

PENSION SCHEMES BILL

**Memorandum from the Department for Work and Pensions to the Delegated Powers and
Regulatory Reform Committee**

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INTRODUCTION

This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pension Schemes Bill (“the Bill”). The Bill was introduced in the House of Lords on 7th January 2020. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

PURPOSE AND EFFECT OF BILL

Pension reforms in recent years have transformed pension saving in this country:

- Automatic enrolment has boosted the pension prospects of 10 million people in just seven years;
- Savers have more freedom and choice about what to do with their pension pots than ever before, thanks to the introduction of Pension Freedoms in 2015;
- The Government has legislated for greater regulation of Master Trusts; and
- The Government has overhauled the pensions guidance landscape, establishing the Money and Pensions Service in 2019, to help people make informed decisions about their money and pensions.

Considerable progress has been made. However, with record numbers saving for retirement, it's more important than ever before that people can easily access information about their pensions, and have full confidence their pensions are secure and well-managed.

The Government's next phase of private pension reform therefore focuses on these key areas. The Bill ensures that Pension Schemes are fit for the future. It will do this by:

- **Providing more options for employers** to ensure that scheme members can adequately save for retirement and to better predict their income in later life;
- **Further strengthening security and increasing transparency** so that savers can be confident that their pensions are protected and that the Pensions Regulator will take action if pensions are put at risk;
- **Improving information** for savers so that they can prepare for retirement with confidence.

These reforms will help build trust in the private pensions industry; enable employers to better balance risk and reward when making investment decisions; and open up pensions to consumers by making information far more easily and readily available to them.

The Bill contains a number of provisions that the Government wishes to draw the attention of the Committee to.

Powers with potential retrospective effect of or ability to amend primary legislation

1. Clauses 41, and clause 92, place a duty on trustees of a collective money purchase scheme to implement the proposals in its implementation strategy, once this is approved by the Pensions Regulator. There are regulation-making powers requiring the trustees to provide the strategy within a specified time period to employers, former employers and other persons specified in regulations and there is power for the Pensions Regulator to direct trustees to implement the strategy if they fail to do so. Those clauses are expressed to override any conflicting provisions of a collective money purchase scheme or

any provisions of a contract between the trustees of such a scheme and a person providing services to the scheme (subsection (2) of section 41 and paragraph (2) of Article 92) and are considered to be capable of having retrospective effect.

2. Clause 44(10) introduces provisions in Schedule 2; there are regulation - making powers at paragraph 1(6) of Schedule 2, and paragraph 1(6) of Schedule 5, which would allow for modifications to be made to Chapters 1 and 2 of Part 4ZA of the Pensions Schemes Act 1993 and the equivalent Northern Ireland legislation, as applicable (in their application to a collective money purchase scheme in relation to which a pause order has effect containing a direction under clause 44(5)(e) (no transfers etc. of members' rights)). The purpose of this power is to provide for modifications to the relevant primary legislation so adjustments to procedures in respect of a transfer of member's rights can be made in the event that a pause order is issued in respect of a transfer under clause 44(5)(e). This is covered further in this memorandum.
3. There are regulation-making powers at clause 47 which have the ability to amend, repeal or revoke a provision of Part 1 or any other enactment. The purpose of this power is to extend the range of schemes able to offer collective money purchase benefits to include unconnected multi-employer schemes. Clause 98 provides for an equivalent power to that in clause 47 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.
4. Clause 48 which introduces Schedule 3 and paragraph 18 of that Schedule, along with clause 99 which introduces Schedule 6 and paragraph 19 of that Schedule, extend an existing power in relation to cross border-schemes receiving contributions from a European employer; the schemes must operate in accordance with the social and labour law of the host EEA State. These provisions will be repealed on exit day.
5. Clause 115 confers regulation-making powers on the Secretary of State. This clause inserts new section 88A into the Pensions Act 2004 which provides a power for the Pensions Regulator to issue a new civil penalty of up to £1 million. Subsection (3) enables the Secretary of State to increase the maximum amount above £1 million by regulations. Paragraph 14 of Schedule 8 provides for an equivalent power to that in clause 115 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

ANALYSIS OF DELEGATED POWERS BY CLAUSE

PART 1: COLLECTIVE MONEY PURCHASE BENEFITS

Clause 2 – subsection (1)(c) - Qualifying benefits

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

- 1.1 Clause 2 sets out the criteria which benefits provided by a pension scheme must meet if they are to be considered ‘qualifying benefits’.
- 1.2 Subsection (1)(c) delegates to the Secretary of State the power to prescribe that certain benefits are not qualifying benefits.

Justification for delegation

- 1.3 The purpose of this power is to ensure that benefit types can be excluded from the definition of qualifying benefit, and so cannot be collective money purchase benefits, if it becomes apparent that they would meet the technical requirements of the definition but, it is not appropriate for them to be collective money purchase benefits. For example, where a type of non-money purchase benefit (i.e. defined benefit) might inadvertently satisfy the definition of collective money purchase benefits set out in clause 2 but it would not be appropriate for them to be categorised as collective money purchase benefits, the Secretary of State could use the regulation power at clause 2 subsection (1)(c) to exclude this category of benefit from being qualifying benefits.

Justification for procedure

- 1.4 Regulations made under this power will be subject to affirmative resolution. The exercise of this power will impact on the legislative regime which applies to certain types of benefit and the operation of schemes providing or looking to provide such benefits. Consequently, it is considered that the use of the power should be subject to debate each time it is used although the Government considers that the most likely use of the power will be to ensure benefits provided by schemes are not inadvertently classified as collective money purchase benefits.

Clause 3 – subsection (8) - Qualifying schemes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

- 1.5 Clause 3 sets out the definition of ‘qualifying schemes’ i.e. the requirements schemes must satisfy to be collective money purchase schemes – for example, a collective money purchase scheme must be set up under an irrevocable trust.
- 1.6 Clause 3(7) requires a scheme offering both qualifying benefits and other forms of benefits (for example, a non-money purchase lump sum) to keep these different benefits separate from qualifying benefits in separate sections.
- 1.7 Clause 3(8) provides that a scheme offering more than one type of qualifying benefit which have different characteristics, as described in regulations made by the Secretary of State, must also keep the different types of collective money purchase benefits in separate sections. Pursuant to clause 1(2)(b), such separate sections are treated as separate schemes for the purpose of this Part of this Bill.

Justification for delegation

- 1.8 This power is required to ensure there is appropriate separation where a scheme provides a combination of qualifying benefits with characteristics which are different in such a way that the Secretary of State considers the different benefits should be separate. This will ensure that one type of benefit does not cross-subsidise another type of benefit. The type of characteristic that is likely to be prescribed is where different benefit types involve allocating different levels of new credits to members for each year of active membership. For example, where a scheme offers a benefit with an annual new credit level of 1/60th annual salary and a benefit with an annual new credit level of 1/80th annual salary, regulations made under clause 3(8) could ensure that the two benefit types are kept separate and treated as separate schemes. This power is suitable for delegation as this is a new type of benefit and the requirements relating to when and to how different types of benefits should be separated will only become apparent as more schemes choose to provide collective money purchase benefits and different scheme designs are explored.

Justification for procedure

- 1.9 Much of legislation relating to pensions is to be found in regulations, which is mainly due to its highly technical nature. In the case of these regulations, the content is likely to be detailed and technical, describing particular scheme designs. This level of detail is more usually set out in regulations than in primary legislation. It is possible that changes may be needed quickly to adapt

the legislation to accommodate new scheme designs as and when they come to light. Because the regulations are to prescribe technical details around different collective benefits types within the same collective money purchase scheme, they are not expected to be controversial. It is therefore considered that the appropriate level of scrutiny is the negative resolution procedure.

Clause 5 – subsection (1) - Schemes divided into sections

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution procedure

Context and Purpose

1.10 Subsection (1) allows the Secretary of State to make provision in regulations about when a pension scheme is or is not divided into sections for the purposes of Part 1 of the Bill. The purpose of this power is to ensure that there is appropriate separation of benefits where pension schemes offer both collective money purchase benefits and other types of benefits, or where a scheme offers more than one type of collective money purchase benefit.

Justification for delegation

1.11 The requirements as to whether or not a scheme is divided into sections for the purposes of Part 1 are expected to be technical and contain detailed requirements relating to scheme design. Further, as this is a new type of pension benefit, it is anticipated that there may need to be changes to the regulations to ensure they are appropriate as new types of scheme offer collective money purchase benefits. It is therefore appropriate for this provision to be set out in regulations.

Justification for procedure

1.12 Regulations made under subsection (1) will be subject to the negative procedure. This is considered appropriate because provision made in regulations under subsection (1) will be technical in nature but is not likely to be controversial or require a more detailed level of Parliamentary scrutiny. In addition, the Government needs to be able to respond to emerging types of scheme design and subjecting regulations to the negative procedure will allow the legislation to accommodate any changes in a timely manner.

Clause 5 – subsection (2) – Schemes divided into sections

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

1.13 Where a collective money purchase scheme that is not divided into sections (an undivided scheme) is authorised by the Pensions Regulator and is then subdivided into sections (a subdivided scheme), subsection (2) delegates to the Secretary of State the power to make regulations to provide that an authorisation previously granted to the undivided scheme applies to any of the sections of the subdivided scheme that are collective money purchase schemes (by reason of clause 1(2)(b) and which satisfy conditions specified in the regulations). For example, regulations made under clause 5(2) could specify the conditions under which a section in a subdivided scheme (that is a collective money purchase scheme by virtue of clause 1(2)(b)) may rely on the existing authorisation granted to the undivided scheme.

Justification for delegation

1.14 The application of the power at subsection (2) is of limited extent to ensure that a proportionate approach to authorisation is possible in circumstances where authorised collective money purchase schemes, not previously divided into sections, are then divided into sections. This power can only be used to make provision to manage this complex situation in respect of authorisation. It is considered appropriate to delegate this power to regulations in order to be able to provide for conditions of authorisation that are applicable in the circumstances and to reflect the models that emerge.

Justification for procedure

1.15 Regulations made under clause 5(2) will be subject to the affirmative procedure. A higher level of Parliament scrutiny is appropriate because these regulations would make changes to the authorisation regime for collective money purchase schemes in certain circumstances.

Clause 6 - Amendment of definitions of “money purchase benefits” etc

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

1.16 Following a court judgment in 2011, the Government legislated to enable regulations to amend the definition of “money purchase benefits” to preserve the generally accepted way money purchase benefits were treated. This power is set out in section 32 of the Pensions Act 2011. Subsection (2) amends the existing regulation-making power at section 32 of the Pensions Act 2011 by extending the existing regulation-making power to include the definition of “collective money purchase benefits”. As collective money purchase benefits will be a subset of money purchase benefits, should there be a requirement in the future to make further amendments to the definition of money purchase benefits, this extension would ensure the Government has the necessary powers to ensure the definition of collective money purchase benefits can also be changed.

Justification for delegation

1.17 As the Secretary of State already has a delegated power to amend the definition of money purchase benefits, it would be reasonable to ensure there is a similar power to amend the definition of collective money purchase benefits. Furthermore, given that the scenario in which this power will be used is likely to be following an unexpected court judgment, the Government will need to be able to react in a timely manner to protect pension scheme members.

Justification for procedure

1.18 The amendment of a definition could potentially have wide ranging effect and require adequate scrutiny. The Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure to ensure both Houses have the opportunity to consider any proposed amendments.

Clause 8 – subsections (2) and (4) - Application for authorisation

Power conferred on: the Pensions Regulator (subsection (2)), the Secretary of State (subsection (4))

Power exercised by: specification by the Pensions Regulator (subsection (2)); regulations made by Statutory Instrument (subsection (4))

Parliamentary procedure: none (subsection (2)), negative resolution procedure (subsection (4))

Context and purpose

- 1.19 The Bill prohibits any person from operating a collective money purchase scheme unless that scheme is authorised by the Pensions Regulator (clause 7(1)). The key information which the trustees of a collective money purchase scheme must provide to the Pensions Regulator when applying for authorisation is prescribed in the primary legislation: an application for authorisation must include the scheme's viability report and certificate (provided for in clause 13), which provides assurance that the scheme design is sound; and the scheme's continuity strategy (provided for in clause 17), which addresses how the interests of members of the scheme will be protected if certain events occur in relation to the scheme.
- 1.20 Clause 8(4) delegates to the Secretary of State the power to make regulations (a) specifying other information that must be included in an application for authorisation and (b) requiring a fee to be paid to the Pensions Regulator in respect of an application. Clause 8(2) requires that an application is made in the form and manner specified by the Pensions Regulator.

Justification for delegation

- 1.21 The power in subsection (4) has been given to make delegated legislation as it will be used to set out specific further details of the information to be included in an application for authorisation of a collective money purchase scheme and the level of any application fee at greater levels of specificity and detail than is usual in primary legislation. Delegated legislation would also provide the flexibility to respond to developments in the collective money purchase market. Industry stakeholders at consultation also emphasised that the legislative framework should be flexible so that the authorisation regime can adapt as the market evolves, for example, to take into account any new models that may emerge.
- 1.22 The Government envisages that much of the information required in the application will resemble closely that which is required for an application for the authorisation of Master Trust pension schemes by the Pensions Regulator, as set out in The Occupational Pension Schemes (Master Trusts) Regulations 2018. The use of delegated powers to prescribe the technical details of the information required in an application and the level of any application fee, therefore, follows section 4 of the Pension Schemes Act 2017, which gave the Secretary of State similar regulation-making powers in relation to an

application for authorisation made by the trustees of a Master Trust pension scheme to the Pensions Regulator.

- 1.23 The requirement that applications are made in the form and manner as specified by the Pensions Regulator enables the Regulator to control how an application is made, in light of their experience of the practical issues around the making of such an application.

Justification for procedure

- 1.24 Regulations made under clause 8(4) will be subject to the negative procedure. Regulations made using this procedure would relate to operational detail. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational details as a matter of course. This approach also mirrors the use of the negative procedure for regulations made under section 4 of the Pension Schemes Act 2017.

Clause 11 – subsections (2)(e) and (3)(a) - Fit and proper persons requirement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for (3)(a) on first use then negative resolution procedure thereafter. Regulations made under subsection (2)(e) are subject to negative resolution procedure.

Context and Purpose

- 1.25 Where an application is made for authorisation of a collective money purchase scheme, the Pensions Regulator must decide whether it is satisfied that the scheme meets the authorisation criteria before granting authorisation to the scheme. The authorisation criteria are listed in subsection (3) of clause 9 and include whether the persons involved in the scheme are fit and proper persons.
- 1.26 Clause 11 applies for the purposes of enabling the Pensions Regulator to decide whether it is satisfied that the persons involved in the scheme are fit and proper persons. Subsection (2) of clause 11 places a duty on the Pensions Regulator to assess whether categories of persons involved with a collective money purchase scheme are ‘fit and proper’ to act in the relevant capacity in relation to the scheme, including persons who establish the scheme, trustees and persons who have power to vary the provisions of the scheme.
- 1.27 The delegated powers in subsection (2)(e) of this clause allow the Secretary of State to specify other categories of people to be subject to this assessment. The Pensions Regulator would then be required to assess whether those persons are ‘fit and proper’ to act in relation to the scheme in the capacity

specified, before the collective money purchase scheme they were associated with could be authorised.

- 1.28 Clause 11(3)(a) provides for regulations to set out matters that the Regulator must take into account when assessing whether a person is a ‘fit and proper’ person to act in a particular capacity. It is anticipated that regulations made under this clause will be focussed on matters including financial capability, experience of managing large pension schemes and financial probity. Subsection (4) provides that the regulations may include provision requiring specified information to be provided to the Pensions Regulator.
- 1.29 The clause broadly mirrors section 7 of the Pension Schemes Act 2017, which set out a similar ‘fit and proper persons’ requirement for Master Trust pension schemes and included similar delegated powers. The equivalent powers to make regulations in section 7 of the Pension Schemes Act 2017 are subject to the same procedures as those in clause 11.

