is to be judged by reference to the circumstances prevailing at that time and of which that person was aware or ought reasonably to have been aware at the time of the act or the time when the failure to act first occurred. This includes acts or failures to act which have occurred before that time and expectations at that time of other acts or failures to act occurring.
- 322 Subsection (10) provides that, for the purposes of conditions A, C and D, any debt due from the employer under section 75 of the Pensions Act 1995 (whether before or after the relevant time) is to be disregarded.
- 323 Subsections (11) to (14) set out how the defence applies in relation to a series of acts or failures to act.
- 324 Subsection (11) provides that the person must show either that the three conditions are met in relation to each of the acts or failures in the series, or that in relation to each of those acts or failures, it formed part of a group of acts or failures (as selected by the person raising the defence) in relation to which the matters set out in subsection (12) are shown.
- 325 Subsection (12) sets out the matters to be shown in order to meet conditions A, B and C in relation to a group of acts. They are that before becoming party to the first act or failure in the

group, the person must show that condition A is met in relation to the overall effect of the group; condition B must be met in relation to that overall effect, and condition C must be met in relation to each of the acts or failures in the group.

326 Subsection (13) provides that if at any time the person considers that condition C will not be met in relation to any particular act or failure to act in the group, the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (11) of this section, and the person may then select another group consisting of the particular act or failure concerned, and any subsequent act or failure, in relation to which the person shows the matters mentioned in subsection (12) of new inserted section 38D.

327 Subsection (14) states that if the person is unable to show in the case of each of the acts or failures to act in the series that the matters set out in subsection (11)(a) or (11)(b) are met, but does show in the case of some of them that those matters are met, the acts or failures to act within paragraph (b) are not to count for the purposes of new section 38C as acts or failures to act in the series.

328 Subsection (15) provides the definition of terms used in this section, including “the relevant time” and “a warning notice”. It also sets out that references to an act or failure to act to which a person is a party has the same meaning as in section 38(6)(a) of the Pensions Act 2004.

#### S38E: Section 38 contribution notice: meaning of “employer resources test”

329 Subsection (1) of new section 38E, the “employer resources test”, enables the Regulator to issue a contribution notice where it is of the opinion that:

- the act or failure to act reduced the value of the resources of the employer, and
- that reduction was a material reduction relative to the amount of the estimated section 75 debt in relation to the scheme.

330 Subsection (2) provides regulation making powers to enable the Secretary of State to specify what constitutes the resources of the employer, and how the value of the employer’s resources is to be determined, calculated and verified.

331 Subsection (3) sets out the meaning of “estimated section 75 debt”.

332 Subsection (4) provides that any actual debts due from the employer under section 75 of the Pensions Act 1995 at the relevant time are to be disregarded for the purpose of the test.

333 Subsection (5) defines “the relevant time”.

#### S38F: Section 38 contribution notice issued by reference to employer resources test: defence

334 New section 38F provides a defence in respect of new section 38E.

335 Subsection (1) of new section 38F applies where the Regulator believes that the conditions of new inserted section 38E have been met, and a warning notice in respect of a contribution notice under section 38 of the Pensions Act 2004 has been issued, wholly or partly because in its opinion, the employer resources test has been met.

336 Subsection (2) provides that where a defence has been raised, a contribution notice must not be issued if the Regulator is satisfied that certain conditions under this section are met.

337 Subsections (3) to (5) set out the conditions for the defence: this provides that the person who wishes to raise the defence must satisfy the Regulator that he or she has met conditions A and C, and where relevant condition B. Those conditions provide for a three step process.

338 Condition A is that before becoming a party to the act or failure, the person gave due consideration to the extent to which the act or failure to act might reduce the value of the



resources of the employer relative to the amount of the estimated section 75 debt in relation to the scheme.

- 339 Condition B is that where, as a result of the consideration outlined in Condition A, the person took all reasonable steps to eliminate or minimise the potential for the act or failure to have such an effect.
- 340 Condition C is that, having regard to all circumstances prevailing at the time of the act or at the time when the failure to act first occurred, it was reasonable for the person to conclude that the act or failure to act would not reduce the value of the resources of the employer and would also not materially reduce the value of the resources of the employer relative to the amount of the estimated section 75 debt in relation to the scheme.
- 341 Subsection (6) gives further detail about what will be required in order for a person to be regarded as having given the consideration referred to in Condition A. This is that the person must have made enquiries and done the other acts that a reasonably diligent person would have made or done in the circumstances.
- 342 Subsection (7) sets out that the person's assessment of whether or not an act or failure might materially reduce the value of the resources of the employer, is to be judged by reference to the circumstances prevailing at that time and of which that person was aware or ought reasonably to have been aware at the time of the act or the time when the failure to act first occurred. This includes acts or failures to act which have occurred before that time and expectations at that time of other acts or failures to act occurring.
- 343 Subsection (8) provides that, for the purposes of conditions A and C, any debt due from the employer under section 75 of the Pensions Act 1995 (whether before or after the relevant time) is to be disregarded.
- 344 Subsections (9) to (12) set out how the defence applies in relation to a series of acts or failures to act.
- 345 Subsection (9) provides that the person must show either that the three conditions are met in relation to each of the acts or failures in the series, or that in relation to each of those acts or failures, it formed part of a group of acts or failures (as selected by the person raising the defence) in relation to which the matters set out in subsection (10) are shown.
- 346 Subsection (10) sets out the matters to be shown to meet conditions A, B and C in relation to a group of acts. They are that before becoming party to the first act or failure in the group, the person must show that condition A is met in relation to the overall effect of the group, condition B must be met in relation to that overall effect, and condition C must be met in relation to each of the acts or failures in the group.
- 347 Subsection (11) provides that if at any time the person considers that condition C will not be met in relation to any particular act or failure to act in the group, the previous acts or failures in the group are to be regarded as a separate group for the purposes of subsection (9), and the person may then select another group consisting of the particular act or failure concerned and any subsequent act or failure, in relation to which the person shows the matters mentioned in subsection (10).
- 348 Subsection (12) states that if the person is unable to show in the case of each of the acts or failures to act in the series that the matters set out in subsection (9)(a) or (b) are met, but does show in the case of some of them that those matters are met, the acts or failures to act within paragraph (b) are not to count for the purposes of new section 38E as acts or failures to act in the series.
- 349 Subsection (13) provides the definition of terms used in this section, including "estimated section 75 debt" and "a warning notice". It also sets out that section 38E(2) (the resources of

the employer and their value) has effect for the purpose of this section as it has effect for the purposes of section 38E, and that references to an act or failure to act to which a person is a party has the same meaning as in section 38(6)(a) of the Pensions Act 2004.

#### Clause 104: Reasonableness of issuing a contribution notice

350 This clause amends section 38 of the Pensions Act 2004 by inserting two new factors for the Regulator to consider when ascertaining if it is reasonable to issue a contribution notice.

351 Subsection (2) amends section 38(7) of the Pensions Act 2004 to add the failure of a person to comply in respect of notices and accompanying statements under section 69A of the Pension Act 2004 as one of the matters the Regulator can take into account when considering if it is reasonable to impose liability on someone to pay a contribution notice sum.

352 Subsection (3) of the clause introduces a new factor which provides that the Regulator may consider the effect of the act or failure to act on the value of the assets or liabilities of the scheme.

353 Subsection 4 of clause 104 provides the meaning of “relevant transferee scheme.”

#### Clause 105: Determination of sum specified in a contribution notice

354 This clause amends section 39 of the Pensions Act 2004 by changing the date at which the shortfall sum, in respect of a contribution notice, will be calculated.

355 Subsection (2) amends section 39(4) of the Pensions Act 2004 to set the “relevant time” of the shortfall sum in relation to a scheme to be the end of the most recent scheme year prior to the issuing of a determination notice.

356 Subsection (3) of the clause omits subsection (4A) of section 39 of the Pensions Act 2004.

#### Clause 106: Sanctions for failure to comply with a contribution notice

357 This clause amends the Pensions Act 2004. Subsection (2) of this clause amends section 40(content and effect of a section 38 contribution notice). Subsection (3) of this clause inserts new section 40A (Offence of failing to comply with a section 38 contribution notice). Subsection (4) of this clause inserts new section 40B (Financial penalty for failure to comply with a section 38 contribution notice). Subsection (5) of this clause amends section 41 of the Pensions Act 2004 (section 38 contribution notice: relationship with employer debt).

#### Section 40 (content and effect of a section 38 contribution notice)

358 Subsection (2) of this clause amends section 40 of the Pensions Act 2004 to insert new subsection (2A) and amend existing subsection (9) to require that a contribution notice issued under section 38 of the Pensions Act 2004 must specify a date for compliance.

#### 40A Offence of failing to comply with a section 38 contribution notice

359 Subsection (3) of this clause inserts new section 40A into the Pensions Act 2004.

360 Subsection (1) of new section 40A states that this section applies where a contribution notice is issued to a person under section 38 of the Pensions Act 2004.

361 Subsection (2) outlines the parameters of the offence, that if a person fails to comply with a contribution notice without a reasonable excuse, then they are guilty of an offence.

362 Subsection (3) outlines that a person guilty of the offence is liable to a fine on summary conviction.

363 Subsection (4) provides that proceedings for an offence may not be instituted if an application has been made under section 41(7) of the Pensions Act 2004, and the application has not been

determined, withdrawn or abandoned. To note, section 41(7) allows for a person to apply to the Regulator for a reduction in the specified amount in a contribution notice issued under section 38 of the Pensions Act 2004, where a sum has been paid by the employer in respect of a debt under section 75 of the Pensions Act 1995, either to the trustees/managers of the scheme, or to the Board of the Pension Protection Fund.

364 Subsection (5) provides that the proceedings of an offence under subsection (2) can only be commenced by the Regulator, Secretary of State, or by or with the consent of the Director of Public Prosecutions in England and Wales.

#### 40B Financial penalty for failure to comply with a section 38 contribution notice

365 Subsection (4) of this clause inserts new section 40B into the Pensions Act 2004.

366 Subsection (1) of the new section 40B states that this section applies where a contribution notice is issued to a person under section 38 of the Pensions Act 2004.

367 Subsection (2) outlines the parameters of the offence, that if a person fails to comply with a contribution notice, and does not have a reasonable excuse, then the financial penalty in section 88A of the Pensions Act 2004 applies.

368 Subsection (3) provides that the Regulator cannot issue a warning notice in respect of the civil penalty if an application has been made under section 41(7) of the Pensions Act 2004 and the application has not been determined, withdrawn or abandoned.

369 Subsection (4) provides the meaning of “warning notice.”

#### Section 41 (section 38 contribution notice: relationship with employer debt)

370 Subsection (5) of this clause amends section 41 of the Pensions Act 2004 to insert new subsections (8A), (10A), (11A) and (11B).

371 Subsection (5)(a) inserts the new subsection (8A) which states that an application for review under section 41(7) may not be made after the date specified in the contribution notice for the purposes of new sections 40(2A) for the purposes of sections 40A(2) (the date specified for compliance with a section 38 contribution notice) and 40B(2) (the date specified for compliance with a revised section 38 contribution notice), or such a date as has effect instead of that date (see subsections (10A) and (11B)).

372 Subsection (5)(b) inserts the new subsection (10A) which specifies that if an application for review is made under section 41(7), the Regulator may change the date for compliance in either a contribution notice issued under section 38 of the Pensions Act 2004 or an earlier revised contribution notice, and specify the revised date in the revised contribution notice. Alternatively, if the Regulator does not issue a revised contribution notice under section 41(9)(b), the Regulator may issue a revised contribution notice specifying the revised date for compliance.

373 Subsection (5)(c) of this clause inserts subsections (11A) and (11B). Newly inserted subsection (11A) provides that subsection (11B) applies where a contribution notice has been issued to more than one person under section 38 of the Pensions Act 2004 imposing joint and several liability to pay the debt with other persons, and the Regulator issues a revised contribution notice specifying a revised date for compliance.

374 Newly inserted subsection (11B) states that where this subsection applies, the Regulator must change the date for compliance in the contribution notices or revised contribution notices to all those jointly and severally liable for the debt specified in the contribution notice, and must also specify the revised date for compliance. Alternatively, if the Regulator does not issue a revised contribution notice under subsection (11), the Regulator must issue revised

contribution notices to all parties jointly and severally liable specifying the revised date for payment.

## Sanctions for avoidance of employer debt etc

### Clause 107: Sanctions for avoidance of employer debt etc

375 This clause inserts new provisions in the Pensions Act 2004 to introduce new criminal offences and financial penalties for the avoidance of employer debt.

376 Subsection (2) of this clause creates two new offences including: section 58A: an offence for avoidance of employer debt and section 58B: an offence for conduct risking accrued scheme benefits.

377 Subsection (3) of this clause also creates two new civil penalties including: section 58C: a financial penalty for avoidance of employer debt and section 58D: a financial penalty for conduct risking accrued scheme benefits. This subsection also inserts section 58E, which sets out the supplementary information relating to sections 58C and 58D.

#### S58A: Offence of avoidance of employer debt

378 Subsection (1) of new section 58A states that it applies to occupational pension schemes apart from money purchase schemes and other schemes as prescribed.

379 Subsection (2) of new section 58A provides that a person commits an offence under this section only if:

- (a) the person does an act or engages in a course of conduct that:
  - (i) prevents the recovery of the whole or any part of a debt due from the employer under section 75 of the Pensions Act 1995,
  - (ii) prevents such a debt becoming due,
  - (iii) compromises or otherwise settles such a debt, or
  - (iv) reduces the amount of such a debt which would otherwise become due,
- b) the person intended the act or course of conduct to have such an effect, and
- c) the person did not have a reasonable excuse for doing the act or engaging in that course of conduct.

380 Subsection (3) outlines that a reference in this section to an act or course of conduct includes a failure to act.

381 Subsection (4) provides that the offence does not apply to a person who is acting in accordance with their function as an insolvency practitioner.

382 Subsection (5) sets out that, for the purposes of this section, a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section.

383 Subsection (6) further sets out that in the case of such a contingent debt, the reference in subsection (2)(b) of this section, to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or section 75(4C)(b) of the Pensions Act 1995 upon which the debt is contingent.

384 Subsection (7) provides details of the sanction that a person guilty of an offence under this section is liable for. Subsection (7)(a) provides that on summary conviction in England and Wales, a person is liable to a fine. Subsection (7)(b) provides that in Scotland, a person is liable to a fine not exceeding the statutory maximum. Subsection (7)(c) provides that on conviction on indictment, a person is liable to imprisonment for a term not exceeding seven years, a fine, or both.

385 Subsection (8) states that proceeding for an offence under this section may be instituted in England and Wales only by the Regulator or the Secretary of State, or by or with the consent of the Director of Public Prosecutions.

386 Subsection (9) defines “insolvency practitioner”.

#### S58B: Offence of conduct risking accrued scheme benefits

387 Subsection (1) of new section 58B states that this section applies to occupational pension schemes apart from money purchase schemes and other schemes as prescribed.

388 Subsection (2) provides that a person commits an offence under this section only if:

- a) the person does an act or engages in a course of conduct that detrimentally affects in a material way the likelihood of accrued scheme benefits being received,
- b) the person knew or ought to have known that the act or course of conduct would have that effect, and
- c) the person did not have a reasonable excuse for engaging in such conduct.

389 Subsection (3) sets out that a reference in this section to an act or a course of conduct includes a failure to act.

390 Subsection (4) states that any reference in this section to accrued scheme benefits being received means benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were scheme members before that time.

391 Subsection (5) defines “the relevant time” for the purposes of this section: the end of the period of time during which the conduct producing the detrimental effect continued or, in any other case, the time of the conduct.

392 Subsection (6) states that a reference in this section to rights which have accrued is to be read in accordance with sections 67A(6) and (7) of the Pensions Act 1995. Section 67 of the Pensions Act 1995 applies whenever a power to modify an occupational pension scheme is exercised to make a change which would, or might, adversely affect a member’s subsisting rights. Sections 67A(6) and (7) outline the meaning of subsisting rights. Subsisting rights means any entitlement to benefits, or right to future benefits, which a member has at that time under the scheme rules. Sections 67A(6) and (7) also outline the meaning of subsisting rights in respect of the survivor of a scheme member, and where the pensionable service of a member of an occupational pension scheme is continuing.

393 Subsection (7) provides that under this section, benefits that may be received under Chapter 3 of Part 2 and section 286 of the Pensions Act 2004 are to be disregarded. These are respectively benefits received under the Pension Protection Fund and the Financial Assistance Scheme.

394 Subsection (8) provides that the offence does not apply to a person who is acting in accordance with their function as an insolvency practitioner. “Insolvency practitioner” is defined in accordance with section 58A(9).

395 Subsection (9) provides details of the sanction that a person guilty of an offence under this section is liable for. Subsection (9)(a) provides that on summary conviction in England and Wales, a person is liable to a fine. Subsection (9)(b) provides that in Scotland, a person is liable to a fine not exceeding the statutory maximum. Subsection (9)(c) provides that on conviction on indictment, a person is liable to imprisonment for a term not exceeding seven years, a fine, or both.

396 Subsection (10) states that proceedings for an offence under this section may be instituted in England and Wales only by the Regulator or the Secretary of State, or by or with the consent of the Director of Public Prosecutions.

#### S58C: Financial penalty for avoidance of employer debt

397 Subsection (1) of new section 58C states that it applies to occupational pension schemes apart from money purchase schemes and other schemes as prescribed.

398 Subsection (2) enables the Regulator to issue a financial penalty under section 88A of the Pensions Act 2004 to a person for avoidance of employer debt. The subsection provides that the Regulator can issue the penalty if:

- a) the person was party to an act or failure where the main purpose was to:
  - (i) prevent the recovery of the whole or any part of a debt due from the employer under section 75 of the Pensions Act 1995,
  - (ii) prevent such a debt becoming due,
  - (iii) compromise or otherwise settle such a debt, or
  - (iv) reduce the amount of such a debt which would otherwise become due, and
- b) it was not reasonable for the person to act or fail to act in the way that the person did.

399 Subsection (3) provides that the penalty does not apply to a person who is acting in accordance with their function as an insolvency practitioner. "Insolvency practitioner" is defined in accordance with section 58A(9).

400 Subsection (4) sets out that, for the purposes of this section, a debt due under section 75 of the Pensions Act 1995 includes a contingent debt under that section

401 Subsection (5) further sets out that in the case of such a contingent debt, the reference in subsection 2(b), of this section, to preventing a debt becoming due is to be read as including a reference to preventing the occurrence of any of the events specified in section 75(4C)(a) or section 75(4C)(b) of the Pensions Act 1995 upon which the debt is contingent.

402 Subsection (6) of new section 58C outlines that for this section, parties to an act or deliberate failure to act include persons who knowingly assist in the act.

403 Subsection (7) of new section 58C provides that where the Regulator is of the opinion that a person was party to a series of acts or failures to act, and the requirements of subsection (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure in relation to which the requirements of subsection (2) are met.

#### S58D: Financial penalty for conduct risking accrued scheme benefits

404 Subsection (1) of new section 58D states that it applies to occupational pension schemes apart from money purchase schemes or other schemes as prescribed.

405 Subsection (2) enables the Regulator to issue a financial penalty under section 88A of the Pensions Act 2004 to a person for conduct risking accrued scheme benefits. The subsection provides that the Regulator can issue the penalty if:

- a) the person was party to an act or deliberate failure to act which detrimentally affected in a material way the likelihood of accrued scheme benefits being received,
- b) the person knew or ought to have known that the act or failure to act would have that effect, and,
- c) it was not reasonable for the person to act or fail to act in the way that the person did.

406 Subsection (3) provides that the offence does not apply to a person who is acting in accordance with their function as an insolvency practitioner. "Insolvency practitioner" is defined in accordance with section 58A(9).

407 Subsection (4) states that any reference in this section to accrued scheme benefits being received means benefits the rights to which have accrued by the relevant time being received by, or in respect of, the persons who were scheme members before that time.

408 Subsection (5) outlines that in this section, the relevant time means: the end of the period of time during which the conduct producing the detrimental effect continued or, in any other case, the time of the conduct.

409 Subsection (6) states that a reference in this section to rights which have accrued is to be read in accordance with sections 67A(6) and (7) of the Pensions Act 1995. Section 67 of the Pensions Act 1995 applies whenever a power to modify an occupational pension scheme is exercised to make a change which would, or might, adversely affect a member's subsisting rights. Sections 67A(6) and (7) specifically consider subsisting rights. Subsisting right means any entitlement to benefits, or right to future benefits, which a member has at that time under the scheme rules. Sections 67A(6) and (7) also outline the meaning of subsisting rights in respect of the survivor of a scheme member, and where the pensionable service of a member of an occupational pension scheme is continuing.