Justification for delegation

- 1.30 A crucial aspect of the success of collective money purchase schemes will be in ensuring that they are run by appropriate people. As these are new schemes, it is possible, for example, that new categories of ‘fit and proper’ persons will emerge in the future. The power provided for in subsection (2)(e) of clause 11 will ensure there is power to provide for these individuals, if appropriate, to be subject to the robust ‘fit and proper’ requirements, to safeguard the scheme and the interests of members.
- 1.31 As for the delegated legislation provided for under subsection (3)(a), ensuring that a person is assessed as ‘fit and proper’ in relation to a scheme will be of crucial importance to the effective running of the scheme and in building and maintaining member confidence. Equally, however, different categories of person or new collective money purchase delivery models that may emerge in the future, may mean that different assessment criteria are needed. It is therefore considered important that the Secretary of State has power to provide the Pensions Regulator with the legislative direction to make this assessment, and to adapt this as these schemes develop. Setting the details in regulations, including detail of the information to be provided to the Pensions Regulator (subsection (4)) will allow for greater specificity and detail than is usual in primary legislation.

Justification for procedure

- 1.32 Regulations made under subsection (2)(e) will be subject to the negative procedure. This procedure provides appropriate scrutiny as well as opportunity for debate if desired, without requiring a debate on each person added to the list as a matter of course.
- 1.33 As these are new types of schemes and because the criteria for assessing persons’ ‘fitness and propriety’ is of such importance, the first use of the

delegated power in clause 11(3)(a) will be subject to the affirmative resolution procedure. This will allow for full and thorough debate in respect of the matters to be taken into account by the Regulator in making its assessment under this criterion. However, we envisage that further use of this power will be limited to adapting the details of the 'fit and proper' criteria to reflect changes in the market that may occur (which may relate to new fit and proper persons becoming involved in the scheme and being added under subsection (2)(e)). Subsequent regulations made under this power will therefore be subject to the negative procedure. This is the same sequence of procedures as is used in respect of the equivalent powers in section 7 of the Pension Schemes Act 2017, in relation to 'fit and proper persons' responsible for Master Trust pension schemes.

Clause 12 – subsection (2)(b) – Scheme design requirement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure

Context and purpose

- 1.34 Whether a collective money purchase scheme's design is sound, including in the long term, will be critical to a collective money purchase scheme's prospects, and will be central to a scheme's ability to achieve authorisation. The Regulator must decide whether it is satisfied that the scheme's design is sound; clause 12 applies for the purposes of enabling the Regulator to make this decision.
- 1.35 Clause 12(2)(a) places a duty on the Regulator to take into account the scheme's viability report and viability certificate (clause 13) in deciding whether the design of the scheme is sound. Clause 12(2)(b) gives the Secretary of State powers to set out in regulations matters which the Regulator must also take into account when assessing whether the design of a collective money purchase scheme is sound. Under subsection (3), those regulations may include provision requiring specified information to be provided to the Regulator. It is intended that the regulations may cover areas such as the supporting documentation/information that the scheme's viability report (clause 13) is based on.

Justification for delegation

- 1.36 Ensuring that the Regulator can make an informed assessment of whether a scheme's design is sound will be of crucial importance to the effective running of the scheme and to member confidence; it is therefore essential that the Secretary of State has power to specify matters that the Regulator must take into account to get this assessment right. Providing for a power to set the

details in regulations will allow for greater specificity and detail than is usual in primary legislation and for these matters to be adapted to reflect the way in which these schemes develop.

Justification for procedure

- 1.37 As these regulations will relate to matters to be taken into account in authorising a new type of scheme, the first exercise of the power to make regulations under subsection (2)(b) will be subject to the affirmative resolution procedure. The decision as to whether a scheme's design is sound will be of critical importance to the effective running of collective money purchase schemes and in safeguarding members. It is important, therefore, that when first determining the matters and information the Regulator must take into account when deciding whether the design of a scheme is sound, that this should be subject to full debate to ensure that they are fit for purpose.
- 1.38 However, it is envisaged that further use of this power is likely to be limited to adapting the matters the Pensions Regulator will be required to take into account. For example, the matters the Regulator needs to consider may need to be amended to take account of changes to accountancy standards or other improvements in administrative processes. It will be important for the Regulator to be able to respond to such changes and take into account all the relevant information needed to make a robust assessment regarding the design of a collective money purchase scheme. Such operational efficiency will ensure members are protected. It is considered appropriate therefore that subsequent exercise of the regulation-making powers, which is anticipated to be in light of operational experience, is made subject to the negative procedure.

Clause 13 – subsection (3) - Viability report

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure.

Context and purpose

- 1.39 This clause requires the trustees of a collective money purchase scheme to prepare a document explaining the design of the scheme and the reasons that they consider it to be sound (a viability report) and to obtain a certificate from the scheme actuary certifying that, in the actuary's opinion, the design of the scheme is sound (a viability certificate). The Pensions Regulator must take the report and certificate into account in deciding whether it is satisfied that the design of a collective money purchase scheme is sound (clause 12(2)).

- 1.40 Clause 13(3) delegates to the Secretary of State the power to prescribe in regulations the details of this viability report and viability certificate, including the information the report must contain, other requirements the report must comply with and the requirements placed on the scheme actuary when providing the viability certificate. It is anticipated that the information required in the report may include information relating to projections concerning the growth in member numbers, increases in the value of scheme funds as a result of investment performance and administrative costs and resources to meet these. Viability reports and financial and business plans are standard practice in many pension schemes and other investment schemes.

Justification for delegation

- 1.41 It is considered that the specificity and detailed nature of the provision to be made in regulations under subsection (2) means it is appropriate for delegation to secondary legislation.

Justification for procedure

- 1.42 As collective money purchase schemes will be a new type of scheme, the power to make regulations under subsection (3) will be subject to affirmative resolution procedure on first use. The information contained in a scheme's viability report and viability certificate will be central to the Pensions Regulator's assessment of its long-term security and therefore the retirement prospects of the scheme members. It is appropriate, therefore, that the details of the structure and contents of these documents are required to be subject to full scrutiny as a matter of course when the initial framework is set out.
- 1.43 It is envisaged that subsequent changes should just relate to changes of a technical nature, for example, accommodating changes in actuarial best practice. It is considered appropriate, therefore, that subsequent exercise of the regulation-making powers in subsection (3) is subject to the negative procedure.

Clause 14 – subsection (3) - Financial sustainability requirement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure

Context and purpose

- 1.44 In deciding whether a collective money purchase scheme is financially sustainable, as part of the authorisation criteria, subsection (2) of this clause requires the Pensions Regulator to be satisfied that the collective money purchase scheme has sufficient financial resources to meet (a) the costs of setting up and running the scheme and (b) in the event of a triggering event

occurring, the costs of dealing with this event, without transferring those costs to members, including the costs of continuing to run the scheme for such period as the Regulator considers appropriate for the scheme.

- 1.45 Clause 14(3) delegates to secondary legislation the matters which the Regulator must take into account in deciding whether it is satisfied that a scheme has sufficient financial resources to meet these costs. Subsection (4) provides that these regulations may require specified information to be provided to the Regulator as well as specifying financial requirements to be met by the scheme such as requirements relating to the scheme's assets or liquidity.
- 1.46 Assessing the financial sustainability of the scheme including its ability to meet the costs of setting up and running the scheme, as well as dealing with triggering events (key risk events, set out in clause 31), will be an important aspect of safeguarding the interests of members.
- 1.47 Clause 14 is similar to section 8 of the Pension Schemes Act 2017, which relates to the requirement on the Regulator to be satisfied as to a Master Trust pension scheme's financial sustainability prior to authorisation and on an ongoing basis. Section 8 of the Pension Schemes Act 2017 gives similar powers to set in regulations the specific details which the Regulator must take into account to make this assessment. The equivalent power in Section 8 of the Pension Schemes Act 2017 is subject to the same procedure as is proposed here, with the regulations having been subject to affirmative resolution procedure on first use then negative resolution procedure thereafter.

Justification for delegation

- 1.48 Collective money purchase schemes are a new kind of pension scheme, and the costs of administering them have not yet been tested. Using secondary legislation to set out the matters to be taken into account by the Regulator in assessing the sufficiency of financial resources is therefore particularly important, as these matters may need to change as more schemes emerge and understanding of their administrative processes and related costs grows. Setting the details in regulations will allow for greater specificity and detail than is usual in primary legislation.

Justification for procedure

- 1.49 The power to make regulations under subsection (3) will be subject to affirmative resolution procedure on first use. This will ensure that the initial set of regulations are subject to a full debate, which will help ensure they are fit for purpose. In the future, however, these details may need to be amended to ensure that the matters to be taken into account by the Regulator are up to date and relevant to its assessment. Subsequent use of the power will be subject to the negative resolution procedure, as Government envisages that these amendments will be technical in nature, for example, developments in

IT systems may affect schemes' administrative costs and the regulations may need to be amended to take account of this.

Clause 15 – subsection (4)(a) - Communication with members requirement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure

Context and purpose

- 1.50 Collective money purchase benefits are new, and communicating their variable nature to members will be a particular challenge. The adequacy of the systems and processes used to communicate with members, prospective members and others, such as surviving spouses or civil partners, will therefore form one of the authorisation criteria considered by the Pensions Regulator, which such schemes will need to meet if they are to operate and continue to operate. Subsection (4)(a) of clause 15 gives power to make regulations specifying the matters which the Regulator must take into account when assessing this criterion. Subsection (5) then sets out examples of the matters these regulations may cover. This includes, but is not limited to, making provision about systems and processes used to assess and improve the effectiveness of the scheme's communications.
- 1.51 This power is intended to work alongside the delegated powers at section 41 of the Pensions Act 1995 and section 113 of the Pension Schemes Act 1993, which, in summary, give the Secretary of State the power to set in regulations the details of the information which an occupational pension scheme (which will include a collective money purchase scheme when they are established) must provide to members and other specified persons. These existing regulation-making powers provide a framework for the information which a scheme is required to provide to members.

Justification for delegation

- 1.52 Collective money purchase schemes are new, so effective communications will be key in helping members understand how these new schemes operate and in aiding transparency. It will be vital, therefore, that the scheme has adequate systems and processes to review and test their communications to members and others who are entitled to benefits from the scheme. It is also likely that the collective money purchase market will evolve over time, which may pose additional challenges. Using secondary legislation to set out the matters to be taken into account by the Pensions Regulator in determining whether a scheme has adequate systems and processes for communicating with members will enable legislation to respond effectively and flexibly as more schemes emerge and understanding of communication requirements and

supporting systems and processes grows. Setting the details in regulations will allow for greater specificity and detail than is usual in primary legislation.

Justification for procedure

- 1.53 As is the case for the other authorisation criteria, regulations made under subsection (4)(a) will be subject to the affirmative resolution procedure on first use. This will ensure that the initial set of regulations are subject to a full debate, which will help ensure they are fit for purpose. As these schemes are established and their practices settle, it may become apparent that changes may need to be made regarding the information members receive or which the Regulator needs to have in order to assess whether schemes have effective systems and processes in place for communicating with members. This may result from changes to the pensions market. The Government considers that it would be appropriate for the likely routine and operational changes to the matters to be taken into account in assessing whether this criterion is met, arising from these market developments, to be subject to the negative resolution procedure. The Government considers that this procedure will provide an appropriate level of Parliamentary scrutiny.

Clause 16 – subsection (2) - Systems and process requirements

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure

Context and purpose

- 1.54 In order to grant authorisation to a collective money purchase scheme, the Pensions Regulator will also need to be satisfied that the systems and processes used in running the scheme are sufficient to ensure it is run effectively. It will be important for member confidence and outcomes that the systems used to operate and administer a scheme are of sufficient quality. This is especially true given that the way benefit payments are calculated will be potentially more complex than in defined benefit or other defined contribution schemes. As these new types of scheme are established and settle and the market evolves, changes will inevitably be needed. Clause 16 (2), therefore, delegates to the Secretary of State the power to prescribe the details the Regulator must take into account when making this assessment. Subsection (3) sets out examples of the kind of detail these regulations would likely include, such as provision about IT data security standards, IT maintenance and processes relating to trustee training and development. This will ensure that the Pensions Regulator's assessment remains relevant as these new schemes and the market develops.
- 1.55 The clause closely mirrors section 11 of the Pension Schemes Act 2017, which makes very similar requirements for Master Trust pension schemes' systems and processes. Section 11 of the Pension Schemes Act 2017 gives

similar powers to set out in regulations the specific details which the Regulator must take into account to assess the sufficiency of those systems and processes.

Justification for delegation

- 1.56 As stated above, the matters these regulations will cover will be technical in nature and regulations will allow Government to respond to changes in the market more flexibly than through amendments to primary. It is considered therefore these matters are appropriate for secondary legislation.

Justification for procedure

- 1.57 Effective systems and processes concerning the operation and administration of these new types of schemes will be vital if they are to be successful and the interests of members safeguarded. The Government, therefore, considers that it is appropriate for regulations made under clause 16(2) to be subject to the affirmative resolution procedure on first use. This will ensure that the matters the Government considers the Pensions Regulator must take into account in deciding whether a scheme has adequate systems and processes is subject to full debate, which will help ensure they are fit for purpose.
- 1.58 However, as these schemes bed in and the market develops, routine and operational changes may need to be made to ensure that the Regulator's assessment of this authorisation criteria remains relevant and up to date. This may, for example, relate to improvements in IT and administration processes. The Government considers therefore that it would be appropriate for such changes to be subject to the negative resolution procedure. This also mirrors the sequence of procedures used for equivalent regulations made under section 11 of the Pension Schemes Act 2017.

Clause 17 – subsections (4), (5) and (8) - Continuity strategy requirement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure

Context and purpose

- 1.59 The Pensions Regulator must, as part of the authorisation criteria, decide if it is satisfied that a collective money purchase scheme has an adequate continuity strategy. Clause 17 requires the trustees of a collective money purchase scheme to prepare a continuity strategy, which is a document setting out how the interests of members of the scheme are to be protected in the event of various adverse events ('triggering events') occurring in relation to the scheme.

- 1.60 A continuity strategy must include a section setting out the levels of administration charges that apply in relation to members of the scheme (subsection (3) of clause 17). Subsection (4) delegates to the Secretary of State the power to prescribe the way in which the levels of those administration charges are to be set out in the strategy. This provision links to the prohibition on charges (clause 45), which is designed to protect members (and those otherwise entitled to benefits in respect of members' rights) from any increased costs that may arise as a result of resolving a triggering event. This approach mirrors section 12(5) of the Pension Schemes Act 2017, which delegates a very similar power to the Secretary of State to prescribe in regulations the way in which a Master Trust pension scheme must set out the administration charges it is levying on its members, in its continuity strategy.
- 1.61 Subsection (5) delegates to the Secretary of State power to make regulations (a) specifying information that must be included in a continuity strategy and (b) requirements as to how a continuity strategy is to be prepared. This mirrors the delegated powers set out in Section 12(6) of the Pension Schemes Act 2017, which give the Secretary of State the same powers with regard to Master Trust pension schemes. It is intended that similar requirements will be made in respect of collective money purchase schemes as have been made under the powers in section 12(6) of the Pension Schemes Act 2017 in relation to Master Trust pension schemes. The regulations may, for example, require a collective money purchase scheme's continuity strategy to set out the roles and responsibilities of different categories of people following a triggering event, how members will be kept informed following a triggering event and how the interests of different groups of members will be balanced following a triggering event.
- 1.62 Subsection (8) delegates to the Secretary of State power to make regulations setting out the matters which the Regulator must take into account in deciding whether a continuity strategy is adequate. Regulations made under subsection (8) may include provision requiring specified information to be provided to the Pensions Regulator (by virtue of subsection (9)).

Justification for delegation

- 1.63 As stated above, the matters these regulations will cover will be technical details of the continuity strategy and the matters to be taken into account by the Regulator in deciding whether the strategy is adequate. Regulations will allow Government to respond to changes in the market as it evolves, that may need to be taken into account in these requirements, more flexibly than through amendments to primary legislation. Using delegated legislation will allow for greater specificity and detail than is usual in primary legislation. It is envisaged that the regulations under subsection (5)(a) could, for example, set out the operational steps the continuity strategy should cover that trustees may need to take to address the triggering event. This could include keeping members informed, and actuarial, accounting and auditing tasks. It is considered therefore that these matters are appropriate for secondary legislation.

Justification for procedure

- 1.64 Regulations made under clause 17 (4), (5) and (8) are to be subject to the affirmative resolution procedure in the first instance. Subsequent regulations made under these powers will be subject to the negative resolution procedure.
- 1.65 An adequate continuity strategy is intended to provide reassurance to the Pensions Regulator that the trustees of the scheme have developed appropriate mitigations against the potential risks the scheme may face and which may threaten the interests of members (if a triggering event occurs). As a mandatory aspect of the application for authorisation, the Government considers that it is appropriate that any initial requirements as to the form and content of the continuity strategy are subject to full debate and therefore that it is appropriate for regulations made under subsections (4) and (5) to be subject to the affirmative resolution procedure on first use. Similarly, it is also appropriate that the initial matters (subsection 8), that the Government considers the Pensions Regulator should take into account in deciding whether a continuity strategy is adequate, should also be subject to full debate.
- 1.66 It is envisaged that subsequent changes made using these powers would relate to matters of operational detail, for example, to take into account changes to scheme processes and actuarial best practice. The negative resolution procedure is considered to provide appropriate scrutiny and opportunity for debate, without requiring debate on each change, which will likely be technical in nature, as a matter of course. This is consistent with the approach taken by regulations made under section 12 of the Pension Schemes Act 2017, which relates to continuity strategy requirements for Master Trust pension schemes.

Clause 18 – subsections (4) to (7) - Calculation of benefits

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

- 1.67 The way in which the rate or level of collective money purchase benefits is calculated each year will be fundamental to the design of a collective money purchase scheme. This clause places requirements on collective money purchase schemes to ensure that members' benefits are calculated according to the rules of the scheme.
- 1.68 Clause 18(4) delegates to the Secretary of State the power to set out in regulations provision about the matters which all collective money purchase schemes must include when setting the schemes rules relating to the valuation of benefits. Specific matters which may be included in the regulations are set out at subsections (5) and (6), which are non-exhaustive.

- 1.69 Subsection (7) states that provisions made through regulations under the powers in this clause would override scheme rules should the two conflict. This is intended to ensure that a scheme cannot attempt to use scheme rules to calculate and apportion benefits in a way contrary to that prescribed in regulations. Subsection (7) also sets out that regulations made under this clause may apply in relation to benefits which have already accrued in the scheme.

Justification for delegation

- 1.70 As this is a new type of pension benefit, delegation of this power would enable a common approach to be taken (where appropriate) to matters such as (i) which assets of the scheme are “available assets” and (ii) the calculation of the “required amount”, which are key aspects of the definition of “qualifying benefits” in clause 2. It is possible that there may be certain methods and assumptions which are inappropriate for collective money purchase schemes. There may also be particular matters or principles which trustees should take into consideration where they are responsible for taking a decision about which methods and assumptions should be used. This regulation-making power provides a safeguard to enable the Government to act to ensure collective money purchase schemes calculate member benefits in accordance with appropriate actuarial assumptions and methodologies.
- 1.71 The matters these regulation-making powers could cover are technical in nature. For example, under subsection (5), regulations are intended to make provision to limit the extent to which scheme rules can be applied to ‘smooth’ or ‘spread’ significant reductions in the value of members’ benefits, expressed in percentages, over a number of years (two or three years) provided that this smoothing is applied equally to all member in all circumstances (e.g. the second and third year reductions are to be made even if the scheme’s financial position improves in years two and three). Under subsection (6), the intention is that the regulations will cover matters such as actuarial assumptions which must be applied when making the calculation. This level of detail is more appropriate to be set out in secondary legislation than on the face of the Bill.
- 1.72 In addition, as these regulations will be important to ensure that collective money purchase schemes operate as intended, it is important that the Government is able to respond quickly to changes in the market and is able to amend the detail of the provisions more quickly and flexibly than would be possible through amendments to primary legislation. It is considered therefore these matters are appropriate for secondary legislation.

Justification for procedure

- 1.73 As these are a new type of scheme, the Government considers that it is appropriate for the regulations made under clause 18 to be subject to the affirmative procedure. The way in which actual benefit value is calculated in cash terms will be of crucial importance to scheme members, and it is important that any legislative provisions governing these calculations are

subjected to full scrutiny under the affirmative procedure which will allow a full debate on the calculation process.

Clause 19 – subsection (2) - Advice of scheme actuary

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on the first use then negative resolution procedure

Context and purpose

- 1.74 This clause requires the scheme trustees to take advice from the scheme actuary before deciding which methods and assumptions to use when the rate or amount of collective money purchase benefits is calculated. Calculations of value are a key part of actuarial duties.
- 1.75 Clause 19(2) delegates to the Secretary of State the power to specify certain requirements a scheme actuary of a collective money purchase scheme must comply with when advising the trustees on the methods and assumptions to be used for the actuarial valuation, including those set out at subsection (3) which allows regulations to require the scheme actuary to have regard to guidance that is prepared and from time to time revised by a person specified or described in regulations. The intention is that the regulations will make provision for the guidance to be prepared by the Institute and Faculty of Actuaries. The power under subsection (2) does not require the scheme actuary to advise a certain way, but rather requires them to comply with the specified matters before giving advice to the trustees based on the specifics of the individual scheme.

Justification for delegation

- 1.76 As collective money purchase benefits are a new type of pension benefit, it is difficult to anticipate what factors may be particularly important, or indeed inappropriate, in relation to the actuarial advice provided and the way these benefits are calculated. It is appropriate to delegate this power as the requirements specified in regulations will be detailed and technical in nature, focusing on actuarial best practice. The reason for specifying the Institute and Faculty of Actuaries in secondary legislation is because the regulations might need to be updated if the Institute changes its name or it is agreed that the preparation of the guidance should be done by another body.

Justification for procedure

- 1.77 Regulations made under clause 19 will be subject to the affirmative resolution procedure in the first instance. The way in which actual benefit value is calculated in cash terms will be of key importance to scheme members, and it is important that requirements on the actuarial advice provided to trustees on

this matter are subjected to full scrutiny when they are first drawn up. Subjecting these regulations to the affirmative resolution procedure on first use will allow a full debate on the technical details of the actuarial advice underpinning the calculation process. Further changes are anticipated to be technical in nature, for example reflecting changes in actuarial practice, and are therefore subject to the negative resolution procedure.

Clause 20 – subsection (5) - Actuarial valuations

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure.

Context and purpose

- 1.78 The calculation of the value of collective money purchase benefits will be based on an actuarial assessment of the scheme's assets and the value of the members' rights, and on whether adjustments are required to the rate or value of the benefit. Clause 20 requires the scheme actuary to prepare actuarial valuations in accordance with the rules of the scheme and any prescribed requirements. This is intended to safeguard the financial viability of the scheme, as it will act as certification that the scheme's asset values and the value of the pension benefits have been calculated correctly.
- 1.79 Subsection (5) delegates to the Secretary of State the power to make provision about how the valuation should be carried out, including the matters set out at subsection (5) such as when the actuarial valuations must be prepared and what they must contain. The purpose of this power is to ensure that the valuations are carried out at appropriate points in time and contain the necessary information and that actuarial methods used in the valuations are kept up to date with changes in actuarial practices.

Justification for delegation

- 1.80 As regulations made under this power are likely to be technical in nature and contain details of processes to be followed and actuarial methods and statements, it is appropriate for this to be set out in regulations rather than in primary legislation.

Justification for procedure

- 1.81 Regulations made under clause 20 will be subject to the affirmative resolution procedure on first use to allow a full debate on the extent of the information to be contained within the actuarial valuation and the valuation process. Subsequent regulations will be made under the negative resolution procedure. This is considered appropriate because any subsequent regulations are likely to be technical in nature to allow for changes to actuarial practices.

Clause 22 – subsection (3)(b) - Benefit adjustments

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

- 1.82 This clause requires the trustees of a scheme providing collective money purchase benefits to explain to the Pensions Regulator any decision to make a benefit adjustment which is not in accordance with either the scheme rules or the most recent actuarial calculation. There may be good reason why the trustees make an adjustment which is not in accordance with either the scheme rules or the most recent actuarial calculation – this clause ensures that the Regulator has all necessary information to judge whether the trustees are justified in their actions.
- 1.83 Subsection (3)(a) sets out in primary legislation the requirement that the trustees of a collective money purchase scheme must provide a report explaining why they have not made the adjustment in accordance with the latest valuation, or does not take effect in accordance with the scheme rules. Subsection(3)(b) delegates to the Secretary of State the power to prescribe any other information which the trustees must supply in their report.

Justification for delegation

- 1.84 As the other information required under subsection (3)(b) is likely to be technical and background information, it is considered appropriate to set out such details in regulations. This also provides flexibility to expand the information required in light of experience, to ensure trustees of collective money purchase schemes are providing the Regulator with the necessary information to make an informed decision.

Justification for procedure

- 1.85 Regulations made under clause 22(3)(b) will be subject to the negative resolution procedure. This is considered appropriate because the regulations are likely to be specifying technical details around information provision and are administrative in nature.

Clause 23 – subsection (2) – Powers of the Pensions Regulator

Power conferred on: The Pensions Regulator

Power exercised by: Directions issued by the Pensions Regulator

Parliamentary Procedure: None

Context and purpose

- 1.86 Clause 23 applies if the trustees of a collective money purchase scheme have not secured an actuarial valuation in accordance with the requirements of the legislation, or the Pensions Regulator is not satisfied that the trustees of a scheme offering collective money purchase benefits have good reason to make a benefit adjustment which is not in accordance with either scheme rules or the most recent actuarial calculation. Under subsection (2), the Pensions Regulator may then direct the trustees to obtain an actuarial valuation and/or take other steps that the Regulator considers appropriate to remedy or to mitigate the failure.

Justification for delegation

- 1.87 As the circumstances under which the Regulator may wish to direct trustees to obtain a valuation may differ, it would not be feasible to provide for all the scenarios. By delegating this power to the Regulator, they would have the ability to assess on a case by case basis to ensure they have the flexibility to adapt to different scenarios.

Justification for procedure

- 1.88 The delegation of this power to the Regulator to issue directions is justified as the Regulator needs to be able to act quickly to safeguard the members' benefits in various scenarios.

Clause 23 – subsection (3)(c) – Powers of the Pensions Regulator

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

- 1.89 Clause 23 applies if the trustees of a collective money purchase scheme have not secured an actuarial valuation in accordance with the requirements of the legislation, or the Pensions Regulator is not satisfied that the trustees of a scheme offering collective money purchase benefits have good reason to make a benefit adjustment which is not in accordance with either scheme rules or the most recent actuarial calculation. The Regulator may then direct the trustees to obtain an actuarial valuation and/or take other steps to resolve the situation.

- 1.90 Subsection (3)(c) delegates to the Secretary of State the power to prescribe the information which the Pensions Regulator must include in a direction to obtain an actuarial valuation or take other remedial steps. The purpose of this power is to ensure that a direction to obtain a valuation or to take any other steps to resolve the situation is clear and contains sufficient and appropriate information.

Justification for delegation

- 1.91 Under subsection (3)(c), the Secretary of State may prescribe any such other information to be included in a direction issued by the Regulator to the trustees for obtaining an actuarial valuation. The information being prescribed is likely to be technical in nature and is more appropriate to be set out in regulations rather than in primary legislation.

Justification for procedure

- 1.92 Regulations made under clause 23(3)(c) will be subject to the negative resolution procedure. This is considered appropriate because the regulations made under clause 23(3)(c) are expected to be technical and non-controversial requirements.

Clause 23 – subsection (4) - Powers of the Pensions Regulator

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

- 1.93 Subsection (4) delegates to the Secretary of State a power to specify requirements with which the Pensions Regulator must comply in exercising the power to direct the trustees of a collective money purchase scheme to obtain an actuarial valuation. The purpose of this power is to ensure the Regulator is using its power in a proportionate manner and provide a safeguard for trustees of collective money purchase schemes.

Justification for delegation

- 1.94 The requirements specified in the regulations made under subsection (4) are likely to be details of the procedure to be followed by the Pensions Regulator and therefore it is appropriate for this to be in secondary rather than in primary legislation. Furthermore, requirements may evolve over time as more collective money purchase schemes enter the market and it is appropriate to delegate this power to ensure there are sufficient safeguards in place.

Justification for procedure

- 1.95 Regulations made under clause 23(4) will be subject to the negative resolution procedure. This is considered appropriate because the regulations made under clause 23(4) are expected to contain technical and procedural requirements relating to the matters the Regulator must comply with.

Clause 24 – subsection (2) - Rules about modifying schemes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

- 1.96 New section 67(3A) of the Pensions Act 1995, is inserted by section 24(2)(e) which governs subsisting rights of members of occupational pension schemes. For example, any accrued non-money purchase benefits cannot be converted into money purchase benefits without the member's consent. This is an important safeguard for member benefits.
- 1.97 Section 45 of the Pension Schemes Act 2015 repealed the power in section 67 (3)(b) of the 1995 Act which delegated to the Secretary of State the power to disapply the subsisting rights provision in relation to the exercise of a power "in a prescribed manner" and replaced it with a power to use regulations to provide for cases in which the subsisting rights provisions do not apply. Section 45 of the 2015 Act was never commenced and is repealed by clause 127(c).
- 1.98 Clause 24(2) makes the same changes as section 45 of the 2015 Act. Clause (2) repeals the power in section 67 (3)(b) of the 1995 Act which delegates to the Secretary of State the power to disapply the subsisting rights provision in relation to the exercise of a power "in a prescribed manner" and inserts a power into section 67 of the 1995 Act which allows the Secretary of State to make regulations excepting specified cases from the subsisting rights provisions.
- 1.99 As the rate of the benefits provided under a collective money purchase scheme is subject to adjustment, it is foreseeable that individuals could challenge that any downward adjustment would be a detrimental change to the members' benefits. Having considered the existing regulation-making powers in section 67(3)(a) of the Pensions Act 1995 which allows the disapplication of the subsisting rights provisions in relation to the exercise of a power in a "prescribed manner", there are concerns that this may not be wide enough to allow the Secretary of State to prescribe the necessary exemptions in respect of collective money purchase schemes. As such, there is a need to replace the existing power with a new regulation-making power.

Justification for delegation

1.100 The regulation-making power at clause 24(2) allows for situations where the subsisting rights provisions do not apply to ensure that the subsisting rights provisions do not prevent collective money purchase schemes from operating in the ways intended in this legislation. In addition, as collective money purchase benefits are a new form of benefits, it is desirable for there to be a regulation-making power to maintain flexibility and to ensure that the Government can adapt to changing practices or react to judicial decisions.

Justification for procedure

1.101 Regulations made under the existing power in section 67 of the 1995 Act are subject to the negative resolution procedure. The Government's view is that the regulation-making power inserted into section 67 by clause 24(2) should also be subject to the negative resolution procedure to ensure consistency of approach across section 67 of the Pensions Act 1995.

Clause 25 – subsections (4)(c) and (5) - Transfer rights

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: negative resolution procedure

Context and purpose

1.102 Under existing pensions legislation, members with money purchase benefits and non-money purchase benefits have a right to transfer their accrued pension rights to a different pension scheme. This right is principally contained in Chapter 1 of Part 4ZA of the Pension Schemes Act 1993 (sections 93 - 101). The accrued pension rights that the member can transfer to another pension scheme is the cash equivalent transfer value ("cash equivalent") placed on the pension benefits the member has built up.