410 Subsection (7) provides that under this section benefits that may be received under Chapter 3 of Part 2 and section 286 of the Pensions Act 2004 are to be disregarded. These are respectively benefits received under the Pension Protection Fund and the Financial Assistance Scheme.

411 Subsection (8) outlines that for this section, parties to an act or deliberate failure to act include persons who knowingly assist in the act.

412 Subsection (9) provides that where the Regulator is of the opinion that a person was party to a series of acts or failures to act, and the requirements of subsection (2) are met in relation to the series, the series of acts or failures to act is to be regarded as an act or failure in relation to which the requirements of subsection (2) are met.

#### S58E: Sections 58C and 58D: partnerships and limited liability partnerships

413 Subsection (1) of new section 58E provides a regulation making power to enable the Secretary of State to modify any of the provisions mentioned in sections 58C and 58D in relation to a partnership or a limited liability partnership.

414 Subsection (2) of new section 58E sets out, for the purposes of this section, that "partnership" includes firm or entities set up under the law of a country outside the United Kingdom, and that references to partner are to be construed accordingly.

415 Subsection (3) of new section 58E sets out, for the purposes of this section, the meaning of a "limited liability partnership".

416 Subsection (4) of new section 58E outlines that this section is without prejudice to section 307 (power to modify this Act in relation to certain categories of scheme) and 318(4) (power to extend the meaning of "employer") of the Pensions Act 2004.

## **Collecting information**

### **Clause 108: Duty to notify the Regulator of certain events**

417 This section amends section 69 of the Pensions Act 2004.

418 Subsection (2) replaces the existing civil penalty under section 10 of Pensions Act 1995 (civil penalties) with a new financial penalty under section 88A of Pensions Act 2004 for failure to comply with the obligations imposed by section 69 of the Pensions Act 2004.

419 Subsection (3) amends section 80 of the Pensions Act 2004 to provide that it is an offence for trustees or managers of an occupational pension scheme, the employer in relation to the scheme (or a prescribed person) to knowingly or recklessly give the Regulator false or misleading information about a notifiable event.

## Clause 109: Duty to give notices and statements to the Regulator in respect of certain events

- 420 This section inserts a new section 69A into the Pensions Act 2004 which imposes a duty on employers and other prescribed persons to notify the Regulator about certain events relating to the sponsoring employer of a Defined Benefit occupational pension scheme.
- 421 Subsection (1)(a) of the new section 69A requires an appropriate person unless the Regulator has directed otherwise to provide a notice accompanied by a statement to the Regulator in circumstances to be prescribed by regulations. That statement will need to contain certain information which will be prescribed under subsection (8). This will include how any detriment to the pension scheme resulting from the event is to be mitigated, and a description of any communication with the trustees or managers of the eligible scheme about the event in question.
- 422 Subsection (1)(b) of new section 69A requires persons responsible for making a notice accompanied by a statement to report any material change to the intended event, or the effect of it, to the Regulator.
- 423 Subsection (1)(c) requires that, unless the Regulator has directed otherwise, in cases where a notice and accompanying statement have been provided, the appropriate person must notify the Regulator if the event is not going to take place or does not take place.
- 424 Subsection (2) provides for “notifiable event” to be defined in regulations that will describe the nature of the events that may be required to be reported.
- 425 Subsection (3) defines who is an appropriate person in relation to the requirement to notify the Regulator which includes the employer in relation to the scheme, a person connected with the employer and an associate of the employer, for example the parent of the employer. Subsection (3)(d) provides that this duty will also fall on other persons as prescribed in regulations.
- 426 Subsection (4) provides for the new term “material change” to be defined in regulations that will describe the nature of changes to certain events relating to the sponsoring employer of a Defined Benefit occupational pension scheme that may be required to be reported.
- 427 Subsections (5)(a) and (b) specify that the statement and notice of the notifiable event and any notifiable change must be given as soon as reasonably practicable after the person making it has become aware of the event or a material change to it.
- 428 Subsection (5)(c) requires that a notice about an event that is not going to, or did not, take place must be made as soon as reasonably practicable after the person required to send the notice becomes aware.
- 429 Subsection (6) sets out that regulations may provide for an earlier notification of a notifiable event or a material change to a notifiable event.
- 430 Subsection (7) specifies any notice of a notifiable event or a material change to a notifiable event must be accompanied by a statement.
- 431 Subsection (8) provides a power to make regulations setting out what information is to be included in the accompanying statement.
- 432 Subsection (9) illustrates the type of information that may be required in the statement made under the power at subsection (8).
- 433 Subsection (10) provides that where a person is required to send a notice and accompanying statement to the Regulator, the person must also give a copy of that notice and any accompanying statement to the trustees or managers of the eligible pension scheme.



- 434 Subsection (11) specify that notices must be in writing and any accompanying statement must be in writing.
- 435 Subsection (12) provides that anyone who makes a notification and statement under this section is protected in the event that making such a notice and statements would otherwise contravene any other duty imposed on that person. For example, a confidentiality section in an employment contract.
- 436 Subsection (13) applies the new financial penalty at section 88A of the Pensions Act 2004 for failures to comply with the obligations imposed by this section.
- 437 Subsection (14) defines connected persons for the purpose of those who may be required to provide a notice and accompanying statement to have the meaning given in section 249 of the Insolvency Act 1986. This subsection also defines associated persons for the purpose of those who may be required to provide a notice and accompanying statement to have the meaning given in section 435 of the Insolvency Act 1986 and section 229 of the Bankruptcy (Scotland) Act 2016.
- 438 Subsection (15) of the new section 69A provides that an “eligible scheme” under this section has the same meaning as under section 126 Pensions Act 2004. That is an occupational pension scheme which is eligible to be taken over by the Board of the Pension Protection Fund. This subsection also provides that “event” under this section includes a failure to act.
- 439 Subsection (3) of this section also amends section 80 of the Pensions Act 2004 to provide that it is an offence to knowingly or recklessly give the Regulator false or misleading information in a notice given under this section or the accompanying statement.

## Gathering information

### Clause 110: Interviews

- 440 This clause inserts a new section 72A into the Pensions Act 2004.
- 441 Subsections (1) and (2) of the clause amend the Pensions Act 2004 by inserting a new section 72A after section 72.

#### 72A Interviews

- 442 Subsection (1) of the new section 72A introduces a new power enabling the Regulator to issue notices to require any person who would be in the scope of a notice under section 72(2) of the Pensions Act 2004 to attend an interview.
- 443 Subsection (2) provides a regulation making power enabling the Secretary of State to specify the information to be contained in a notice issued under section 72A(1).
- 444 Subsection (3) of clause 110 repeals existing sections 72(1A) and (1B) of the Pensions Act 2004 which relate to a power to require persons to attend an interview with the Regulator concerning information provided in response to a section 72 notice in connection with the Regulator’s function relating to automatic enrolment and master trusts. This is because the new interview powers in new section 72A will apply to employer duties relating to these types of pension benefits.
- 445 Subsection (4) of clause 110 provides that not complying with the interview power under the new section 72A will be a criminal offence under section 77 of the Pensions Act 2004 in line with non-compliance with the Regulator’s existing section 72 powers.

### Clause 111: Inspection of premises

- 446 This clause amends section 73 of the Pensions Act 2004. It amends the range of premises that the Regulator can enter for the purposes of an inspection.

- 447 For an inspection to take place the Regulator must be investigating compliance with listed legislative provisions. Subsection (2) of the clause adds the Pension Schemes Act 2017 and part 1 of this Bill to that list.
- 448 Subsection (3) of the clause inserts a further provision into section 73 that permits the Regulator to carry out inspections of premises liable to inspection at any reasonable time if it is investigating whether it has grounds to issue a contribution notice, restoration order or financial support direction. Subsection (2)(f) provides that this inspection power also applies to the corresponding provision in Northern Ireland legislation.
- 449 Subsection (4) of the clause inserts new subsections (5A) and (5B) into section 73 of the Pensions Act 2004 which creates a new power for inspectors to carry out inspections of premises liable to inspection for compliance with relevant legislative provisions. Subsection (5B) provides a regulation making power to enable the Secretary of State to specify the legislative provisions that the Regulator may enter premises to investigate compliance.
- 450 Subsection (5) of the clause amends the range of premises that an inspector may enter for the purposes of an inspection by adding those where documents are held which relate to the business of the sponsoring employer or, in the case of a scheme other than a money purchase scheme, certain significant corporate transactions the employer undertakes (rather than just documents relating to the administration of the pension scheme) are held.
- 451 Subsection (6) of the clause inserts a new subsection (6A) into section 73 that the definition of ‘employer’ will be the definition which is relevant to the pension provision in question. It also inserts a new subsection (6B) to make it clear that the definition of ‘employer’ includes a previous employer in relation to the scheme.
- 452 Subsection (7) inserts a definition of pensions legislation for the purpose of the power at new section 73(5B).

## Clause 112: Fixed penalty notices and escalating penalty notices

- 453 This clause inserts two new sections, 77A and 77B into the Pensions Act 2004 to allow the Regulator to issued fixed and escalating civil penalties for non-compliance with the interview and inspection powers inserted or extended by clauses 110 and 111 and written notices for information issued under section 72 of the Pensions Act 2004.

### 77A: Fixed penalty notices

- 454 New section 77A(1) details when a fixed penalty notice may be issued. New subsection (2) explains what is a fixed penalty notice and the effect of the notice. Subsection (3) provides a regulation making power to enable the Secretary of State to set the level of the penalty at a rate not exceeding £50,000 and subsection (4) details information which must be included in the penalty notice.
- 455 Section 77A(5) sets out the review and appeal rights where a recipient wishes to challenge the penalty by applying the existing provisions in sections 42, 43 and 44 of the Pensions Act 2008 relating to the recovery of the penalty and the recipient’s rights to ask for review of the penalty notice or appeal to a tribunal. Subsection (6) provides that this section does not apply in a case if a fixed penalty under section 40 of the Pensions Act 2008 (automatic enrolment) or section 17 of the Pension Schemes Act 2017 (master trusts) is applicable.

### 77B Escalating penalty notices

- 456 New section 77B(1) details when an escalating penalty notice may be issued. New subsection (2) provides that where a person has exercised their right of referring the Regulator’s decision to issue a fixed penalty notice to a tribunal and the referral has not yet been determined, the

Regulator may not issue an escalating penalty notice. New subsection (3) explains what a fixed penalty notice is and the effect of the notice, subsection (4) explains that an escalating penalty is a penalty calculated by reference to a prescribed daily rate and subsection (5) provides a regulation making power to enable the Secretary of State to set the level of the penalty at a rate not exceeding £10,000 a day. New subsection (6) details information which must be included in the penalty notice.