1.103 Clause 25 amends existing legislation to extend this right to transfer accrued pension rights to members with collective money purchase benefits.

1.104 Under existing legislation, trustees are required to facilitate the transfer of money purchase benefit cash equivalents, within six months of the date of the transfer application from the member. This will also apply to collective money purchase benefits transfers. However, clause 25(4) amends section 99 of the Pension Schemes Act 1993 so as to provide a power for the Secretary of State to amend this deadline, by secondary legislation, to a longer period in relation to collective money purchase benefits.

1.105 Clause 25(5) inserts new section 99A into the Pension Schemes Act 1993. This provides that where trustees receive an application for a transfer of collective money purchase benefits, they cannot facilitate a member's application to transfer before the end of three weeks beginning with the day

after the day on which the notice is given. New section 99A(2)(b) gives the Secretary of State power to specify, by secondary legislation, a period other than 3 weeks.

Justification for delegation

- 1.106 While the transfer process for members with collective money purchase benefits largely follows the same process in legislation for money purchase benefits there are some differences. As collective money purchase schemes bed in and the market evolves, it may become apparent to trustees that the need for actuarial input in calculating cash equivalents for collective money purchase benefits means that a longer time period is required to facilitate these transfers. The delegated power in clause 25(4) will enable the Secretary of State to amend the period if this proves to be the case.
- 1.107 The newness and complexity of collective money purchase benefits means it will be important to give members time to consider whether or not to surrender the rights they have built up in a collective money purchase scheme by transferring their cash equivalent to a different pension scheme. Clause 25 (5), therefore, builds in a three week 'cooling-off' period into the collective money purchase transfer process. Trustees will be unable to facilitate a member's application to transfer during this three-week period unless they receive written consent from the member to do so. It may become apparent in the future that members do not need three weeks to decide whether or not to transfer to another pension scheme. The power to amend the three-week period by secondary legislation provides the flexibility to respond in an efficient manner if this is the case.

Justification for procedure

- 1.108 The delegated powers will help ensure that the right balance is struck between protecting the interests of members and not placing disproportionate burdens on schemes. To help ensure we get the change right, the Secretary of State will work closely with industry and the Regulator before exercising powers under these provisions. In light of this, the negative resolution procedure is considered to be the appropriate one. This is also consistent with the procedure used for most other regulations under Part 4ZA of the Pension Schemes Act 1993.

Clause 27 – subsection (1) and (2) - Requirement to submit supervisory return

Power conferred on: Secretary of State

Power exercised by: Notice (subsection (1)); Regulations made by Statutory Instrument (subsection (2))

Parliamentary Procedure: None (subsection (1)); Negative resolution procedure (subsection (2))

Context and purpose

- 1.109 The Pensions Regulator will be responsible for ongoing supervision of authorised collective money purchase schemes, and as part of this, will need to be satisfied that these schemes continue to meet the authorisation criteria. Where they do not, the Regulator can decide to withdraw authorisation from the scheme. As part of its oversight, the Regulator may, by notice, require the trustees of a collective money purchase scheme to submit a supervisory return no more than once every 12 months (subsection (1)). It is envisaged that the Pensions Regulator will use the information in the supervisory return, alongside other information provided, for example, as part of annual valuations, viability and continuity updates and significant and triggering event notifications, to help them monitor whether the scheme continues to meet all of the authorisation criteria. The notice issued by the Regulator must specify the information required to be included in the return; the manner and form in which the return must be submitted; and the period (of at least 28 days) within which the return is to be submitted.
- 1.110 Subsection (2) allows the Secretary of State, by regulations, to set out the information that may be required in a supervisory return.
- 1.111 Clause 27 mirrors closely section 15 of the Pension Schemes Act 2017, which places very similar requirements to submit a supervisory return on the trustees of Master Trust pension schemes in order to help the Regulator determine whether they continue to meet the authorisation criteria provided for under the 2017 Act.

Justification for delegation

- 1.112 The need to reflect adequately changes in the way individual schemes are operating over time in the supervisory return means that the legislative framework will itself need to be flexible and it is considered appropriate to delegate power to the Regulator to issue such notices and to set out the manner, form and required content of a return as well as a time period for its return (subject to a 28 day minimum). The information which the Regulator requires to maintain effective oversight may change as schemes mature and the market evolves. Consequently, and as was the case with section 15 of the 2017 Act, clause 27(2) delegates to the Secretary of State power to set in regulations the information that the Regulator may require in a supervisory return. The use of secondary legislation will provide the flexibility that will be needed to keep pace with changes in these schemes.

Justification for procedure

- 1.113 Regulations made under subsection (2) will be subject to the negative resolution procedure. This mirrors the use of the negative resolution procedure for regulations made under section 15 of the 2017 Act. The Government considers this procedure to be appropriate because the provisions that will be made under these regulations relate to operational details and it is likely that the details will need to change over time.
- 1.114 The issuance of the notice itself under subsection (1) is not subject to Parliamentary procedure, which is considered appropriate given the specificity of detail, which may depend on the circumstances and which may depend on the Regulator's experience. This reflects the approach taken in section 15 of the 2017 Act.

Clause 28 – subsections (2)(g), (3) and (4) - Duty to notify the Pensions Regulator of significant events

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: first regulations under subsection (3) are subject to affirmative resolution procedure. Subsequent regulations under subsection (3) and regulations under subsection (2)(g) and (4) are subject to negative resolution procedure.

Context and purpose

- 1.115 Certain events may impact on a scheme's authorised status. This clause places a duty on persons listed in subsection (2), where they become aware of certain "significant events" that have occurred in relation to an authorised collective money purchase scheme, to report those to the Pensions Regulator as soon as reasonably practicable. It is envisaged that these events may include, for example, a change of scheme trustee or a negative change in the employer's financial situation. Ensuring that the Regulator is aware of these events at the earliest opportunity is important as a part of the Regulator's supervisory and regulatory functions and is vital if member interests are to be protected.
- 1.116 Similar requirements to clause 28 are made in existing legislation with regard to defined benefit schemes (notifiable events under section 69 of the Pensions Act 2004) and Master Trust pension schemes (this clause closely mirrors section 16 of the Pension Schemes Act 2017, which makes very similar provision with regard to significant events in relation to Master Trust pension schemes).
- 1.117 Subsection (2) sets out a list of persons who are obliged to give the Regulator written notice that a significant event has occurred. This includes scheme trustees, employers and persons providing legal advice to the scheme. Subsection (2)(g) provides the Secretary of State with the power to prescribe

other categories of person obliged to give the Regulator written notice that a significant event has occurred.

- 1.118 Subsection (3) requires the Secretary of State to set out in regulations the 'events' which constitute 'significant events'. There is precedent for this requirement to set 'significant events' in regulations in section 16(3) of the 2017 Act, which similarly placed a duty on the Secretary of State to make regulations, which were then made following consultation and debate.
- 1.119 Subsection (4) provides that the Secretary of State may make regulations to specify further information that is to be provided by a person required to give a notice under this clause.

Justification for delegation

- 1.120 Subsection (2)(g) is needed because as these schemes mature and the market develops new categories of persons may emerge who should be subject to the requirements in this clause. This will ensure that persons acting in a capacity not currently specified in the legislation can be made subject to the duty to notify the Regulator if a significant event occurs. Furthermore, the manner in which collective money purchase schemes operate is likely to change as these schemes develop over time. There is, therefore, a need for flexibility to capture all relevant categories of person obliged to notify the Regulator that a significant event has occurred. It is also possible that as these schemes develop there may be a need to add new significant events, which in turn may require further categories of persons to be subject to the duty to notify the Regulator of the occurrence of a significant event.
- 1.121 Subsection (3) requires the Secretary of State to set out in regulations the events that will constitute significant events for the purpose of this clause. It is envisaged that the list of significant events will be developed in consultation with the Regulator and industry stakeholders but it is important that legislation is able to respond to changes in the pensions market as these schemes develop. This will ensure that the appropriate events are captured that will help safeguard members.
- 1.122 Subsection (4) provides a power to specify in regulations further information to be provided by a person required to give notice under this clause. This may, for example, allow the Regulator to request more detailed information. As outlined above, it will also be important to have the flexibility to be able to respond to developments in these schemes and the market. The use of delegated legislation would provide the flexibility to respond effectively to these changes in a timely fashion. Setting the details in regulations will also allow for greater specificity and detail than is usual in primary legislation.

Justification for procedure

- 1.123 Regulations made under subsection (3) will be subject to the affirmative resolution procedure in the first instance. It is appropriate that the events that

the Government initially identifies as significant events in relation to collective money purchase schemes be subject to full debate. Subsequent changes would be made using the negative resolution procedure. It is envisaged that should relate to the addition of new significant events or amendment to existing events, which may be required as a result of developments in these schemes and the market. Regulations made under subsection (2)(g) and (4) are to be subject to the negative resolution procedure as they relate to the people required to notify the Regulator of significant events and who may also be required to provide further information. This procedure would provide appropriate scrutiny and opportunity for debate of these matters, without requiring debate on each change as a matter of course.

Clause 29 – subsections (1), (4) (6), (7), (8) and (10) - Risk notices

Power conferred on: the Pensions Regulator (subsections (1), (4) (6), (7)(b) and (8)), the Secretary of State (subsections (7)(a) and (10))

Power exercised by: directions or notices issued by the Pensions Regulator (subsection (1), (4) (6)); specification by the Pensions Regulator (subsection (7)(b) and (8)); regulations made by Statutory Instrument (subsections (7)(a) and (10))

Parliamentary procedure: none (subsection (1), (4) (6), (7)(b) and (8)); negative resolution procedure (subsections 7(a) and (10))

Context and purpose

- 1.124 Clause 29 enables the Pensions Regulator to issue a risk notice to the trustees of a collective money purchase scheme if it considers there is an issue of concern in relation to the scheme, which if not resolved would result in the scheme either breaching or being likely to breach the authorisation criteria (subsection (1)). A risk notice will require the trustees to submit a plan (a resolution plan) to the Regulator explaining how they intend to resolve the issue. As these issues are not as serious as triggering events (significant adverse events such as employer insolvency), the intention is that the Regulator can use this procedure to react more flexibly and quickly to safeguard members' interests by requiring the trustees to resolve the issue of concern before the situation deteriorates further. Subsection 4 delegates to the Regulator power to issue a further notice if it is not satisfied with the initial resolution plan provided setting out the date by which a further plan must be submitted. The clause requires the trustees to provide periodic updates via a progress report to the Regulator setting out what progress has been made in implementing the resolution plan.
- 1.125 Under subsection (5), the trustees must implement the proposals in a resolution plan if the Regulator notifies the trustees that it is satisfied that the proposals are likely to be adequate to resolve the issue of concern. Subsection (6) delegates to the Pensions Regulator the power to direct the trustees to comply with this requirement.
- 1.126 Subsection (7)(a) delegates to the Secretary of State the making of regulations to set out the time period within which the trustees must submit an initial report

setting out the progress they are making in implementing the proposals in a resolution plan (where the trustees are required by virtue of subsection (5) to implement proposals).

- 1.127 Subsection (7)(b) delegates to the Regulator the function of specifying the intervals at which further progress reports are to be provided.
- 1.128 Subsection (8) delegates to the Regulator the function of specifying the manner and form in which resolution plans and progress reports are to be provided.
- 1.129 Subsection (10) delegates to the Secretary of State the power to make regulations to set out details of the information the risk notice must contain and to set the period within which a resolution plan or any revised plan must be submitted to the Regulator.

Justification for delegation

- 1.130 It is considered appropriate to give power to the Regulator to issue notices under subsection (1) and (4) to require a resolution plan or revised plan to be submitted, in the circumstances set out. The Regulator is required to set out the issue of concern and date by which the trustees must comply, within the risk notice (there are regulation-making powers in subsection (10) to specify a time period for compliance).
- 1.131 It is also considered appropriate under subsection (6) to direct the trustees to implement the proposals in a resolution plan, where this has been agreed with the Regulator. This would enable the Regulator to take action to require the trustees to resolve the issue of concern, which the Regulator considers will or is likely to lead to a breach of the authorisation criteria if not resolved; this is important for member protection.
- 1.132 As the nature of the information to be provided in a risk notice will need to vary depending on the form of the risk and in the light of operational experience it is appropriate that the details of information to be included in a risk notice can be set out in regulations (under subsection (10)). It is also considered appropriate that the Secretary of State can make regulations to set maximum time periods within which a resolution plan (including any revised plan) or initial progress report must be submitted, in order to respond to emerging practice as these new schemes develop (subsections (7)(a) and (10)).
- 1.133 The powers given to the Regulator to specify the form and manner in which resolution plans and progress reports are to be provided and to specify the intervals at which further progress reports are to be submitted (subsections (7)(b) and (8)) enable the Regulator to control how these plans and reports are made and when subsequent reports should be submitted, in light of its experience of the practical issues concerned.

Justification for procedure

1.134 Regulations made under subsection (10) and (7)(a) only relate to information that must be contained in a risk notice and the dates by which a resolution plan (including any revised plan) or initial progress report should be provided to the Regulator. As these items relate to operational details, it is considered appropriate that the regulations are subject to the negative resolution procedure.

Clause 33 - subsections (4)(b) and (10) - Notification of triggering events

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.135 When a triggering event occurs, under clause 33 relevant parties are required to notify the Pensions Regulator of the occurrence of the event. Subsection (2) sets out who the relevant parties are for any given triggering event – for example, if an insolvency event occurs in relation to an employer, clause 33 requires the employer, amongst others, to notify the Regulator.

1.136 Clause 33 also requires the relevant parties to give notifications to employers and trustees as applicable informing them of the occurrence of the event (subsections (3) to (9)). Subsection (4)(b) delegates to the Secretary of State the power to set out other matters which must be notified in this instance.

1.137 Subsection (10) delegates to the Secretary of State the power to set the time limit within which a notification under clause 33 must be made. Prompt notification that a triggering event is occurring should allow the Regulator to take more effective action to safeguard members' benefits. The power closely mirrors section 22(7) of the Pension Schemes Act 2017, which also delegates to the Secretary of State the power to prescribe the time limit on equivalent notifications in respect of a Master Trust pension scheme.

Justification for delegation

1.138 In relation to subsection (4)(b), it is considered this is a matter appropriate for secondary legislation as this would allow for greater detail relating to operational matters than is usual in primary legislation. It would also provide the flexibility needed to respond to changes in schemes and the market.

1.139 In relation to subsection (10), this is a power to set the detail of the time period within which a notification must be made. It is considered this is a matter appropriate for secondary legislation.

Justification for procedure

1.140 Regulations made under subsections (4)(b) and (10) are to be subject to the negative resolution procedure. It is considered this is appropriate given the operational and administrative matters in relation to which these regulation-making powers can be exercised. It also mirrors the use of the negative procedure for the equivalent powers in section 22(6)(b) and (7) of the Pension Schemes Act 2017.

Clause 36 – subsections (1)(c), (2)(b) and (c), (5), and (6) - Continuity option 1: transfer out and winding up

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure for subsections (2) and (6) and negative resolution procedure for subsections (1)(c) and (5)

Context and purpose

1.141 Following a triggering event, trustees of a collective money purchase scheme are required to pursue one of three continuity options set out in the Part 1 of the Pension Schemes Bill 2019. Clause 36 covers the scenario where a collective money purchase scheme can no longer satisfy the Pensions Regulator that it meets the authorisation criteria, or where for any other reason the trustees decide that it is appropriate to wind up the scheme. To protect the rights and benefits that beneficiaries have accrued in the scheme, this option requires the trustees to find alternative arrangements for active, deferred and pensioner beneficiaries and their survivors, which for example, could include transferring accrued rights or benefits to another pension scheme. Once this is done, the trustees will be able to wind the scheme up. This provision is intended to protect beneficiaries from being trapped in a failing scheme after a triggering event has occurred.

1.142 Subsection (1)(c) delegates to the Secretary of State the power to set out the information which the scheme trustees must provide to employers and the scheme beneficiaries in relation to the proposal to discharge liabilities and wind up the scheme. Subsection (5) delegates to the Secretary of State the power to prescribe the form the information must be provided in and the deadline by which the information must be provided.

1.143 Subsection (2) provides three options open to trustees to discharge members accrued rights and liabilities. Under subsection (2)(a) beneficiaries accrued rights to benefits would be transferred into either another collective money purchase scheme or to a Master Trust scheme. Subsection (2)(b) delegates to the Secretary of State the power to prescribe certain circumstances in which the value of the accrued rights to benefits of the beneficiaries of a collective money purchase scheme may be transferred into certain other pension schemes with descriptions specified in regulations. This recognises that in the future categories of pension schemes other than collective pension schemes

or Master Trust pension schemes may enter the market and be able to receive bulk transfers of beneficiaries from a collective money purchase scheme that is being wound up.

- 1.144 Subsection (2)(c) delegates to the Secretary of State the power to prescribe alternative payment arrangements in respect of beneficiary benefits. For example, the trustees may decide that bulk annuitisation of these benefits may be the most appropriate course of action. It is also possible that as the collective and wider pensions market evolves new pension arrangements may emerge that might provide an appropriate alternative to annuitisation. This power provides the flexibility to respond to these potential changes so that trustees can act in the best interests of members.
- 1.145 Subsection (6) allows the Secretary of State to make provision in regulations for the purposes of giving effect to continuity option 1. For example, regulations made under this power could be used to protect beneficiaries' interests by providing the Pensions Regulator with powers to direct trustees to take actions to give effect to continuity option 1. Subsection (7) sets out the matters which must be covered in regulations including provision about the quantification of accrued rights to benefits and the winding up of collective money purchase schemes. Subsection (10) empowers the Secretary of State to provide for the application of civil penalties under section 10 of the Pensions Act 1995 to a person who fails to comply with a requirement imposed by this clause in regulations.
- 1.146 Subsection (11) provides that regulations made under subsection (2) or (6) are subject to the affirmative resolution procedure. Subsection (12) provides that regulations made under subsection (1)(c) or (5) are made under the negative resolution procedure.

Justification for delegation

- 1.147 In relation to subsections (1)(c) and (5), clear and timely access to information will be important in assuring all parties that the proposal in relation to discharge of liabilities is in the best interests of beneficiaries, ensuring the process is transparent and that beneficiaries are informed of opt out rights. The information needs to be prescribed at a fine level of detail to ensure clarity. For example, the trustees may be required to inform all parties of the timetable for the transfer, and the administrative costs which the receiving scheme may levy on beneficiaries. This level of technical and operational detail is more suited to regulations than primary legislation and is more flexible if it is necessary to accommodate changes to respond to changing circumstances such as advances in technology. Subsections (1)(c) and (5) follow sections 24(1) and (3) of the Pension Schemes Act 2017, which makes a similar provision for notification requirements around the transfer of beneficiaries out of a Master Trust following a triggering event, and are subject to the negative resolution procedure.
- 1.148 In relation to the powers under subsections (2)(b) and (c) these powers provide flexibility for trustees in future to discharge liabilities to categories of

pension schemes which are not yet provided for in legislation and to ensure that these schemes are subject to an appropriate level of detailed regulation. Regulations are more suitable than primary legislation to provide for the requisite level of technical detail that will likely be needed.

- 1.149 In relation to subsection (6) these powers enable the Secretary of State to prescribe the detail of how the trustees should implement continuity option 1 in regulations within a framework of mandatory and discretionary requirements set out in subsections (6) and (7). Regulations are more suitable than primary legislation to provide the requisite level of technical detail that will be needed.
- 1.150 It is suitable for regulations under subsection (10) to provide for the application of civil penalties, to ensure that the penalties apply proportionately to the complex provisions in this clause.

Justification for procedure

- 1.151 The powers in subsections (1)(c) and (5) are subject to the negative resolution procedure. This is the usual procedure for regulations of this type which are providing technical information and provides an appropriate level of Parliamentary scrutiny.
- 1.152 In relation to the powers under subsection (2)(b) and (c), the nature of the destination pension scheme or alternative payment mechanism will potentially have a significant impact on member outcomes in the short and long term, and the Government considers, therefore, that this power should be subject to the affirmative resolution procedure on each use. As this will be a new market, with only one employer at present committed to establishing a collective money purchase scheme, the Government cannot be definite about where members might be transferred to. Given the interest shown in this new type of scheme during the public consultation, the Government envisage that in the near future receiving schemes in these circumstances are more likely to be another collective money purchase scheme or a Master Trust pension scheme. However, it is inevitable that the collective and wider pension market will evolve and new alternatives as receiving schemes may emerge as viable options.
- 1.153 In relation to subsection (6), the importance of these provisions for beneficiary outcomes and the fact it may require trustees to take steps not contained in their scheme rules, means it is appropriate for this power also to be subject to the affirmative resolution procedure on each use.

Clause 37 – subsection (3)(b) - Continuity option 2: resolving triggering event

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

- 1.154 Following a triggering event, the trustees of a collective money purchase scheme must follow one of three continuity options set out in the primary legislation. Clause 37 sets out the procedure where trustees decide to follow option of attempting to resolve the triggering event. This option may be used where for example, the Pensions Regulator notifies the trustees that the scheme's authorisation may be withdrawn and the trustees may decide to attempt to resolve the Regulator's concerns. Subsection (3)(b) delegates to the Secretary of State the power to set the time period within which the trustees must resolve the triggering event and notify the Regulator of this.
- 1.155 Subsection (3)(b) provides a power to set the detail of the time period within which the triggering event must be resolved and a notification made. It is important for member protection that triggering events are required to be resolved as quickly as possible – equally, however, member outcomes may be affected if it becomes clear that scheme trustees are unable to carry out the required activities within the time limit that has been prescribed. This clause broadly replicates section 25 of the Pension Schemes Act 2017 which makes similar provisions for Master Trusts.

Justification for delegation

- 1.156 It is appropriate for subsection (3)(b) to enable adjustments to be made to the time period for resolving triggering events by secondary legislation, so that the time period can be adjusted to relate to operational practices. As such adjustments will be operational in nature, it is suitable to make these changes by way of regulations rather than primary legislation.

Justification for procedure

- 1.157 Given the nature of the regulation-making power, namely to set an administrative timetable, the negative resolution procedure is considered to provide an appropriate level of Parliamentary scrutiny. The scope of the power is limited to setting the time limit the trustees have to notify the Regulator that they have complied with their legal duties as set out in this clause.

Clause 38 – subsection (3) - Continuity option 3: conversion to closed scheme

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.158 The third option for trustees following a triggering event will be to close the scheme either to new members, or to new members and to new contributions and additionally to continue paying benefits under the rules of the scheme as and when they fall due. Existing scheme members may also continue to accrue benefits. Subsection (3) delegates to the Secretary of State the power to set a time period within which the scheme trustees must inform the Regulator when the trustees consider that the process of converting to a closed scheme has been completed. This will ensure that the Regulator is given prompt notice that the conversion has been carried out, allowing the Regulator to continue to monitor the scheme appropriately to ensure the interests of members continue to be protected.

Justification for delegation

1.159 Given the nature of the regulation-making power, namely to set an administrative timetable, the negative resolution procedure is considered to provide an appropriate level of parliamentary scrutiny. The scope of the power is limited to setting the time limit within which the trustees have to notify the Regulator that they have complied with their obligations under this clause.

Justification for procedure

1.160 As the regulations will only be used to set an administrative timetable which is considered an operational detail, it is considered appropriate that they will be subject to the negative resolution procedure. The power does not allow for any wider use beyond setting the time limit within which the trustees have to notify the Regulator that they have complied with their obligations under this clause.

Clause 39 – subsection (1)(b) - Implementation strategy

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.161 Following a triggering event, the trustees are required to set out their implementation strategy designed to protect the scheme members, which must be approved by the Regulator. Clause 39(1)(b) delegates to the

Secretary of State the power to set the deadline within which this strategy must be submitted to the Regulator.

Justification for delegation

- 1.162 Given that regulations made under this power will be of an operational nature, it is considered to be more appropriate for delegation than primary legislation.

Justification for procedure

- 1.163 As this relates to a matter of operational nature in that the regulations will only be used to set an administrative timetable. It is considered appropriate that the regulations are subject to the negative resolution procedure. The power does not allow for any wider use beyond the power to set the time limit the trustees have to submit the implementation strategy to the Pensions Regulator.

Clause 40 – subsections (4) and (6) – Approval of implementation strategy

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

- 1.164 The Pensions Regulator may approve the trustees' implementation strategy for protecting scheme members following a triggering event only where the Regulator is satisfied that the strategy is adequate. Subsection (3) provides that that implementation strategy must include information about the levels of administrative charges in relation to members of the scheme. Subsection (4)(a) provides that the Secretary of State may prescribe the levels of administrative charges as at the date specified, or described in the regulations, must be provided in the information. Subsection (4)(b) provides that the information must be provided in a manner specified or described in the regulations.
- 1.165 Subsection (6)(a) delegates to the Secretary of State the power to prescribe in detail any other information which the implementation strategy must contain and subsection (6)(b) provides that the information must be prepared in accordance with regulations made by the Secretary of State.
- 1.166 This clause broadly follows the approach set out in section 26 of the Pension Schemes Act 2017. It will be important to ensure that timescales prescribed are realistic, allowing trustees to make informed decisions on the future of members' rights before submitting the implementation strategy to the Regulator. The Government envisages consulting with industry before any changes are made to ensure that those changes are effective. Once the process following triggering events becomes embedded, it will be important to

retain the ability for the Secretary of State to set a timescale which reflects the reality of industry practice and takes account of operational experience, as needed.

Justification for delegation

1.167 Transparency and clarity around member charges will be very important in ensuring that members do not face unacceptable costs following a triggering event; using regulations will allow the Secretary of State to set a greater level of detail than is usual in primary legislation, and to amend these details in the implementation strategy if, and when, this becomes necessary. For example, subsection (4)(a) allows for regulations ensuring the charge levels stated relate to the period following the triggering event. This level of administrative detail is more appropriate for secondary legislation.

Justification for procedure

1.168 As the setting of timescales and detailed information to be included in the implementation strategy is a matter of operational detail, it is considered appropriate that the regulations made under this clause are subject to the negative resolution procedure.

Clause 41 – subsection (2) - Trustees’ duties once implementation strategy approved

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.169 Clause 41 subsection (1)(a) places an obligation on trustees to pursue the continuity option identified in an approved implementation strategy. Subsection (1)(b) requires trustees to take such other steps as are identified in the implementation strategy in order to carry it out. Subsection (2) provides that the Secretary of State may by regulations, require the trustees of a collective money purchase scheme to make available an approved implementation strategy before the end of a period specified or described in the regulations to employers, relevant former employers and other persons of a specified description.

Justification for delegation

1.170 The time table may need to change from time to time and specifying in regulations exactly which categories of relevant former employers need to be informed provides flexibility. The power does not allow for any wider use.

Justification for procedure

- 1.171 As the timetable is an operational detail, it is considered appropriate to subject the power to the negative resolution procedure. The power to specify certain descriptions of relevant former employers in regulations is also a narrow one which is limited in application to this section so the negative resolution procedure is considered appropriate.

Clause 43 – subsections (2), (3) and (4)(b), (c) and (d) - Periodic reporting requirements

Power conferred on: the Secretary of State (subsections (2) and (4)(b) and (c)), the Pensions Regulator (subsections (3) and (4)(d))

Power exercised by: Regulations made by Statutory Instrument (subsections (2) and (4)(b) and (c)); specification by the Regulator (subsections (3) and (4)(d))

Parliamentary Procedure: Negative resolution procedure (subsections (2) and (4)(b) and (c)), none (subsections (3) and (4)(d))

Context and purpose

- 1.172 Clause 43 requires the trustees of a collective money purchase scheme to submit reports regularly to the Pensions Regulator during a triggering event period. This will allow the Regulator to keep a close watch on the scheme and intervene should the situation appear to be deteriorating.
- 1.173 Subsections (2) and (4)(b) and (c) delegate to the Secretary of State the power to prescribe the time period within which the first of these reports must be submitted, and information that must be included in them, including recording events or decisions as specified in regulations. Subsection (3) delegates to the Regulator the function of specifying the intervals at which subsequent reports are to be submitted. Subsection (4)(d) enables the Regulator to specify the manner and form in which the reports must be made.

Justification for delegation

- 1.174 Secondary legislation would give greater provision for different timescales to be set, in respect of the initial reports to be provided, in response to different triggering events and allows for the timescales to be amended with relative ease if necessary as more collective money purchase schemes develop. Different information requirements may be needed for different triggering events and secondary legislation is appropriate for specifying such requirements. It is envisaged that Government would work with both the industry and the Regulator to ensure that all the relevant decisions and events are required to be included in any report.
- 1.175 It is appropriate for the Regulator to be able to control the manner and form in which reports must be made and the intervals at which subsequent reports

are to be submitted, in light of their experience of the practical issues concerned.

Justification for procedure

- 1.176 The timing for submission of these reports and their content is a matter of operational detail and it is considered appropriate therefore to subject the regulations to the negative resolution procedure.
- 1.177 It is appropriate for the Regulator to manage the requirements regarding the manner and form in which reports must be made and the intervals at which subsequent reports are to be submitted. Requirements as to form and manner of reports and the timing of ongoing reports are matters of technical detail. It is considered the Regulator is best placed to determine these matters in accordance with its practice and its understanding of the market.

Clause 44 subsection (5) and Schedule 2 paragraph 4(3) – Pause orders

Power conferred on: the Pensions Regulator

Power exercised by: by order (containing a direction)

Parliamentary procedure: none

Context and purpose

- 1.178 Under clause 44, the Pensions Regulator may issue a pause order in relation to a collective money purchase scheme during a triggering event period for the scheme, if either of two conditions is met. The Conditions are set out in subsections (3) and (4). Condition 1 is that the Regulator is satisfied that the making of the pause order will help the trustees to carry out the implementation strategy. Condition 2 is that the Regulator is satisfied that there is, or is likely to be if a pause order is not made, an immediate risk to the interests of members of the scheme or the assets of the scheme and it is necessary to make a pause order to protect the interests of the generality of the members of the scheme. This pause order would enable the Regulator to direct that certain specified activities are to be paused – subject to the powers of direction in subsection (5). The Regulator can also by order direct the trustees of the scheme to notify certain persons of the order and of any order extending its period or validating action done in contravention of it, under paragraph 4(3) of Schedule 2.

Justification for delegation

- 1.179 It is considered appropriate to delegate these powers of direction to the Regulator. It is appropriate for the Regulator to determine the nature of the activities to be paused for these purposes and to be able to require trustees to notify certain persons of the order and of related orders. Similar powers are given to the Regulator in respect of Master Trust pension schemes in the Pension Schemes Act 2017. It is also considered appropriate to delegate to

the Regulator the specification of the time period within which any required actuarial valuation is to be prepared.

Justification for procedure

1.180 The power to specify the nature of the activity to be paused, the time period within which any actuarial valuation is to be done and the persons to be notified are not powers subject to Parliamentary procedure. These matters are intended to be specific to the case in hand. Parliament is being given the opportunity to debate the powers of direction that may be exercised by the Regulator in terms of their scope as set out in subsection (5) and in Schedule 2 but it is not considered necessary for further Parliamentary scrutiny to be afforded to the more specific terms of a pause order that may be issued under these powers, (for example where an order may contain a direction in relation to payments of a description specified in the order). Pause orders may need to be issued very swiftly in reaction to events.