457 New section 77B(7) sets out the review and appeal rights where a recipient wishes to challenge the penalty by applying the existing provisions in sections 42, 43 and 44 of the Pensions Act 2008 relating to the recovery of the penalty and the recipient's rights to ask for a review of the penalty notice or appeal to a tribunal. Subsection (8) makes it clear that this section does not apply in a case if an escalating penalty was issued under section 41 of the Pensions Act 2008 or section 18 of the Pension Schemes Act 2017.

## Provision of false or misleading information

### Clause 113: Provision of false or misleading information to Regulator

458 This clause amends the Pensions Act 2004 with the insertion of new section 80A, which enables the Regulator to issue a financial penalty to a person for providing false or misleading information to the Regulator.

#### 80A Financial penalty for providing false or misleading information to the Regulator

459 Subsection (1) of newly inserted section 80A provides that a person may be issued with a financial penalty under section 88A of the Pensions Act 2004 if the Regulator determines that a person has knowingly or recklessly provided the Regulator with information that is false or misleading in a material particular, and the information was provided in specified circumstances.

460 Subsection (2) sets out the circumstances in which the Regulator can exercise the power to issue the new financial penalty. Subsection (2)(a) details the sections of the Pensions Act 2004 that the information should be provided in purported compliance with. Subsection (2)(b) of section 80A states that an additional condition is that the information is provided in applying for registration of a pension scheme under section 2 of the Welfare Reform and Pensions Act 1999 (registration of stakeholder pension schemes).

461 Subsection (2)(c) details that the information is provided otherwise than as mentioned in paragraph (a) or (b) of this subsection, but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the Regulator for the purpose of exercising its functions under this the Pensions Act 1995, the Pensions Act 2004, the Pensions Act 2008, Schedule 18 to the Pensions Act 2014, the Pension Schemes Act 2017, or Part 1 of the Pension Schemes Act 2019.

### Clause 114: Provision of false or misleading information to trustees or managers

462 This clause amends the Pensions Act 2004 with the insertion of new section 80B, which enables the Regulator to issue a financial penalty to a person for providing false or misleading information to trustees or managers.

#### 80B Financial penalty for providing false or misleading information to trustees or managers

463 Subsection (1) of new section 80B states that this section applies to occupational pension schemes apart from those specified in subsections (1)(a) and (1)(b). Subsection (1)(a) states that the section does not apply to money purchase schemes. Subsection (1)(b) provides a regulation making power to enable the Secretary of State to specify other schemes that the section does not apply to.

464 Subsection (2) provides that a person may be issued with a financial penalty under section 88A of the Pensions Act 2004 if the Regulator determines that a person has knowingly or recklessly provided a trustee or manager of a non-money purchase scheme with information that is false or misleading in a material particular, and the information was provided in specified circumstances.

465 Subsection (3) details the circumstances in which the Regulator can exercise the power to issue the new financial penalty. Subsection (3)(a) of inserted section 80B details the sections of the relevant legislation which the information should be provided in purported compliance with.

466 Subsection (3)(b) of new section 80B provides that an additional condition is that the information is provided otherwise than as mentioned in subsection (3)(a) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that it would be used by the trustees or managers who receive it in that person's capacity as a trustee or manager of the scheme.

## Financial penalties

### Clause 115: Financial penalties

467 This clause amends the Pensions Act 2004 with the insertion of section 88A, which introduces a new financial penalty, section 88B, which outlines detail for the time for recovery of the financial penalty, and section 88C, which details how the financial penalty is to be recovered.

#### 88A Financial penalties

468 Subsection (1) of newly inserted section 88A enables the Regulator to issue a notice requiring a person to pay a specified penalty amount, within a specified time-frame, in relation to an act that person has done.

469 Subsection (2) states that the penalty is to be an amount determined by the Regulator, not exceeding a maximum of £1 million.

470 Subsection (3) provides a regulation making power to enable the Secretary of State to increase the maximum amount that a civil penalty can be issued under section 88A to an amount above £1 million.

471 Subsection (4) states that the minimum time-frame for compliance with the penalty notice is at least 28 days after the date on which the notice was issued.

472 Subsection (5) of section 88A provides that the notice must specify the legislative provision by virtue of which the penalty is imposed.

473 Subsection (6) details that this section applies in relation to a person where the Regulator determines that a penalty under this section may be imposed on a body corporate, and the act in question was done with the consent or willingness of a director, manager, secretary or other similar office of the body or a person purporting to act in any such capacity.

474 Subsection (7) provides that where the affairs of a body corporate are managed by its members, the new financial penalty introduced by this section will apply in relation to the acts of a member in connection with the member's functions of management, similar to a director of a body corporate.

475 Subsection (8) stipulates that section 88A applies in relation to a person where the Regulator determines that a penalty under this section may, apart from this subsection, be imposed on a Scottish partnership, and the act in question was done with the consent or willingness of a partner.

476 Subsection (9) provides that if the Regulator requires a person to pay a penalty under section 88A by virtue of subsection (6) or (8), the Regulator may not also require the body corporate or the Scottish partnership to pay a penalty in respect of the same act.

477 Subsection (10) details that the Regulator may not issue a notice for the new financial penalty in relation to an act if the person has been convicted of an offence in respect of the same act, or if criminal proceedings for the offence have been instituted and have yet to be concluded against the person in respect of the same act.

478 Subsection (11) states that the Regulator may not issue a notice under this section in respect of an act if the Regulator has required the person to pay a penalty under section 10 of the Pensions Act 1995 (civil penalties) in respect of the same act.

479 Subsection (12) of inserted section 88A provides that in this section, any references to “act” includes any omissions to act.

#### Section 88B Financial penalties: time for recovery

480 Subsection (1) of new section 88B provides that subsection (3) applies where

- a) the Regulator issues a notice under section 88A requiring a person to pay a penalty because of a determination by the Regulator under section 58C or 58D (financial penalty for avoidance of employer debt etc), and
- b) when the notice is issued, the person is subject to one or more contribution notices issued under section 38 (contribution notices where avoidance of employer debt).

481 Subsection (2) of section 88B states that subsection (3) does not apply if, when a notice under section 88A is issued, a qualifying insolvency event has occurred in relation to the person who is the employer in relation to the scheme and the penalty notice issued under section 88A relates to that employer.

482 Subsection (3) details that the Regulator may not take any step to recover the penalty specified in a notice under section 88A, and may not treat an amount received as payment or part payment of the penalty, until after the relevant date, or if sooner, the date on which the qualifying insolvency event occurs in relation to the person who is the employer in relation to the scheme and the penalty notice issued under section 88A relates to that employer.

483 Subsection (4) provides the meaning of “qualifying insolvency event” and “the relevant date”.

#### Section 88C Financial penalties: recovery

484 Subsection (1) of new section 88C provides that a penalty under new section 88A is recoverable by the Regulator.

485 Subsection (2) states that in England and Wales, the new financial penalty is, if the county court orders, recoverable under section 85 of the County Courts Act 1984.

486 Subsection (3) states that in Scotland, the new financial penalty is enforceable as if it were an order issued by the sheriff court

487 Subsection (4) stipulates that the Regulator must pay any recovered penalties into the Consolidated Fund.

## Supplementary

### Clause 116: Minor and consequential amendments

488 This clause gives effect to Schedule 7.

## Schedule 7 : Part 3: minor and consequential amendments

489 This schedule makes minor and consequential amendments to other relevant legislation following from the changes to the Regulator's powers.

## Northern Ireland

### Clause 117: The Pensions Regulator: Northern Ireland

490 This clause introduces Schedule 8, which contains provision for Northern Ireland corresponding to provision made for England, Wales and Scotland in clauses 103 to 116 and Schedule 7.

### Schedule 8: The Pensions Regulator: Northern Ireland

491 This Schedule makes provision for Northern Ireland similar to that made by Part 3 and Schedule 7.

### Part 1 Amendments of the Pensions (Northern Ireland) Order 2005

492 Part 1 of the Schedule makes provision for Northern Ireland similar to that made by clauses 103 to 116.

493 Paragraph 2 (grounds for issuing an Article 34 contribution notice) corresponds to clause 103. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

494 Paragraph 3 (reasonableness of issuing contribution notice) corresponds to clause 104.

495 Paragraph 4 (determination of sum specified in a contribution notice) corresponds to clause 105.

496 Paragraph 5 (sanctions for failure to comply with a contribution notice) corresponds to clause 106.

497 Paragraph 6 (sanctions for avoidance of employer debt etc) corresponds to clause 107. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

498 Paragraph 7 (duty to notify the Regulator of certain events) corresponds to clause 108.

499 Paragraph 8 (duty to give notices and statements to the Regulator in respect of certain events) corresponds to clause 109. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

500 Paragraph 9 (interviews) corresponds to clause 110. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

501 Paragraph 10 (inspection of premises) corresponds to clause 111. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

502 Paragraph 11 (fixed penalty notices and escalating penalty notices) corresponds to clause 112. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

503 Paragraph 12 (provision of false or misleading information to Regulator) corresponds to clause 113.

504 Paragraph 13 (provision of false or misleading information to trustees or managers) corresponds to clause 114. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

*These Explanatory Notes relate to the Pension Schemes Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 5)*

505 Paragraph 14 (financial penalties) corresponds to clause 115. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

## Part 2 Minor and Consequential Amendments

506 Part 2 of the Schedule makes provision for Northern Ireland similar to that made by Schedule 7.

507 Paragraph 15 corresponds to paragraph 1 of Schedule 7.

508 Paragraph 17 corresponds to paragraph 3 of Schedule 7.

509 Paragraph 18 corresponds to paragraph 4 of Schedule 7.

510 Paragraph 19 corresponds to paragraph 5 of Schedule 7.

511 Paragraph 20 corresponds to paragraph 6 of Schedule 7.

512 Paragraph 21 corresponds to paragraph 7 of Schedule 7.

513 Paragraph 22 corresponds to paragraph 8 of Schedule 7.

514 Paragraph 23 corresponds to paragraph 9 of Schedule 7.

515 Paragraph 24 corresponds to paragraph 10 of Schedule 7.

516 Paragraph 25 corresponds to paragraph 11 of Schedule 7. This paragraph amends Article 288 of the Pensions (Northern Ireland) Order 2005 which governs Assembly control of subordinate legislation.

517 Paragraph 26 corresponds to paragraph 12 of Schedule 7.

518 Paragraph 27 corresponds to paragraph 13 of Schedule 7.

519 Paragraph 29 corresponds to paragraph 15 of Schedule 7.

520 Paragraph 30 corresponds to paragraph 16 of Schedule 7.

## Part 4: Pensions Dashboards

### Clause 118 and 119 Pensions dashboards

521 These clauses amend the Pensions Act 2004 by inserting new sections in Part 4 (financial planning for retirement) of that Act. The inserted sections give the Secretary of State the power to make regulations to support the provision of pensions information to individuals who use certain pensions dashboard services or any pensions dashboard service provided by or on behalf of the Money and Pensions Service. Clause 118(2) introduces new sections 238A to 238C.

### Clause 118: Qualifying pensions dashboard service

#### 238A Qualifying pensions dashboard services

522 Subsection (1) sets out the meaning of a pensions dashboard service. It is an electronic communications service by which pensions information may be requested by, and provided to, an individual using the service.

523 Subsection (2) enables the Secretary of State to make regulations setting out that a pensions dashboard service must meet certain requirements if it is to be a qualifying pensions dashboard service. The duties imposed by new section 238D (information from occupational pension schemes) and new section 137FAA (information from personal and stakeholder

pension schemes) of the Financial Service and Markets Act 2000 (as inserted by this bill) apply where the pensions dashboard service meets the requirements for a qualifying pensions dashboard service. This is to ensure that the service meets certain conditions and standards before those responsible for a pension scheme are required to provide pensions information.

524 Subsection (3) provides that those requirements may, in particular, relate to what relevant or other information must be provided to the individual using the dashboard service, how and in what circumstances it must be provided, as well as requirements relating to how the service is established, maintained and operated.

525 Subsection (4) defines what is meant by “relevant information”. This is information set out in the regulations relating to state pensions, basic or additional retirement pension, to occupational or personal pension schemes, or to a particular description of such schemes. This may include information relevant to an individual’s state pension, occupational or personal pensions.

526 The regulation-making power in subsection (2) is further illustrated by subsection (5). The regulations may provide that the pensions dashboard service must comply with certain standards, specifications or technical requirements published by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations (subsection (5)(a)) or that the service provider must meet certain conditions (subsection (5)(b)). The regulations may further provide that a person operating a pensions dashboard service must be a person approved or authorised from time to time by a person or body described in this paragraph (subsection (5)(c)) or require the provider to provide or not to provide certain information, facilities or services in connection with the dashboard service (subsection (5)(d)).

527 As set out in the Government’s consultation response, the provision of pensions dashboard services will involve multiple parties, technical services and governance. This is made up of the supporting digital architecture which allows dashboards to work, the dashboards themselves (with which consumers interact) and a governance system which monitors the whole infrastructure.

528 Subsection (6) enables the regulations to allow for the making of determinations by Secretary of State, the Money and Pensions Service or a person specified or described in the regulations. This is to enable those identified in regulations to make decisions related to the establishment and running of pensions dashboard services and the related infrastructure.

#### 238B Qualifying pension dashboard service: further provision

529 This section supplements section 238A. In particular, subsection (1) provides that regulations under 238A(2) may impose requirements about how requests for information about pensions must be dealt with. This may include requirements about the format and presentation of data and the use of intermediaries to ensure the data is held in a compatible format for the purposes of matching and presentation. Section 238(1) further provides that the regulations may also impose requirements about the involvement of the dashboard service provider in arrangements for dealing with requests for pensions information.

530 Subsection (2) provides that regulations subsection (1) may, in particular, impose requirements concerning the use of electronic communications, for example networks designed to support qualifying pensions dashboard services and any pensions dashboard service provided by the Money and Pensions Service (subsection (2)(a)). Subsection (2) also makes it clear that the regulations may impose requirements concerning the use of facilities or services (subsection (2)(b)) or the provision of assistance in connection with establishing, maintaining or managing those facilities or services (subsection (2)(c)). The regulations may also provide that a qualifying pensions dashboard service must take part in arrangements for



establishing, maintaining and managing such facilities and services as enable a pensions dashboard service to function (subsection (2)(d)).

531 Subsection (3) clarifies that the facilities or services outlined in subsection (2)(b) above may include facilities or services designed for transmitting or authenticating information or for authenticating a person's identity. This is so that the pensions information provided in relation to the scheme is accurate and can be securely transmitted using a trusted electronic communications network.

532 Subsection (4)(a) goes on to provide that regulations under subsection (2)(b) may impose requirements as respects facilities or services which may include compliance with standards, specifications or technical requirements as are published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations. Subsection (4)(b) allows regulations to require that facility or service providers in relation to a pension dashboard service are approved by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations.

533 Subsection (5) makes it clear that regulations under subsection (2)(d) may, in particular, require the provider of the pensions dashboard service to co-operate, and to co-ordinate activities, with the Money and Pensions Service or a person specified or described in the regulations, and to enable them to monitor or audit compliance by the provider. This is to ensure that pensions dashboard services, which will be overseen or provided by the Money and Pensions Service, operate effectively and efficiently.

534 Subsection (6) enables the regulations to provide that a disclosure of information provided for by the regulations is not to be a breach of a duty of confidence or a breach of any other restriction on the processing of personal data. However, this is subject to subsection (7) which makes it clear that this does not extend to authorising or requiring the processing of personal data which would otherwise contravene the data protection legislation, as defined in the next section.

#### 238C Sections 238A and 238B: interpretation

535 This section sets out a series of definitions used for sections 238A and 238B.

536 Subsection (2) provides that "state pensions information" about an individual refers to the information set out in the section 42(7) of the Child Support, Pensions and Social Security Act 2000 or section 38(7) of the Child Support, Pensions and Social Security Act (Northern Ireland) 2000.

537 Subsection (3) makes it clear that any reference made to the Money and Pensions Service also includes those persons (known as "delivery partners") to whom the Money and Pensions Service has delegate functions under section 5 of the Financial Guidance and Claims Act 2018.

538 Subsection (4) defines what is meant by "additional retirement pension", "basic retirement pension", "the data protection legislation", "electronic communications service", "personal data" and "state pension".

539 Clause 118(3) amends section 316 of the Pensions Act 2004 and provides that any regulations that are made under the new section 238A, is subject to the affirmative resolution procedure.

#### **Clause 119: Information from occupational pension schemes**

540 Clause 119 (1) and (2) introduce sections 238D to 238F into the Pensions Act 2004.

#### 238D Information from occupational pension schemes

541 Subsection (1) of the inserted section 238D enables the Secretary of State to make regulations imposing requirements on the trustees or managers of a relevant occupational pension scheme in relation to the provision, by a qualifying pensions dashboard service, of pensions

information. “Relevant occupational pension scheme” is defined in section 238F. The regulations may also impose obligations on the scheme trustees or managers with respect to assisting a qualifying pensions dashboard service to provide this information. Subsection (1) also enables the regulations to impose similar requirements on the scheme trustees or managers with respect to any pensions dashboard service provided by the Money and Pensions Service.

542 Subsection (2) enables the regulations to specify the meaning of “pensions information” in relation to a relevant occupational pension scheme. This information may, in particular, include information about an individual’s rights and obligations under the scheme, the pensions and other benefits to which they are or may be entitled and information designed to help the individual find out if they are a member of the scheme or to understand the scheme.

543 Subsection (3) provides that regulations under subsection (1) may impose requirements relating to the provision of pensions information by the scheme trustees or managers. These include the persons to whom, and the manner, form and time in which, information must be provided and the steps to be taken before it is provided. For example, the regulations may provide that ID verification must be completed before any information is provided or that information must be in a certain electronic format.

544 Subsection (4) provides that the regulations may require the scheme managers or trustees to comply with standards, specifications or technical requirements as are published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in regulations, for example the Pensions Regulator.

545 Subsection (5) enables the regulations under subsection (1) to allow for the making of determinations by the Secretary of State, the Money and Pensions Service or a person specified in the regulations. This is to enable those identified in regulations to make decisions related to the establishment and running of pensions dashboard services and the related infrastructure.

546 Subsection (6) provides that regulations under subsection (1) may require the scheme trustees or managers to provide information about the carrying out by them of their requirements under this section to the Pensions Regulator, the Money and Pensions Service or a person specified or described in the regulations. This is, for example, to confirm the accuracy of data held and to support activity designed to help schemes provide data to dashboards and ongoing management information.

547 Subsection (7) enables the regulations to provide that the scheme trustees or managers must have regard to any guidance issued by the Secretary of State or a person specified or described in the regulations in complying with their responsibilities under this section.

#### 238E Information from occupational pension schemes: further provision

548 Subsection (1) provides that regulations under 238D(1) may make provision about the way pensions information is provided, which may include the use of intermediaries, for example, parties providing elements of the infrastructure such as the pension finder service under contractual arrangement with the Money and Pension Service. Subsection (1) also enables regulations to set out the arrangements that the scheme trustees or managers must make to deal with requests for information about pensions.

549 Subsection (2) makes it clear that regulations under subsection (1) may, in particular, impose requirements on the trustees or managers concerning the use of electronic communications networks, facilities or services. This is designed to support qualifying pensions dashboard services and any pensions dashboard service provided by the Money and Pensions Service. The scheme trustees or managers may also be required to provide assistance or to participate

in arrangements for establishing, maintaining and managing such facilities and services as enable a pensions dashboard service to function.

550 Subsection (3) clarifies that the facilities or services outlined in subsection (2)(b) may include facilities or services designed for transmitting or authenticating information and for verifying a person's identity. This is so that the pensions information provided in relation to the scheme is accurate and can be securely transmitted using a trusted electronic communications network.

551 Subsection (4)(a) goes on to provide that the regulations under subsection (2)(b) may require the trustees or managers to comply with requirements as regards the use of facilities or services which may include compliance with standards, specifications or technical requirements as are published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations. Subsection (4)(b) makes provision for the regulations to require that a person who is providing a facility or service used in connection with a pensions dashboard service must be approved by the Secretary of State, the Money and Pensions Service or a person specified or described in the regulations.

552 Subsection (5) provides that regulations under subsection (2)(d) may, in particular, require the trustees or managers to co-operate, and co-ordinate activities, with the Money and Pensions Service or a person specified or described in the regulations, for example to enable the collection of management information to enable audit activity such as the response times.

553 Subsections (6) and (7) make the same provision as respects the exercise of the regulation – making powers in section 238D(1) and processing of personal data as is found in section 238B.

#### 238F Sections 238D and 238E interpretation

554 Subsection (1) applies for the purposes of sections 238D and 238E.

555 Subsection (2) clarifies that any reference made to Money and Pensions Service also applies to those with whom that the Money and Pensions Service have made arrangements to act as delivery partners.