Clause 45 – subsections (3) and (6) - Prohibition on increasing charges etc during triggering event period

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: regulations under subsections (3)(a) and (6) and the first regulations made under subsection (3)(b) will be subject to affirmative resolution procedure; subsequent regulations made under subsection (3)(b) will be subject to negative resolution procedure

Context and purpose

- 1.181 Clause 45(1) prohibits the trustees of a collective money purchase scheme from increasing or imposing new administration charges on members, or imposing such charges as a result of a member leaving, or deciding to leave the scheme, during a triggering event period in relation to the scheme. The effect is to limit the extent to which members' bear the costs of winding up of the scheme, or paying for other measures that may apply when a scheme enters a triggering event period. The clause also prohibits a scheme which takes on a bulk transfer of members from a scheme that is experiencing a triggering event period, from increasing or imposing new charges in its own scheme to pay for costs for which it is liable in relation to the transfer.
- 1.182 Subsection (2) resembles section 33(2) of the Pension Schemes Act 2017, which makes similar provision in respect of administration charges during a triggering event in relation to a Master Trust pension scheme.
- 1.183 Subsection (3) allows the Secretary of State to prescribe that administration charges that are the subject of the regulations made under subsection (3) are exempt from the limitations at subsections (1) and (2) and may prescribe how the levels of administration charges to these are to be calculated.

- 1.184 Subsection (6) allows the Secretary of State to apply some or all of the provisions of this clause to a scheme receiving a bulk transfer from a collective money purchase scheme that is winding up that has the characteristics specified in regulations under clause 36(2)(b). This power accommodates the possibility that as the market evolves, new types of pension schemes may emerge (other than collective money purchase schemes or Master Trust pension schemes) that may receive a bulk transfer from a collective money purchase scheme in these circumstances (to be prescribed in regulations under clause 36(2)(b)).

Justification for delegation

- 1.185 In relation to the powers at subsection (3), as these matters may need to change from time to time to reflect evolving operational practices, the evolving market and any potential loopholes that may emerge, the Government considers it is more suitable to use secondary legislation. Secondary legislation will provide the flexibility to respond more efficiently in order to protect members.
- 1.186 As for the power at subsection (6), this is linked to the use of delegated powers in clause 36(2)(b) and is dependent on regulations being made under this clause; should such regulations be made it is considered appropriate to be able to provide for the provisions of this clause to apply in respect of such schemes.

Justification for procedure

- 1.187 As this forms part of the new authorisation regime for collective money purchase schemes, regulations made under subsection(3)(a) or (6), and the first regulations under subsection (3)(b) will be subject to the affirmative resolution procedure (subsequent regulations made under subsection (3)(b) will be subject to the negative resolution procedure). As collective money purchase schemes are new, it is entirely appropriate that regulations relating to administration charges and the protection of members be subject to full debate. Similarly, it is appropriate that extending this clause to any new types of scheme the Government considers may be appropriate to be a receiving scheme should be subject to full debate. This will help ensure the regulations are fit for purpose and member interests are safeguarded. It is appropriate for regulations under subsections (3)(a) and (6) to be subject to the affirmative resolution procedure which can provide an opportunity for the Government to fully outline and explain to Parliament the framework it has developed for safeguarding the interests of members in relation to administration charge levels during a triggering event period.
- 1.188 It is appropriate for the first regulations made under subsection (3)(b) be subject to the affirmative resolution procedure and that subsequent regulations under this subsection are subject to the negative resolution

procedure. This is because further changes are likely to be operational in nature. There will still be appropriate scrutiny and opportunity for debate.

Clause 46 – subsections (1) and (3) - Publication of information

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument (subsection (1)); guidance (subsection (3))

Parliamentary Procedure: Negative resolution procedure (subsection (1)); none (subsection (3))

Context and purpose

1.189 Clause 46 delegates to the Secretary of State a power to prescribe in regulations the publication of information relating to collective money purchase schemes. The regulations may amongst other things require information to be made available free of charge. The intention is for information to be accessible to members, prospective members, employers, pension commentators and other relevant interested parties.

Justification for delegation

1.190 This delegated power is necessary to allow the Secretary of State to set out exactly which information must be published and allow for a greater level of detail than could be provided in primary legislation, at this stage. Setting out a list of all information that a collective money purchase scheme can publish in primary legislation could constrain future developments in the manner in which scheme communications can be provided. For example, using regulations made under subsection (2)(d) will allow specification in detail of how and when information contained in a document can be redacted before publication. It allows the Government to work with the pensions industry to ensure the content of technical scheme design, governance and administration documentation are appropriate for publication and adequately take into account any commercial sensitivities across the full scheme disclosure framework.

1.191 The Government's intention is that the regulations will set out in detail what information collective money purchase schemes will be required to publish and the method for how that information will be made available. That will include, (in whole or in part) technical documents required under Part 1 of the Bill, (for instance, the viability report (clause 13), the continuity strategy (clause 17), the actuarial valuation (clause 20), the certificate or report in relation to actuarial valuation (clause 21) and the implementation strategy (clause 39)). Save for the certificate or report in relation to actuarial valuation, all of these clauses include delegated powers that allow the Secretary of State to make regulations to specify the content of the information. For this reason, the delegated powers at subsection (2) is consistent with the use of delegated powers in the clauses cited above, specifying details by regulations can provide the flexibility to identify the appropriate parts of information to be

published and address new forms of information and documents as they emerge. It allows for the publication of other relevant collective money purchase scheme documents required under the existing money purchase framework, for instance the scheme rules and audited accounts. It also allows for other information to be published that is not explicitly contained in the scheme governance or administration documentation but where public scrutiny or comparisons between schemes would be beneficial.

- 1.192 In view of the need to ensure schemes understand what is required of them by this clause, it is appropriate for there to be guidance on complying with these requirements to which trustees must have regard. Trustees must have regard to any guidance prepared by the Secretary of State, when complying with a requirement imposed on them under subsection (1).

Justification for procedure

- 1.193 The details regarding publication are essentially an operational matter and it is considered appropriate that the regulations are subject to the negative resolution procedure. In addition, this approach is consistent with the existing publication and disclosure requirements required under section 113 of the Pension Schemes Act 1993. It is appropriate for guidance to be prepared by the Secretary of State. As the guidance relates to legislative requirements it is not considered necessary for it to be subject to a Parliamentary procedure.

Clause 47 – subsection (1) - Power to extend definition of qualifying schemes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

- 1.194 Clause 3(3) excludes schemes which are used by two or more unconnected employers from the definition of qualifying schemes. This limitation is necessary as a safeguard until the legal requirements for other kinds of collective money purchase scheme structures are better understood. For example, commercial Master Trust providers are interested in operating a collective money purchase scheme, but this work is at a very early stage of development.
- 1.195 Clause 47(1) delegates to the Secretary of State the power to remove the prohibition in clause 3(3) on schemes which are not established by the employer or used by two or more unconnected employers from satisfying the definition of qualifying schemes. This would allow such schemes to meet the definition of qualifying schemes and enable the Regulator to authorise such schemes according to the authorisation regime provided for in this Bill.

Justification for delegation

1.196 Delegating these powers to regulations will provide the Government with the ability to respond to changing market demands for non-connected multi-employer collective money purchase schemes as they emerge and enable regulations to adapt the authorisation regime in different ways best suited to a particular scheme structure. The power at clause 47(1) only delegates the power to amend the legislation to provide for multi-employer collective money purchase schemes not established by an employer of the scheme, or used by two or more employers, some or all of which are not connected with each other. It does not allow the legislation to be amended for other purposes or for other kinds of scheme.

Justification for procedure

1.197 Given that these provisions will allow different providers of collective money purchase schemes and therefore change the nature of the market, it is considered appropriate for regulations made under this power to be subject to the affirmative resolution procedure.

Clause 47 – subsections (3), (4) and (5) – Power to extend definition of qualifying schemes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

1.198 Where the power at clause 47(1) is exercised, clause 47(3) delegates to the Secretary of State the power to make further provisions relating to authorisation, triggering events, continuity options and imposing administration changes during triggering event period. Clause 47(4) allows regulations made under clause 47(3) to make provision corresponding or similar to the provisions set out in Part 1 of the Pension Schemes Act 2017 or to disapply any of these provisions in relation to schemes which are not established by an employer of the scheme or used by two or more employers some or all of which are not connected with each other. This is to ensure the Government may adapt the existing authorisation and ongoing supervision framework so that it can apply to such schemes.

1.199 Furthermore, clause 47(5) allows regulations to apply with modification, amend, repeal or revoke any provisions in Part 1 of this Bill and any other legislation for the purpose of facilitating collective money purchase schemes which are not established by an employer of the scheme or used by two or more employers some or all of which are not connected with each other.

Justification for delegation

1.200 This clause delegates the power to amend the legislation to provide for multi-employer collective money purchase schemes not established by an employer of the scheme or used by two or more employers some or all of which are not connected with each other. It does not allow the legislation to be amended for other purposes or other kinds of scheme. Delegating these powers to regulations will provide the Government with the ability to respond to changing market demands for non-connected multi-employer collective money purchase schemes as they emerge and enabling regulations to adapt the authorisation regime in different ways best suited to a particular scheme structure.

Justification for procedure

1.201 As regulations made under this power may amend primary legislation, it is considered appropriate for regulations made under this power to be subject to the affirmative resolution procedure to allow Parliamentary scrutiny.

Clause 48 and paragraph 18 of Schedule 3 – New section 291(4)(f) - power to modify Part 1 in respect of UK cross-border schemes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1.202 Schedule 3, paragraph 18 (which inserts new section 291(4)(f) into the PA 2004) extends an existing power in that section to modify Part 1 in relation to cross-border schemes receiving contributions from a European employer. The provisions place an obligation on the trustees or managers of a UK cross-border scheme to operate in accordance with the relevant labour laws of the host member State, in respect of relevant members.

1.203 The provisions will be repealed on exit day.

Justification for Delegation

1.204 Subsection (4)(f) confers a regulation-making power to allow modification of UK pensions legislation in respect of UK based cross-border schemes. The intention is to avoid unnecessary dual regulation between the Regulator and the regulatory authority of another member State.

Justification for Procedure

1.205 The negative resolution procedure applies to the extended provision. This is the same procedure as currently applies to regulations made under the existing provision. Although the powers allow for the modification of primary legislation by secondary legislation, which would usually indicate the use of the affirmative resolution procedure, the negative resolution procedure is considered appropriate in this instance because it would be used to avoid duplication of, and inconsistencies in, regulation, so that the regulation regime of the host member state can work effectively.

Clause 49 – subsection (2) - Interpretation of Part 1

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

1.206 This clause clarifies the meaning of various terms used within the legislation. Subsection (2)(a) defines the meaning of ‘connected employers’ as a connection between two employers as set out in section 1161(5) of the Companies Act 2006 (the “2006 Act”). Subsection (2)(b) delegates to the Secretary of State the power to specify other circumstances in which two or more employers would be considered to be ‘connected’. The power therefore allows employers to be prescribed as ‘connected’ in regulations rather than under section 1161 (5) of the 2006 Act. This power is necessary to ensure that employers cannot circumvent the provisions of section 1161(5) of the 2006 Act with regard to collective money purchase benefits or schemes. It is not a general power to define employers as ‘connected’ for any purposes other than that concerned with collective money purchase benefits and schemes.

Justification for delegation

1.207 The power under subsection (2) is delegated to regulations because the level of detail that would need to be used to specify ‘connected’ will be greater than is usual in primary legislation. Furthermore, as the structure of corporate entities evolve over time, it is important that legislation can change and react to any emerging trends or practices.

Justification for procedure

1.208 Regulations made under clause 49(2)(b) will always be subject to the affirmative resolution procedure. This is because any changes made under these powers could change what “connected employers” means in this context. Using the affirmative resolution procedure would allow for full and proper consultation, scrutiny and debate.

Clause 49 – subsection (4) – Interpretation of Part 1

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and purpose

1.209 This clause clarifies the meaning of various terms used within the legislation. Subsection (3) relates to schemes offering both qualifying benefits and other benefits where there is no power to wind up the scheme so that it only provides qualifying benefits. For the section of the scheme that relates to collective money purchase benefits, subsection (4) delegates to the Secretary of State the power to specify that for the purposes of Part 1 of this Bill, a reference to a collective money purchase scheme may include a scheme that is in the process of being wound up and was a collective money purchase scheme before the commencement of the winding up process.

Justification for delegation

1.210 The power under subsection (4) is delegated because there is a need for the legislation to be adapted in response to different scenarios. As collective money purchase benefits are a new type of benefit, it is difficult to anticipate how the legislation would be interpreted when certain events take place. Taking a regulation-making power would allow the Secretary of State to respond in a timely manner to ensure collective money purchase schemes operate as envisaged.

Justification for procedure

1.211 Regulations made under clause 49(4) will be subject to the affirmative resolution process on each use. This is because any changes made under these powers could change the treatment of a collective money purchase scheme in specific situations and using the affirmative process would allow for full and proper consultation, scrutiny and debate.

Schedule 2 - Pause Orders

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.212 Schedule 2 includes a narrowly drawn power in paragraph 1(6) to enable certain specified primary legislation to be modified in certain specified circumstances as follows.

- 1.213 The Bill enables the Pensions Regulator to pause certain activities once a collective money purchase scheme has experienced a triggering event (clause 31). The Regulator can make the order if it is satisfied it will help the trustees carry out their implementation strategy (clause 39), or if it 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 or the assets of the scheme if the order is not made. A pause order may, amongst other things, contain a direction that no transfers out of the scheme can take place during the period the order has effect. This could have an impact on the operation of existing members' rights in relation to transfers, early leavers, cash transfers and contribution refunds in existing legislation, under Part 4ZA of the Pension Schemes Act 1993.
- 1.214 The regulation-making power in paragraph 1(6) of Schedule 2 therefore enables the Secretary of State to modify this existing primary legislation in order to ensure that this can continue to operate taking into account the effect of such a direction. This is similar to the regulation-making power in paragraph (1)(6) of Schedule 1 to the Pension Schemes Act 2017.

Justification for delegation

- 1.215 The provision intended to be made by regulations under paragraph 1(6) is technical in nature, modifying existing pensions legislation for specific circumstances where a specific direction under a pause order is in place for a collective money purchase scheme, in order to ensure that that existing legislation will continue to be operable. It is envisaged that the power may be needed to modify the application of certain time limits provided for within the existing legislation in order to take into account the impact of a pause order containing a direction pausing transfers out of the scheme.

Justification for procedure

- 1.216 These regulations are subject to the negative resolution procedure. Although the powers allow for modification of primary legislation which would usually indicate the use of the affirmative resolution procedure, the negative resolution procedure is considered appropriate in this instance as the power is narrowly drawn in scope and the nature of the regulations will be to make technical modifications to ensure that the interaction with existing legislation on transfers works in concert with the pause order provisions so that they work effectively. This procedure will still enable Parliament to debate their use if they have concerns and as they see fit. This approach also mirrors the procedure for the equivalent regulation-making power in Schedule 1 to the Pension Schemes Act 2017.