556 Subsection (3) defines what is meant by “the data protection legislation”, “pension dashboard service”, “personal data”, “qualifying pensions dashboard service” and “relevant occupational pension scheme”.

#### 238G Compliance

557 The new inserted subsection 238G(1) enables the Secretary of State to make provision in regulations for ensuring compliance with the duties imposed on the trustees or managers of a relevant occupational pension scheme in regulations made under section 238D. In section 238G, the Regulator refers to the Pensions Regulator (see Part 1 of the Pensions Act 2004 Act).

558 Subsection (2) provides that regulations may (amongst other things) make provision for the imposition of compliance notices, penalty notices, and for the making of appeals. They may also confer additional functions on the Regulator.

559 Subsection (3) provides that regulations may determine the amount or maximum amount of penalty, which must not exceed £5000 in the case of an individual or £50,000 in any other case (subsection (4)).

560 Subsection (5) explains that “a relevant occupational pension scheme” is as defined in 238D(6).

561 Clause 119 (3) amends section 316 of the Pensions Act 2004 with the effect that any regulations that are made under sections 238D or 238G of that Act are subject to the affirmative resolution procedure.

## Clause 120: Pensions Dashboards: Northern Ireland

562 This clause introduces Schedule 9 which contains provision for Northern Ireland corresponding to provision made for England, Wales and Scotland set out in clauses 118 and 119.

### Schedule 9: Pensions dashboards: Northern Ireland

563 This Schedule makes provision for Northern Ireland similar to that made by Part 4, clauses 118 and 119.

564 Paragraph 2 (qualifying pensions dashboard service) corresponds to clause 118.

565 Paragraph 3 (information from occupational pension schemes) corresponds to clause 119.

566 These paragraphs amend the Pensions (Northern Ireland) Order 2005 by inserting new Articles after Article 215 of the Pensions (Northern Ireland) Order 2005. They allow the Department for Communities in Northern Ireland to make regulations which are designed to support the provision of pensions information to individuals who use certain pensions dashboard services or a pensions dashboard service provided by or on behalf of the Money and Pensions Service. This includes setting out the requirements for providing such services.

567 Paragraph 4 (Admissibility of statements) corresponds to clause 119(3).

568 Paragraph 5 (Assembly control of regulations) corresponds to clause 119(4). This paragraph amends Article 288 of the Pensions (Northern Ireland) Order 2005 and provides that any regulations that are made in respect of the new Articles 215A, 215D and 215G are subject to the confirmatory procedure.

## Clause 121: Information from personal and stakeholder pension schemes

569 This clause amends the Financial Services and Markets Act 2000 (“FSMA”) by inserting three new sections section 137FAA, 137FAB & 137FAC, into that Act. These new sections set out the requirement that, subject to certain exceptions, the Financial Conduct Authority must exercise its general rule making powers to make rules in relation to personal pension schemes and certain stakeholder pension schemes with respect to the provision of pensions dashboard services.

### 137FAA Financial Conduct Authority general rules: pensions dashboards

570 Subject to certain exceptions (which are provided for in section 137FAB), section 137FAA(1) requires the Financial Conduct Authority to exercise its general rule making powers in section 137A of FSMA to impose requirements on certain persons with respect to the provision, by a qualifying pensions dashboard service or any dashboard service provided by the Money and Pensions Service, of pensions information. The rules must (subject to exceptions) also impose requirements on such persons with respect to assisting a qualifying pensions dashboard service or any pensions dashboard service provided by the Money and Pensions Service to provide this information.

571 The requirements apply to persons authorised by the Authority and specified in the rules (see section 137FAC for the meaning of “specified authorised persons”). The intention is that the rules will apply to the person who is authorised under Part 4A of FSMA to operate a personal pension scheme or a stakeholder pension scheme.

572 Subsection (2) enables rules to specify the meaning of “pensions information” in relation to a personal pension or a stakeholder pension scheme. This information may, in particular, include information about an individual’s rights and obligations under the scheme, the pensions and other benefits to which they are or may be entitled and information designed to help the individual find out if they are a member of the scheme or to understand the scheme.

- 573 Subsection (3) provides that rules may impose requirements relating to the provision of pensions information to the individual, by authorised persons. These include the persons to whom, and the manner and form in which, information must be provided and the steps to be taken before it is provided. For example, the rules may provide that ID verification must be completed before any information is provided or that information must be in a certain electronic format.
- 574 Subsection (4) provides that the rules may require specified authorised persons to comply with standards, specifications or technical requirements as are published by the Secretary of State, the Money and Pensions Service or a person specified or described in rules.
- 575 Subsection (5) enables the rules to allow for the making of determinations by the Secretary of State, the Money and Pensions Service or a person specified or described in rules.
- 576 Subsection (6) provides that rules may require specified authorised persons to provide information about the carrying out by them of their requirements under this section to the Financial Conduct Authority, the Money and Pensions Service or a person specified or described in the rules. This is for example, to confirm the accuracy of data held and to support activity to help schemes provide data to dashboards and ongoing management information.
- 577 Subsection (7) enables rules to provide that specified authorised persons must have regard to any guidance issued from time to time by persons specified or described in the rules in complying with their responsibilities under this section.
- 578 Subsection (8) specifies that the Financial Conduct Authority must have regard to any regulations made under 238D of the Pensions Act 2004 or any corresponding provision in force in Northern Ireland in determining what should be included within the rules.

#### 137FAB Pensions dashboards: further provision

- 579 This section makes further provision in relation to the rules under section 137FAA(1). Subsection (1) provides that rules may, in particular, impose requirements on specified authorised persons to provide pensions information in a particular way and concerning the arrangements for dealing with requests for this information. This may include the format and the use of intermediaries, for example, parties providing elements of the infrastructure including under contractual arrangements with the Money and Pension Service.
- 580 Subsection (2) provides that rules may, in particular, impose requirements on specified authorised persons concerning the use of electronic communications networks, facilities or services. This is designed to support qualifying pensions dashboard services and any pensions dashboard service provided by the Money and Pensions Service. The authorised person may also be required to provide assistance or to participate in arrangements for establishing, maintaining and managing such facilities and services as enable a pensions dashboard service to function.
- 581 Subsection (3) further clarifies that the services and facilities outlined in subsection (2)(b) above may include facilities or services designed for transmitting or authenticating information and for verifying a person's identity. This is so that the pensions information provided in relation to the scheme is accurate and can be securely transmitted using a trusted electronic communications network.
- 582 Subsection (4)(a) makes it clear that that rules under subsection (2)(b) may impose requirements as regards facilities or services which may include compliance with standards, specifications or technical requirements published from time to time by the Secretary of State, the Money and Pensions Service or a person specified or described in the rules. Subsection (4)(b) provides that the rules may require that a facility or service provider in relation to a

pension dashboard service is approved by the Secretary of State, the Money and Pensions Service or a person specified or described in the rules.

583 Subsection (5) makes it clear that rules under subsection (2)(d) may require authorised persons to co-operate, and to co-ordinate activities, with the Money and Pensions Service or a person specified or described in the rules. This is to ensure that pensions dashboard services, which will be overseen or provided by the Money and Pensions Service, operate effectively and efficiently.

584 Subsections (6) and (7) make the similar provision as respects the processing of personal data to that in section 238D(1) of the Pensions Act 2004.

#### 137FAC Sections 137FAA and 137FAB: supplementary

585 Subsection (1) provides that the Financial Conduct Authority must consult the Secretary of State and HM Treasury before publishing a draft of the rules.

586 Subsection (2) provides that section 137AA is not to be treated requiring the Financial Conduct Authority to make general rules by virtue of that section which come into force before regulations under section 238D of the Pensions Act 2004 are in force.

587 Whilst section 137FAA imposes a duty on the Financial Conduct Authority to make rules, subsection (3) makes it clear that this is not to be taken as requiring the Authority to make rules in every case to which the power extends. This is so that provision may be made for exceptions, for example where a personal pension scheme has very few members, or to allow for a phased introduction so that the requirements apply to some schemes before others.

588 Subsection (4) clarifies that any reference made to the Money and Pensions Service also applies to those with whom the Money and Pensions Service have made arrangements to act as delivery partners.

589 Subsection (5) provides for definitions relevant to newly inserted sections 137FAA and 137FAB, including definitions of “pensions dashboard service”, “personal pension scheme”, “qualifying pensions dashboard service”, “specified authorised person” and “stakeholder pension scheme”.

590 Clause 121(3) makes an amendment to section 138F of FSMA whereby the Financial Conduct Authority will not be required to notify the Bank of England about rules made under section 137FAA in regards to pensions dashboards.

#### **Clause 122: The Money and Pensions Service the pensions guidance function**

591 Clause 122 inserts a new section 4A after section 4 in the Financial Guidance and Claims Act 2018.

592 The pensions guidance function of the Money and Pensions Service is to provide, to members of the public free and impartial information and guidance relating to occupational and personal pensions (see section 3 of that Act).

593 Subsection (1) of new section 4A makes it clear that the Money and Pension Service may, nonetheless, as part of its pensions guidance function provide information about state pensions, including information relating to an individual, and information about basic and additional retirement pension by means of a pensions dashboard service. It also makes it clear that it may, as part of its pensions guidance function, carry out the functions in relation to pensions dashboard services for which provision is made in regulations or FCA rules as the result of the new sections introduced in this Part of the Bill.

594 Subsection (2) makes it clear that subsection (1) is without prejudice to certain of the Money and Pensions Services' other functions.

595 Subsection (3) concerns definitions relevant to section 4A.

## Part 5: Further provision relating to pension schemes

### Scheme funding

#### Clause 123: Funding of defined benefit schemes

596 Clause 123 introduces Schedule 10 to the Act which provides for amendments to the statutory framework for defined benefit pension scheme funding set out in Part 3 of the Pensions Act 2004.

#### Schedule 10: Funding of defined benefit schemes

##### Background

597 The White Paper *Protecting Defined Benefit Pension Schemes* proposed a package of measures to deliver clearer more enforceable scheme funding standards in order to better protect members' pensions. These amendments deliver the measures proposed in the White Paper.

##### 221A Funding and Investment Strategy

598 Paragraph 2 inserts a new section 221A into the Pensions Act 2004.

599 Subsection (1) of section 221A imposes a duty on trustees or managers to have a funding and investment strategy for the purpose of ensuring pensions and other scheme benefits to and in respect of members can be paid over the long term. In the White Paper we described this as a long term objective for the scheme.