PART 2: COLLECTIVE MONEY PURCHASE BENEFITS: NORTHERN IRELAND

Clause 53(1)(c) - Qualifying benefits

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure

1.217 This clause provides for an equivalent power to that described for clause 2(1)(c) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 54(8) – Qualifying schemes

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.218 This clause provides for an equivalent power to that described for clause 3(8) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 56(1) and (2) - Schemes divided into sections

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure for regulations under subsection (2) and negative resolution for regulations under subsection (1)

1.219 This clause provides for equivalent powers to those described for clause 5(1) and (2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 57 - Amendment of definitions of “money purchase benefits” etc

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

1.220 This clause provides for an equivalent power to that described for clause 6 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 59(2) and (4) – Application for authorisation

Power conferred on: the Pensions Regulator (subsection (2)), the Department for Communities (subsection (4))

Power exercised by: specification by the Pensions Regulator (subsection (2)); regulations made by Statutory Rule (subsection (4))

Assembly procedure: none (subsection (2)), negative resolution (subsection (4))

1.221 This clause provides for an equivalent power to that described for clause 8(2) to be exercisable in relation to Northern Ireland by the Pensions Regulator. It also provides for an equivalent power to that described for clause 8(4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 62 – subsections (2)(e) and (3)(a) – Fit and proper persons requirement

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure for (3)(a) on first use then negative resolution thereafter. Regulations made under subsection (2)(e) are subject to negative resolution

1.222 This clause provides for an equivalent power to that described for clause 11(2)(e) and (3)(a) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 63 - subsection (2)(b) – Scheme design requirement

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.223 This clause provides for an equivalent power to that described for clause 12(2)(b) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 64 - subsection (3) – Viability report

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.224 This clause provides for an equivalent power to that described for clause 13(3) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 65 - subsection (3) – Financial sustainability requirement

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.225 This clause provides for an equivalent power to that described for clause 14(3) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 66(4)(a) – Communication with members requirement

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.226 This clause provides for an equivalent power to that described for clause 15(4)(a) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 67 - subsection (2) – Systems and processes requirements

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.227 This clause provides for an equivalent power to that described for clause 16(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 68 - subsections (4), (5) and (8) – Continuity strategy requirement

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.228 This clause provides for equivalent powers to those described for clause 17(4), (5) and (8) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 69 – subsection (4) - Calculation of benefits

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure

1.229 This clause provides for equivalent powers to those described for clause 18(4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 70 - subsection (2) – Advice of scheme actuary

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.230 This clause provides for an equivalent power to that described for clause 19(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 71 - subsection (5) – Actuarial valuations

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

1.231 This clause provides for an equivalent power to that described for clause 20(5) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 73 - subsection (3)(b): Benefits adjustments

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.232 This clause provides for an equivalent power to that described for clause 22(3)(b) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 74 – subsections (3)(c) and (4) – Powers of the Pensions Regulator

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.233 This clause provides for equivalent powers to those described for clause 23(3)(c) and (4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 75 – subsection (2) – Rules about modifying schemes

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.234 This clause provides for an equivalent power to that described for clause 24(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 76 – subsections (4)(c) and (5) – Transfer rights

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.235 This clause provides for equivalent powers to those described for clause 25(4)(c) and (5) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 78 – subsection (2) – Requirement to submit supervisory return

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.236 This clause provides for an equivalent power to that described for clause 27(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 79 – subsections (2)(g), (3) and (4) – Duty to notify the Pensions Regulator of significant events

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: First regulations under subsection (3) are subject to the confirmatory procedure. Subsequent regulations under subsection (3) and regulations under subsection (2)(g) and (4) are subject to negative resolution

1.237 This clause provides for equivalent powers to those described for clause 28(2)(g), (3) and (4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 80 – subsections (1), (4), (6) to (8) and (10): Risk notices

Power conferred on: the Pensions Regulator (subsections (1), (4), (6), (7)(b) and (8)), the Department for Communities (subsections (7)(a) and (10))

Power exercised by: directions or notices issued by the Pensions Regulator (subsections (1), (4) and (6)); specification by the Pensions Regulator (subsections (7)(b) and (8)); regulations made by Statutory Rule (subsections (7)(a) and (10))

Assembly procedure: none (subsections (1), (4), (6), (7)(b) and (8)), negative resolution (subsections (7)(a) and (10))

1.238 This clause provides for equivalent powers to those described for clause 29(1), (4), (6) to (8) and (10) to be exercisable in relation to Northern Ireland by the Pensions Regulator (subsections (1), (4), (6), (7)(b) and (8)) and the Department for Communities in Northern Ireland (subsections (7)(a) and (10)).

Clause 84 – subsections (4)(b) and (10) – Notification of triggering events

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.239 This clause provides for equivalent powers to those described for clause 33(4)(b) and (10) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 87 – subsections (1)(c), (2)(b) and (c), (5) and (6) – Continuity option 1: discharge of liabilities and winding up

Powers conferred on: Department for Communities

Powers exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure for subsections (2) and (6) and negative resolution for subsections (1) and (5)

1.240 This clause provides for an equivalent power to that described for clause 36(1)(c), (2)(b) and (c), (5) and (6) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 88 – subsection (3)(b) - Continuity option 2: resolving triggering event

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.241 This clause provides for an equivalent power to that described for clause 37(3)(b) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 89 – subsection (3) – Continuity option 3: conversion to closed scheme

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.242 This clause provides for an equivalent power to that described for clause 38(3) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 90 – subsection (1)(b) – Implementation strategy

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.243 This clause provides for an equivalent power to that described for clause 39(1)(b) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 91 - subsections (4) and (6) – Approval of implementation strategy

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.244 This clause provides for equivalent powers to those described for clause 40(4) and (6) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 92 - subsection (2) – Trustees’ duties once implementation strategy approved

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.245 This clause provides for an equivalent power to that described for clause 41(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 94 – subsections (2), (3) and (4)(b), (c) and (d) – Periodic reporting requirements

Power conferred on: the Department for Communities (subsections (2) and (4)(b) and (c)), the Pensions Regulator (subsections (3) and (4)(d))

Power exercised by: Regulations made by Statutory Rule (subsections (2) and (4)(b) and (c)), specification by the Pensions Regulator (subsections (3) and (4)(d))

Assembly procedure: Negative resolution (subsections (2) and (4)(b) and (c)), none (subsections (3) and (4)(d))

1.246 This clause provides for equivalent powers to those described for clause 43(2), (3) and (4)(b), (c) and (d) to be exercisable in relation to Northern Ireland by the Pensions Regulator ((subsections (3) and (4)(d)) and the Department for Communities in Northern Ireland (subsections (2) and (4)(b) and (c)).

Clause 96 – subsections (3)(a), (3)(b) and (6) - Prohibition on increasing charges etc during triggering event period

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: regulations under subsections (3)(a) and (6) and the first regulations made under subsection (3)(b) will be subject to confirmatory procedure; subsequent regulations made under subsection (3)(b) will be subject to negative resolution

1.247 This clause provides for equivalent powers to those described for clause 45(3)(a), (3)(b) and (6) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 97 – subsections (1) and (3) - Publication of information

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule (subsection (1)), guidance (subsection (3))

Assembly procedure: Negative resolution (subsection (1)), none (subsection (3))

1.248 This clause provides for equivalent powers to those described for clause 46(1) and (3) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 98 – subsections (1), (3) and (5) – Powers to extend definition of qualifying schemes

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

1.249 This clause provides for an equivalent power to that described for clause 47(1), (3) and (5) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 100 - subsections (2) and (4) – Interpretation of Part 2

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

1.250 This clause provides for equivalent powers to those described for clause 49(2) and (4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 5, paragraph 1(6) - Pause orders: Northern Ireland

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution procedure

1.251 Schedule 5, paragraph 1(6) provides for an equivalent power to that described for paragraph 1(6) of Schedule 2 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 6, paragraph 19 – New Article 267(4)(f) - power to modify Part 2 in respect of UK cross-border schemes

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution procedure

1.252 Schedule 6, paragraph 19 (which inserts Article 267(4)(f) of the Pensions (Northern Ireland) Order 2005) provides for an equivalent power to that described for paragraph 18 of Schedule 3 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

PART 3: THE PENSIONS REGULATOR

Clause 103(4) – new section 38E, subsection (2) – “employer resources test”

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

- 1.253 This clause introduces two tests (in addition to the existing “main purpose test” and the “material detriment test”) into the Pensions Act 2004 under which the Pensions Regulator can issue a contribution notice: they are the “employer insolvency test” (under new section 38C) and the “employer resources test” (under new section 38E).
- 1.254 Section 38E introduces the employer resources test which assesses whether an act (or failure to act):
- a) reduced the value of the resources of the employer; and
 - b) the reduction was a material reduction relative to the amount of the estimated section 75 debt in relation to the scheme.
- 1.255 Subsection (2)(a) of new section 38E provides for a regulation-making power which allows the Secretary of State to determine what constitutes the resources of the sponsoring employer for the purpose of the employer resources test. There is a separate regulation-making power at subsection (2)(b) enabling the Secretary of State to prescribe the manner for determining, calculating and verifying the value of the employer’s resources for the purpose of the employer resources test.

Justification for delegation

- 1.256 As the method for calculating and determining the resources of a sponsoring employer is technical in nature, it is appropriate to delegate these powers to the Secretary of State. Furthermore, as accounting practices and industry practices change, delegating this power to the Secretary of State would enable the legislation governing how the employer’s resources are calculated to be updated in line with these changes in a timely manner without taking up Parliamentary time.
- 1.257 The Government also intends to consult with the relevant stakeholders to determine the most appropriate approach to assessing the employer’s resources. Delegating the power would also enable further detailed engagement with the industry to ensure the Government has taken into account all relevant arguments, and would enable the Pensions Regulator to consider and develop a code of practice to inform the industry as to how the employer resources test would be applied.

Justification for procedure

- 1.258 Both regulation-making powers under new section 38E(2) would be subject to the affirmative procedure (see paragraph 11 of Schedule 7 to the Bill) .
- 1.259 The Government considers that it would be appropriate to subject the regulations to the affirmative resolution procedure as this is a new test and would allow a suitable level of Parliamentary scrutiny and debate on the structure of the test.

Clause 107 – new section 58A, subsection (1)(b) – new criminal offence of avoidance of employer debt

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

- 1.260 This clause inserts two new criminal offences into the Pensions Act 2004: 58A (avoidance of employer debt) and 58B (conduct risking accrued scheme benefits).
- 1.261 New section 58A creates an offence of avoidance of employer debt. It provides that a person commits an offence only if:
- a) they do an act or engage in a course of conduct that:
 - (i) prevents the recovery of part of a debt,
 - (ii) prevents a debt becoming due,
 - (iii) compromises or settles a debt, or
 - (iv) reduces the amount of 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 the course of conduct.
- 1.262 This offence applies in relation to an occupational pension scheme other than a money purchase scheme or, under subsection (1)(b), a prescribed scheme or a scheme of a prescribed description. Subsection (1)(b) allows for regulations which can prescribe an occupational pension scheme, or a scheme of a prescribed description, to which the offence will not apply. The offence will apply where an occupational pension scheme provides a mixture of benefits.
- 1.263 For this offence, on summary conviction, a person is liable, in England and Wales, to an unlimited fine, and in Scotland, to a fine not exceeding the statutory maximum. On conviction on indictment, a person is liable to

imprisonment for a term not more than seven years or an unlimited fine, or both.

Justification for delegation

1.264 The power under subsection (1)(b) of the new section 58A, to prescribe schemes or types of pension schemes to which the offence will not apply, is needed to enable the Secretary of State to fine tune how the offence would apply in order to target the types of schemes most at risk. This would also allow the Government to respond to any changing and emerging risks to pension schemes.

Justification for procedure

1.265 The regulations made under the delegated power at subsection (1)(b) of the new 58A will be subject to the affirmative resolution procedure (see paragraph 11 of Schedule 7 to the Bill). The power to disapply the offence to a particular scheme or scheme of a prescribed description should be subject to the affirmative resolution procedure because regulations could weaken the deterrent effect of the offence and reduce protection for members of non-money purchase schemes. Therefore, it is appropriate that there is sufficient Parliamentary scrutiny.

Clause 107 – new section 58B, subsection (1)(b) – new criminal offence of conduct risking accrued scheme benefits

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

1.266 This clause inserts two new criminal offences into the Pensions Act 2004: 58A (avoidance of employer debt) and 58B (conduct risking accrued scheme benefits).

1.267 New section 58B creates an offence of conduct risking accrued scheme benefits. It provides that a person commits an offence 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 doing the act or engaging in the course of conduct.

- 1.268 This offence applies in relation to an occupational pension scheme other than a money purchase scheme or, under subsection (1)(b), a prescribed scheme or a scheme of a prescribed description. Subsection (1)(b) allows for regulations which can prescribe an occupational pension scheme, or a scheme of a prescribed description, to which the offence will not apply. The offence will apply where an occupational pension scheme provides a mixture of benefits.
- 1.269 For this offence, on summary conviction, a person is liable, in England and Wales, to an unlimited fine, and in Scotland, to a fine not exceeding the statutory maximum. On conviction on indictment, a person is liable to imprisonment for a term not more than seven years or an unlimited fine, or both.

Justification for delegation

- 1.270 The power under subsection (1)(b) of the new section 58B, to prescribe schemes or types of pension schemes to which the offence will not apply, is needed to enable the Secretary of State to fine tune how the offence would apply in order to target the types of schemes most at risk. This would also allow the Government to respond to any changing and emerging risks to pension schemes.

Justification for procedure

- 1.271 The regulations made under the delegated power at subsection (1)(b) of the new section 58B will be subject to the affirmative resolution procedure (see paragraph 11 of Schedule 7 to the Bill). The power to disapply the offence to a particular scheme or scheme of a prescribed description should be subject to the affirmative resolution procedure because regulations could weaken the deterrent effect of the offence and reduce protection for members of non-money purchase schemes. Therefore, it is appropriate that there is sufficient Parliamentary scrutiny.

Clause 107 – new section 58C, subsection (1)(b) – financial penalty for avoidance of employer debt

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

- 1.272 This clause inserts two new financial penalties into the Pensions Act 2004: sections 58C (for avoidance of employer debt) and 58D (for conduct risking accrued scheme benefits).

1.273 New section 58C creates a financial penalty for avoidance of employer debt. It provides that new section 88A (a new civil penalty, up to £1 million, provided for under this Bill – see clause 115) applies to a person who:

a) was party to an act or deliberate failure to act the main purpose or one of the main purposes of which was to:

- (i) prevent the recovery of the whole or part of a debt due under section 75 of the Pensions Act 1995,
- (ii) prevent such a debt becoming due,
- (iii) compromise or settle such a debt,
- (iv) reduce the amount of a debt which would otherwise become due, and

b) if it was not reasonable for the person to act or fail to act in the way that the person did.

1.274 The penalty applies in relation to an occupational pension scheme other than a money purchase scheme or, under subsection (1)(b), a prescribed scheme or a scheme of a prescribed description. Subsection (1)(b) allows for regulations which can prescribe an occupational pension scheme, or a scheme of a prescribed description, to which the penalty will not apply. The penalty will apply where an occupational pension scheme provides a mixture of benefits.

Justification for delegation

1.275 The power under subsection (1)(b) of new section 58C, to prescribe schemes or types of pension schemes to which the penalty will not apply, is needed to enable the Secretary of State to fine tune how the power to issue the civil penalty at new section 58C would apply in order to target the types of schemes most at risk. This would also allow the Government to respond to any changing and emerging risks to pension schemes.

Justification for procedure

1.276 The regulations made under subsection (1)(b) at new section 58C will be subject to the affirmative resolution procedure (see paragraph 11 of Schedule 7 to the Bill). The powers to disapply the civil penalty to a particular scheme or scheme of a prescribed description should be subject to the affirmative resolution procedure because regulations could weaken the deterrent effect of the civil penalty and reduce protection for members of non-money purchase schemes. Therefore, it is appropriate that there is sufficient Parliamentary scrutiny.

Clause 107 – new section 58D, subsection (1)(b) – financial penalty for conduct risking accrued scheme benefits

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and Purpose

1.277 This clause inserts two new financial penalties into the Pensions Act 2004: sections 58C (avoidance of employer debt) and 58D (conduct risking accrued scheme benefits).

1.278 New section 58D creates a financial penalty for conduct risking accrued scheme benefits. It provides that new section 88A (a new civil penalty, up to £1 million, provided for under this Bill – see clause 115) applies to a person who 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, if:

(i) the person knew or ought to have known that the act or failure to act would have that effect, and

(ii) it was not reasonable for the person to act or fail to act in the way that the person did.