600 Subsection (2) of section 221A sets out what the strategy must cover, including the planned "funding level" of the scheme on the relevant date or dates, and the planned investments to be held by the scheme on those dates.

601 Subsection (3) makes clear that the funding level is the ratio of assets to liabilities and provides for regulations to set out how "relevant date" is determined.

602 Subsection (4) makes provision for regulations which may make provision:

- to require trustees or managers to take into account prescribed matters and follow prescribed principles when determining the funding and investment strategy relating to the scheme. For example, the regulations may require information in relation to the scheme's maturity, whether it is open or closed and the financial strength of the sponsoring employer. Factors such as these will affect the timeframe, funding levels and investments which are held;
- for the level of detail required in the strategy;
- to set how long trustees have to determine their strategy; and
- to specify when trustees should review and if necessary revise their strategy – for example, the regulations could be used to require trustees to review their strategy annually.

603 Subsection (5) makes clear the matters and principles trustees may be required to take into account includes the actuarial methods or assumptions used to determine the funding level.

604 Subsection (6) means that trustees who do not have a funding and investment strategy which complies with the requirements in new section 221A could be subject to a civil penalty where

they have not taken all reasonable steps to ensure compliance: this could be up to £5,000 for individuals and up to £50,000 for organisations.

### 221B Statement of strategy

605 Paragraph 2 also inserts new section 221B into the Pensions Act 2004.

606 Subsection (1) of 221B requires trustees to prepare a written statement, defined as a “statement of strategy”, setting out the scheme’s funding and investment strategy itself and supplementary matters. In the White Paper this was referred to as a “DB Chair’s Statement”.

607 Subsection (2) sets out the supplementary matters to be included in the statement. These are:

- the trustees’ assessment of whether the funding and investment strategy is being successfully implemented, or any remedial action they intend to take, to get the strategy back on course;
- the key risks and mitigations for implementation; reflections on any key decisions trustees have taken and lessons learned; and other prescribed matters, which may include a view of the sponsoring employer.

608 Subsection (3) does three things:

- defines the written statement required under subsection (1) of 221B as a “statement of strategy”;
- makes clear Part 1 of the statement of strategy is to cover the funding and investment strategy; and
- Part 2 of the same statement is to cover the supplementary matters.

609 Subsection (4) requires trustees or managers to regularly review and where necessary revise Part 2 of the statement of strategy and on occasions which may be prescribed in regulations.

610 Subsection (5) requires trustees or managers to consult the employer when preparing the supplementary matters to be included in the statement of strategy.

611 Subsection (6) requires the chair of the trustees to sign the statement of strategy on behalf of the scheme trustee board. Regulations may require a person to meet prescribed conditions to be appointed chair.

612 Subsection (7) requires the trustee board to appoint a Chair if they do not already have one.

613 Subsection (8) provides that regulations may be made to:

- require the trustees or managers to take account of prescribed matters and follow prescribed principles when preparing Part 2 of the statement of strategy;
- ensure sufficient detail is included in Part 2 of the statement for example to explain trustees’ decision making and to support the Pensions Regulator in their regulatory enforcement;
- require trustees to provide the information required in the statement in a particular form i.e. a template;
- set out when, and the occasions on which trustees must send the statement to the Regulator – for example to ensure the statement is submitted every three years with the



actuarial valuation, or to ensure a revised statement is submitted following a direction from the Regulator to the scheme to revise their funding and investment strategy.

614 Subsection (9) provides that trustees who do not comply with these requirements can be subject to the section 10 Pensions Act 1995 civil penalty where they fail to take all reasonable steps to secure compliance.

#### Amending the Statutory Funding Objective

615 The statutory funding objective requires schemes to have sufficient and appropriate assets to cover its technical provisions (section 222 Pensions Act 2004).

616 Paragraph 3 of Schedule 10 inserts new subsection (2A) into section 222 of the 2004 Pensions Act so that the calculation of the scheme's technical provisions is consistent with the scheme's funding and investment strategy as set out in the scheme's statement of strategy.

#### Requirements in relation to actuarial valuations and reports

617 Paragraph 4 of Schedule 10 amends section 224 of the Pensions Act 2004. It inserts subsection (7A) to require trustees to send to the Regulator as soon as practicable, an actuarial valuation (full report) prepared for the purposes of Part 3 of the Pensions Act 2004, together with any other prescribed information. Other prescribed information may include the statement of funding principles, the statement of investment principles and, as noted, the statement of strategy.

618 The amendment at sub-paragraph (3) provides that trustees who do not comply with the requirements under subsection (7A) can be subject to the section 10 of the Pensions Act 1995 civil penalty where they fail to take all reasonable steps to secure compliance.

#### Recovery plan

619 Paragraph 5 amends section 226 Pensions Act 2004 so that regulations can set out the matters to be taken into account, or the principles to be followed, in determining whether a recovery plan is appropriate for the purposes of subsection (3) having regard to the nature and circumstances of the scheme. These may include matters such as the length of time taken by trustees to meet the statutory funding objective, taking into account whether the sponsoring employer can afford to pay more into the scheme.

#### Matters requiring agreement of employer

620 Paragraph 6 amends section 229 of the Pensions Act 2004 to require the trustees or managers to obtain the sponsoring employer's agreement to the funding and investment strategy (as defined in section 221A).

#### Powers of the Regulator

621 Paragraph 7 amends section 231 of the Pensions Act 2004 so as to make provision regarding the action the Pensions Regulator can take when trustees do not comply with the requirements relating to the funding and investment strategy (set out in this Act and any subsequent regulations). Subparagraph (3) inserts paragraph (aa) at subsection (2) which provides that the Regulator may direct trustees or managers to revise the scheme's funding and investment strategy in accordance with the direction.

622 Part 2 of Schedule 10 contains minor and consequential amendments to the Pensions Act 2004. Paragraph 9 amends section 60 so that the full name and address of any chair of the trustees is registrable information. Paragraph 10 amends section 80 so that the offence under that section covers information provided in the statement of strategy under new section 221B. Paragraph 11 amends section 316 which governs Parliamentary control of subordinate legislation.

## Transfer rights

### Clause 124: Exercise of right to cash equivalent

- 623 Clause 24 places conditions on the right of a member to transfer their accrued pension rights to a different pension scheme and to protect members falling victims to pension scams. This right is set out in Chapter 1 of Part 4ZA and Chapter II of Part IVA of the Pension Schemes Act 1993 (sections 93-101P).
- 624 Subsection (2) amends section 95 of the Act by inserting new subsections (6ZA) and (6ZB). New subsection (6ZA) provides a power to make regulations so that a member will only have a right to transfer if certain conditions prescribed in regulations are met.
- 625 New subsection (6ZB) provides a list of conditions that the regulations may prescribe including (but not limited to), under paragraph (a), a member's employment or residency. Under paragraph (b), the regulations can make it a condition to provide the trustees or managers of the occupational pension schemes with information or evidence about the member's employment or residence. Evidence relating to the member's employment may include (but may not be limited to) payslips, which will help establish a genuine employment link between the member and the employer of the scheme the member wants their pension benefits to be transferred into.
- 626 Subsections (3), (4) and (5) make provision in relation to situations where conditions under new subsection (6ZA) or (101F(5A)) have not been satisfied.
- 627 Subsection (3) amends section 98 by inserting a reference to new section 99(2ZA) into subsection (2) so that the member loses the right to take a cash equivalent where the duty on the trustees is extinguished because a condition prescribed under new section 95(6ZA) is not met.
- 628 Subsections (4) and (5) insert new subsections (2ZA) and (2ZB) respectively into section 99. Subsection (2ZA) exempts the trustees or managers of the occupational pension scheme from having to comply with the time period for facilitating a member's request to transfer their pension benefits to another scheme if a condition prescribed under new subsection (6ZA) of section 95 is not met. Subsection (2ZB) exempts the trustees or managers of the occupational pension scheme from having to comply with the time period for facilitating a member's request to transfer their pension benefits to another scheme (where the member was required by section 96(4) to give a transfer notice under section 101F(1) in addition to making a transfer application) because the conditions prescribed in regulations made under new subsection (5A) of section 101F have not been met.
- 629 Section 101F (power to give transfer notice) sets when a trustee or manager of a qualifying scheme must facilitate a member's request to transfer their pension credit benefit. Subsection (6) amends section 101F by inserting new subsections (5A) and (5B). New subsection (5A) provides a power to make regulations so that a member will only have the right to transfer their pension credit benefit if certain conditions prescribed in regulations are met. New subsection (5B) provides examples of the conditions which the regulations may prescribe. They include, but are not limited to, conditions about employment and place of residence.
- 630 Section 101J (time for compliance with transfer notice) deals with the time period within which trustees or managers must facilitate a member's request to transfer their pension credit benefit. Subsections (7) and (8) amend section 101J by inserting new subsection (2AA) and (2AB) respectively. New subsection (2AA) exempts trustees or managers from having to comply with the time period for facilitating a member's request to transfer their pension credit benefit if a condition prescribed under new subsection (5A) of section 101F is not met.

631 Subsection (7) inserts new subsection (2AB) in section 101J to exempt the trustees or managers from having to comply with the time period for facilitating a member's request to transfer their pension credit benefit if the conditions prescribed in regulations made under section 95(6ZA) have not been met, where the member was required by section 101G(4) to make an application under section 95(1) in addition to giving a transfer notice.

## The Pension Protection Fund

### Clause 125: Modification of provisions relating to pensionable service

632 The compensation to which an individual is entitled from the Pension Protection Fund is determined in accordance with Schedule 7 to the 2004 Pensions Act and regulations made under it. "Pensionable service" (see paragraph 36 of Schedule 7) is fundamental to the calculation of pension compensation. Amongst other things, it governs the compensation payable to those under their scheme's normal pension age, the total benefits which are subject to the compensation cap and the payment of survivors' benefits indexation and revaluation.

633 The policy intent, and the Pension Protection Fund practice, is, and has always been, that a pension which arose by virtue of a transfer payment to the scheme, where the initial amount of the pension was determined at the time of the transfer payment, is treated as attributable to the person's pensionable service. But, in the case *Anthony Beaton v the Pension Protection Fund* [[2017] EWHC 2623], the High Court decided that, when applying the compensation cap (see paragraph 26 of Schedule 7), benefits derived from such a transfer-in could not be said to be attributable to pensionable service and could not be aggregated.

634 The amendments made to the Pension Protection Fund (Compensation) Regulations 2005 (S.I. 2005/607) and the Pension Protection Fund Multi-employer Regulations 2005 (S.I. 2005/441) by the Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) Amendment and Modification Regulations 2018 (S.I. 2018/988) ("the 2018 Regulations") restore the policy intent prospectively. They enable a fixed pension to be treated as pensionable service for the purposes of calculating Pension Protection Fund compensation, except when aggregating benefits for the compensation cap. The Regulations do not apply to the cap following the CJEU decision in the case of the *Grenville Hampshire v the Board of the Pension Protection Fund* (C-17/17). This provided that individuals are entitled to receive compensation to at least 50% of the value of their accrued pension entitlement from the Pension Protection Fund (see the Explanatory Notes to the 2018 Regulations).

635 Subsection (1) remedies certain consequences of the *Beaton* judgement so that the legislation supports the policy intent and past practice. It does this by treating the amendments made to the Pension Protection Fund (Compensation) Regulations 2005 by the 2018 Regulations as if those amendments always had effect so far as they apply to the Pensions Protection Fund, thereby covering payments which have already been made since the Pension Protection Fund was established.

636 Sub-section (2) makes similar provision in relation to the definition of pensionable service in the Pension Protection Fund Multi-employer Regulations 2005 (It achieves this by treating the amendment made to those Regulations by the 2018 Regulations 2018 as if that amendment always had effect).

637 The amendments made by subsection (1) form part of the law of Great Britain and also apply to Great Britain. The amendment in subsection (2) forms part of the law of the United Kingdom but its territorial application is to Great Britain. This is consistent with the territorial application of the Pension Protection Fund Multi-employer Regulations 2005.

## Administration charges

### Clause 126: Administration charges

638 Schedule 18 to the Pensions Act 2014 allows the Secretary of State to make regulations which limit or prohibit particular types of administration charges in relation to pension schemes specified in the regulations. Section 1 of the Welfare Reform and Pensions Act 1999 (“the 1999 Act”) sets out the conditions that must be met by a stakeholder pension scheme. These include that the scheme complies with such requirements as are set out in regulations concerning deductions from members’ pension funds in respect of charges and expenses.

639 “Administration charge” is defined in Schedule 18 to the Pension Act 2014. Subsection (2) of this clause amends the definition to make it clearer which charges are in scope of the definition. The effect of the amendments is that an “administration charge”, in relation to a member of a pension scheme, means any use of the scheme’s assets to meet the administrative expenses of the scheme, to pay commission or in any other way, that does not constitute the member drawing their pension benefits, or moving their savings to acquire pension rights in in a different scheme. Subsection (1) makes similar amendments in relation to the description of administration charges in subsection (5) of section 1 of the 1999 Act (meaning of “stakeholder pension scheme”).

640 Subsection (3) amends subsections (6)(b) and (7) of Section 113 of the Pension Schemes Act 1993 (disclosure of information about schemes to members) and subsection (4) amends subsections (3)(b), (4) and (7) of Section 137FA of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about pension scheme transaction costs etc) to make clear that transaction costs are a type of administration charge.

## Categories of pension schemes

### Clause 127: Pension Schemes Act 2015: repeals

641 This clause repeals uncommenced sections of the Pension Schemes Act 2015 which have been superseded by the provisions in Part 1 of the Bill.

## Northern Ireland

### Clause 128: Further provision relating to pension schemes: Northern Ireland

642 This clause introduces Schedule 11 which contains provision for Northern Ireland corresponding to provision made for England, Wales and Scotland set out in clauses 124 to clause 127 and Schedule 10.

### Schedule 11: Further provision relating to pension schemes: Northern Ireland

643 This Schedule makes provision for Northern Ireland similar to that made by Schedule 10 and Part 5.

#### Part 1 Funding of defined benefit schemes

644 Part 1 of the Schedule makes provision for Northern Ireland similar to that made by Parts 1 and 2 of Schedule 10.

645 The paragraphs in Part 1 of Schedule 11 correspond to the paragraphs of the same number in Schedule 10. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

#### Part 2 Other provision

646 Part 2 of the Schedule makes provision for Northern Ireland similar to that made by Part 5, clauses 124 to clause 127.

*These Explanatory Notes relate to the Pension Schemes Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 5)*

647 Paragraph 12 (transfer rights: exercise of right to cash equivalent) corresponds to clause 124. The power to make regulations contained in amendments made by this paragraph vests in the Department for Communities in Northern Ireland.

648 Paragraph 13 (the Pension Protection Fund: modification of provisions relating to pensionable service) corresponds to clause 125.

649 Paragraph 14 (administration charges) corresponds to clause 126.

650 Paragraph 15 (categories of pension schemes: repeal of provisions of Pension Schemes Act (Northern Ireland) 2016) corresponds to clause 127.

651 This paragraph repeals uncommenced provisions of the Pension Schemes Act (Northern Ireland) 2016 which have been superseded by the provisions in Part 2 of the Bill.

## **Part 6: Final**

### **Clause 129: Extent**

652 This clause sets out the extent of the Bill. More detail is given on page 13 and at Annex A of these notes. Subsection (4) provides that amendments or repeals made by this Bill to other enactments have the same extent as the enactment concerned.

### **Clause 130: Commencement**

653 This clause makes provision for the coming into force of the Bill. Subsection (3) sets out the provisions which will come into force on the day the Bill is passed. Subsection (2) sets out the provisions which will come into force on the day that the Department for Communities in Northern Ireland will appoint by order. The remainder of the Bill will come into force on the day appointed in regulations made by the Secretary of State (subsection 1). Subsections (4) to (8) make further provision regarding regulations and orders under this clause.

### **Clause 131: Short title**

654 This section states that the Act may be cited as the Pension Schemes Act 2019

## Commencement

655 The act comes into force on the day appointed by the Secretary of State, subject to subsections (2) and (3).

656 Subsections (2) and (3) provide as follows:

- (a) Subsection (2) lists provisions that come into force on a day appointed by order by the Department for Communities in Northern Ireland.
- (b) Subsection (3) lists provisions that come into force on the day on which this Bill is passed as an Act.

## Financial implications of the Bill

657 The Bill imposes various functions on the Pensions Regulator. These new functions may involve increased expenditure. But its funding is recovered by a levy on eligible pension schemes so there will be no impact on DWP expenditure.

658 The provisions on pension dashboards in Part 4 enable the conferring of a number of new powers and functions on the Money and Pensions Service, which is the name of the single financial guidance body in the Financial Guidance and Claims Act 2018, and the Secretary of State. The additional powers and functions of the Money and Pensions Service may involve increased expenditure. But its funding is recovered by two levies. One is a levy on eligible pension schemes and the second is a levy paid by the financial sector. If any additional functions provided for under Part 4 are conferred on the Secretary of State, there may be some impact on DWP expenditure.

## Parliamentary approval for financial costs or for charges imposed

659 This section will be completed when the Bill transfers to the House of Commons.

## Compatibility with the European Convention on Human Rights

660 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act).

661 In the opinion of Baroness Stedman-Scott the provisions of the Bill are compatible with the Convention rights and she has made a statement to this effect.

## Related documents

662 The following documents are relevant to the Bill and can be read at the stated locations:

- Protecting defined benefit pension schemes March 2018: <https://www.gov.uk/government/publications/protecting-defined-benefit-pension-schemes>
- Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator - June 2018: <https://www.gov.uk/government/consultations/protecting-defined-benefit-pension-schemes-a-stronger-pensions-regulator>
- Green Paper - Security and Sustainability in Defined Benefit Pension Schemes – February 2017: <https://www.gov.uk/government/consultations/defined-benefit-pension-schemes-security-and-sustainability>
- Delivering collective defined contribution pension scheme March 2019: <https://www.gov.uk/government/consultations/delivering-collective-defined-contribution-pension-schemes>
- Pensions dashboards: feasibility report and consultation: <https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation>
- Pension scams August 2017: <https://www.gov.uk/government/consultations/pension-scams>

## Annex A – Territorial extent and application in the United Kingdom

663 The provisions of this Bill extend to England and Wales and Scotland only, subject to the following exceptions:

- Part 2, clauses 117, 120, and 128, and Schedules 4, 5, 6, 8, 9 and 11 extend to Northern Ireland; and
- Part 6 and clause 125(2) extend to England and Wales, Scotland and Northern Ireland.

664 The Bill also contains amendments to certain Acts that extend and apply to England and Wales, Scotland and Northern Ireland, including the Building Societies Act 1986, the Financial Services and Markets Act 2000 and the Financial Guidance and Claims Act 2018.



Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1 – Collective Money Purchase Benefits	Yes	Yes	Yes	No	No	No	Not applicable	No, GB clauses only
Part 2 – Collective Money Purchase Benefits: Northern Ireland	No	No	No	Yes	Not applicable	Not applicable	Yes	Yes <sup>12</sup>
Part 3 – The Pensions Regulator	Yes	Yes	Yes	Yes (clause 117 only and Schedule 8)	No	No	As above for clause and Schedule applying to Northern Ireland	As above for clause and Schedule applying to Northern Ireland
Part 4 – Pensions Dashboards	Yes	Yes	Yes	Yes (clause 120 only and Schedule 9)	No	No	As above for clause and Schedule applying to Northern Ireland	As above for clause and Schedule applying to Northern Ireland
Part 5 – Further provision relating to pension schemes	Yes	Yes	Yes	Yes (clause 128 only and Schedule 11)	No	No	As above for clause and Schedule applying to Northern Ireland	As above for clause and Schedule applying to Northern Ireland

<sup>12</sup> The Department for Work and Pensions in Westminster and the Department for Communities in Northern Ireland have agreed for the Department for Work and Pensions to bring forward legislation for Northern Ireland that corresponds with the GB measures; and that on restoration of the functioning of the Northern Ireland Assembly, a Legislative Consent Motion will be required.

<b>Provision</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Extends and applies to Scotland?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Would corresponding provision be within the competence of the National Assembly for Wales?</b>	<b>Would corresponding provision be within the competence of the Scottish Parliament?</b>	<b>Would corresponding provision be within the competence of the Northern Ireland Assembly?</b>	<b>Legislative Consent Motion needed?</b>
Part 6 - Final	Yes	Yes	Yes	Yes	No	No	As above for clauses applying to Northern Ireland	As above for clauses applying to Northern Ireland



# **PENSION SCHEMES BILL [HL]**

## **EXPLANATORY NOTES**

These Explanatory Notes relate to the Pension Schemes Bill [HL] as introduced in the House of Lords on 15 October 2019 (HL Bill 5).

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Ordered by the House of Lords to be printed, 15 October 2019

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