1.279 The penalty applies in relation to an occupational pension scheme other than a money purchase scheme or, under subsection (1)(b), a prescribed scheme or a scheme of a prescribed description. Subsection (1)(b) allows for regulations which can prescribe an occupational pension scheme, or a scheme of a prescribed description, to which the penalty will not apply. The penalty will apply where an occupational pension scheme provides a mixture of benefits.

Justification for delegation

1.280 The power under subsection (1)(b) of new section 58D, to prescribe schemes or types of pension schemes to which the penalty will not apply, is needed to enable the Secretary of State to fine tune how the power to issue the civil penalty at new section 58D would apply in order to target the types of schemes most at risk. This would also allow the Government to respond to any changing and emerging risks to pension schemes.

Justification for procedure

1.281 The regulations made under subsection (1)(b) at new section 58D will be subject to the affirmative resolution procedure (see paragraph 11 of Schedule 7 to the Bill). The powers to disapply the civil penalty to a particular scheme or scheme of a prescribed description should be subject to the affirmative resolution procedure because regulations could weaken the deterrent effect of

the civil penalty and reduce protection for members of non-money purchase schemes. Therefore, it is appropriate that there is sufficient Parliamentary scrutiny.

Clause 109 – new section 69A, subsection (1) – duty to give notices and statements to the Regulator of certain events: power to direct

Power conferred on: The Pensions Regulator

Power exercised by: The Pensions Regulator

Parliamentary procedure: Nil

Context and Purpose

1.282 The new section 69A provides a new power for specified persons to provide information to the Pensions Regulator and pension scheme trustees where certain notifiable events occur. Subsection (1) of new section 69A provides for a power to enable the Regulator to give directions as to circumstances where the requirement to give notices does not apply. The purpose of this power is to enable the Regulator to fine tune the notification requirement to focus on scenarios or types of schemes which pose a higher risk to the Pension Protection Fund or its members.

Justification for delegation

1.283 Given the duty to give notices and statements is a new requirement, it is unclear as to the amount of notifications this could generate. By providing a power for the Regulator to direct when a notification is not required, this would free up the Regulator's resources to focus on the more significant notifications. It is appropriate to delegate this power to the Regulator as they are best placed to determine what events needs to be notified in line with changing industry practice.

Justification for procedure

1.284 There is no Parliamentary procedure for issuing directions under section 69A(1). This is deemed appropriate as the Regulator needs to be able to amend and update these as the industry becomes familiar with the duty to give notices and statements. This is also in line with the requirement to notify under the existing notifiable events regime at section 69 of the Pensions Act 2004. Furthermore, this power can only be used to restrict the scope of the requirement rather than expanding it, the Government is content there does not need to be further scrutiny.

Clause 109 – new section 69A, subsection (2) – duty to give notices and statements to the Regulator of certain events

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.285 The new section 69A provides a new power for specified persons to provide information to the Pensions Regulator and pension scheme trustees where certain notifiable events occur. There is a power at subsection (2) of new section 69A which enables the Secretary of State to specify the events which would be considered “notifiable events” for the purpose of the requirement to provide a notice and accompanying statement to the Pensions Regulator.

Justification for delegation

1.286 The range of events for which a notice and accompanying statement must be given will be varied and would likely change in time (see for example the prescribed events in respect of the employer in relation to an eligible scheme in regulation 2 of SI 2005/900 made under the existing section 69(2)(b) of the Pensions Act 2004). As such, the Government considers this to be a matter which is appropriate for secondary legislation. By setting out the range of events which are subject to the notification requirement in regulations, this enables new events to be added to the requirement in order to keep pace with changing business practices without taking up parliamentary time.

Justification for procedure

1.287 The power to prescribe events for the purpose of the duty to give notices and accompanying statement under new section 69A is subject to the negative resolution procedure. This approach is appropriate as this will allow the legislation to evolve in line with changing business practices to ensure pension scheme members continue to be protected against new types of events. This is also consistent with the existing procedure for section 69 (duty to notify the Regulator of certain events). Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this would provide additional opportunities for scrutiny.

Clause 109 – new section 69A, subsection (3) – duty to give notices and statements to the Regulator of certain events: appropriate persons

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.288 New section 69A(3) sets out the persons who are required to give a notice and accompanying statement to the Pensions Regulator (the “appropriate person”). Subsections (3)(a) to (3)(c) provide that the appropriate persons are the employer in relation to the scheme, a person connected with the employer and an associate of the employer. Under subsection (3)(d), regulations may extend the obligation requiring a person to give notice to the Regulator to persons of a prescribed description.

Justification for delegation

1.289 It is important to ensure there is the flexibility so that all persons responsible for planning an event which is subject to the notification requirement are included in the new requirement to provide a notice accompanied by a statement. Given that the range of events may differ, the Government is aware that it is possible for persons who do not fall within subsections (3)(a) to (3)(c) to be responsible for the planning of the event. Accordingly, allowing the scope of appropriate persons to be widened via secondary legislation would enable any loopholes to be addressed in a timely manner.

Justification for procedure

1.290 The negative resolution procedure is considered appropriate in relation to this regulation-making power given the narrow scope of the power. The use of the negative resolution procedure will also enable the Government to react to emerging risks in a timely manner and ensure that the appropriate persons are subject to the notification requirement. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement which provides an opportunity for scrutiny.

Clause 109 – new section 69A, subsection (4) – duty to give notices and statements to the Regulator of certain events: material change

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.291 Specified persons are required to notify the Pensions Regulator in the event of any material change in, or the expected effects of, a notifiable event or if a notifiable event is not going to or does not take place. Subsection (4) of new section 69A allows regulations to prescribe what is a “material change” where there has been a change to certain events that may be required to be notified.

Justification for delegation

1.292 It is appropriate to delegate the power to prescribe what constitutes a “material change” to regulations as what is material would depend on the specific event. Taking such a power would enable regulations to adapt what “material change” means in respect of new notifiable events prescribed in regulations made under new section 69A(2) and ensure that what constitutes a “material change” continues to be relevant.

Justification for procedure

1.293 The regulation-making power to prescribe what is a material change will be subject to the negative resolution procedure. This is considered appropriate for what the regulations would prescribe as the changes made would follow any changes made to the range of notifiable events. Using the negative resolution procedure would also be consistent with the procedure for prescribing additional notifiable events. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this would provide additional opportunities for scrutiny.

Clause 109 – new section 69A, subsection (6) – duty to give notices and statements to the Regulator of certain events: prescribed period

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.294 Subsection (6) of the new section 69A makes provision for regulations to provide that a notice and the accompanying statement are to be given before the beginning of a prescribed period ending with the notifiable event or

material change in question. This is so that the Pensions Regulator and the trustees of the scheme have sufficient time to consider the proposed action and determine if any mitigation should be put in place to protect scheme members' benefits.

Justification for delegation

1.295 This provision will allow requirements to be imposed by regulation for an earlier notification in respect of certain notifiable events. For example, where a date is already fixed and known, the notice and the accompanying statement would need to be given to the Regulator a month before that date. Furthermore, as different notifiable events may affect pension schemes in different ways, there is a need to be able to prescribe specific timeframes for notification. The delegation of this power also mirrors the provision under existing section 69 of the Pensions Act 2004.

Justification for procedure

1.296 The regulation-making powers will be subject to the negative resolution procedure. The negative resolution procedure is considered appropriate for a prescription of time. Using the negative resolution procedure would also be consistent with the procedure for prescribing additional notifiable events in existing section 69(5) of the Pensions Act 2004. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this would provide additional opportunities for scrutiny.

Clause 109 – new section 69A, subsection (8) – duty to give notices and statements to the Regulator of certain events: content of the accompanying statement

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.297 New section 69A(7) requires a statement to accompany a notice provided to the Pensions Regulator in respect of events that pose the highest risk to defined benefit occupational pension schemes. This will enable trustees and the Pensions Regulator to take action where necessary to protect the members' pensions. Subsection (8) of new section 69A provides a power to enable regulations to set out further detail as to particular types of information which must be included in an accompanying statement.

Justification for delegation

1.298 New events may be prescribed, and the nature of events is likely to change over time. Furthermore, the content of the statement may vary depending on

the type of notifiable event to which it relates. This provision allows for that variation. This power would enable a flexible approach to ensure that the Regulator is provided with targeted information in order for them to act to protect scheme members. Examples of the information that may be prescribed under subsection (8) are illustrated at new section 69A(9).

Justification for procedure

1.299 The regulation-making power will be subject to the negative resolution procedure. This is considered appropriate given the description of particular events may be technical in nature. It is also in keeping with the negative resolution procedure (under existing section 69 and new 69A(2)(a)) which applies to regulations setting out the type of events of which the Regulator must be notified. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this will provide additional opportunities for scrutiny.

Clause 110 – new section 72A – Interviews

Power Conferred On: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

1.300 To help protect pension scheme members, the Pensions Regulator's existing functions include investigating both potential breaches of pension legislation and cases where a sponsoring employer may not be meeting its obligations to fund its pension scheme. To do this, it has a range of information gathering powers including, in very limited circumstances relating to automatic enrolment (under the Pensions Act 2008) and Master Trust schemes (under the Pension Schemes Act 2017), the power to require a person to attend an interview. Clause 110 extends the power to require an interview to apply to occupational and personal pension schemes and gives the Regulator a stand-alone interview power. The Regulator may require someone it believes holds information relevant to the exercise of its functions to attend an interview.

1.301 Clause 110(2) inserts new section 72A into the Pensions Act 2004 which will allow the Regulator to conduct an interview with anyone to whom it can issue a notice under section 72. Subsection (1) of new section 72A requires the Regulator to issue prior written notice. The content of the written notice will be prescribed in regulations made under new section 72A(2) - it is intended that the additional information will explain broadly the purpose of the interview and set out the recipient's legal rights and responsibilities.

1.302 It is the Government's intention that the prescribed information will include, as a minimum, the following information: who is being required to attend for an interview; the time and location of the interview; the relevant 'Pensions

Regulator function(s)' engaged and the power under which the interview is being carried out and why the person is subject to interview (i.e. seen as having relevant information). It will also provide information about how the interview process will be conducted including a statement on the person's legal obligations and rights, as well as the procedures around the admissibility of evidence, the right to have representation, and appropriate warnings about the consequences of non-compliance with the interview notice.

Justification for delegation

- 1.303 The requirement to issue a notice is set out on the face of the primary legislation and the regulations will provide the additional detail. It is considered appropriate to delegate the power to prescribe what should be set out in the notice since the exact requirements which are either necessary or desirable to be contained in the notice may change. Furthermore, what is contained in a notice is an administrative matter and delegating this power would allow changes to be made in a timely manner without taking up Parliamentary time.

Justification for procedure

- 1.304 Regulations made under new section 72A(2) would be subject to the negative resolution procedure. The Government considers the negative resolution procedure will provide a suitable level of Parliamentary scrutiny as what is to be contained in a notice is an administrative matter. Using the negative resolution procedure will also be a more proportionate procedure if the Secretary of State needs to make amendments to the regulations if, for example, the information to be included changes in the future but also to set out the types of information required in the first instance. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this would provide additional opportunities for scrutiny.

Clause 111 – section 73, new subsection (5B)(a) – Inspection of premises

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution procedure

Context and purpose

- 1.305 Another of the Pensions Regulator's powers is its ability to enter a range of premises to inspect and, if appropriate, copy or remove records or information it needs to investigate whether pension legislation is being complied with. Currently, sections 73(2) to 73(4) of the Pensions Act 2004 detail the relevant legislative provisions that the Regulator must be investigating compliance with, for an inspection to take place.
- 1.306 Pensions legislation and the role and functions of the Regulator are evolving. There have been circumstances when there was some uncertainty as to

whether the Regulator's powers were broad enough to enter premises. The insertion of new section 73(2A) adding additional legislative provisions and the amendment to section 73(6) extending the range of premises the Regulator may enter, is intended to resolve this issue. The regulation-making power at the new subsection (5B)(a) will enable the Secretary of State to add to the list of pension provisions for which the Regulator may conduct an inspection to investigate compliance. This will allow for future legislative changes to be accommodated or any subsequent areas of uncertainty to be clarified without requiring primary legislation. The new subsection (5B)(b) provides that the legislative provisions include the corresponding provisions in Northern Ireland.

Justification for delegation

1.307 The power to expand the legislative provisions for which the Regulator may conduct an inspection to investigate compliance aims to ensure that the Regulator can undertake investigations covering compliance with a wider range of pensions legislation and to reduce the likelihood of its investigations being frustrated by an unforeseen loophole. Such changes may need to be made quickly and the delegation of this power by way of regulations will ensure any changes can be made in a timely manner so that the Regulator can act quickly to protect scheme members, whilst still allowing Parliament to have a suitable level of scrutiny.

Justification for procedure

1.308 The granting of any power which allows access to a person's property or records represents a potential interference with the rights of the individual which requires justification, and changes to the Pensions Regulator's inspection powers, no matter how urgent, should be given significant consideration. Accordingly, it is proper that the regulation-making power at new subsection (5B)(a) of section 73 of the Pensions Act 2004 should be subject to the affirmative resolution procedure to ensure adequate Parliamentary scrutiny.

Clause 111 – section 73, new subsection (6)(f) – Inspection of premises

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution procedure

Context and Purpose

1.309 Subsection (4) of clause 111 extends the range of premises that a Pensions Regulator inspector may enter by inserting new subsections (6)(d) – (6)(f) in section 73 of the Pensions Act 2004. New section 73(6)(f) expands the range of premises where documents relevant to a change in ownership of the sponsoring employer or a significant asset of that employer are held. It is envisaged that this would enable inspectors to obtain corporate records which

are relevant to investigations into employers who have sold their business or significant assets to the detriment of a defined benefit pension scheme's funding.

- 1.310 Subsection (6)(f) confers a regulation-making power to the Secretary of State to exclude a prescribed scheme or schemes of a prescribed description from this power. The Government is mindful that powers of entry and inspection should be proportionate. Further, this particular type of investigation is not relevant to money purchase schemes so these schemes have been excluded from the scope of the inspection powers. Pensions legislation is evolving and it may be that other types of scheme will be introduced with different funding obligations that mean that the new type of scheme does not need to be in scope of new section 73(6)(f).

Justification for delegation

- 1.311 This power will allow types of scheme that do not need to be in the scope of this particular part of the inspection power to be excluded from its scope. Given that the power is a restrictive power, the Government's view is that it would be appropriate to delegate this power to secondary legislation.

Justification for procedure

- 1.312 The regulations are subject to the negative procedure. This is considered to be an appropriate level of scrutiny as the regulations will be reducing the number or type of schemes that the Pension Regulator will be able to enter premises to seek these particular type of records.

Clause 112 – new section 77A, subsection (3)(a) – Fixed penalty notices

Power Conferred On: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

- 1.313 Currently, a failure to comply with the Pensions Regulator's information gathering powers is a criminal offence and the Regulator can instigate proceedings against those who do not comply with notices requiring information under section 72 of the Pensions Act 2004 ('section 72 notices') or cooperate with a Regulator's inspector. However, preparing criminal proceedings can be time consuming for the Regulator and is often considered a disproportionate response to lower level breaches.
- 1.314 The Regulator has the power to issue fixed and escalating civil penalties for breaches of specific automatic enrolment and Master Trust scheme legislation, including section 72 notices and connected interviews relating to automatic enrolment. This clause will extend the fixed and escalating penalties

regime for non-compliance with a section 72 notice and inserts provision for the new stand-alone interview and the Regulator's inspection powers.

- 1.315 The fixed penalty will be imposed for non-compliance with the initial request. Clause 112 inserts a new section 77A (Fixed penalty notices) in to the Pensions Act 2004. The section sets out when fixed penalties may be issued, the maximum amount and the detail which must be included on the penalty notice. Subsection (3)(a) sets out a power to prescribe what the penalty will be. It is intended that regulations made under the power will indicate the level, or maximum level, of the penalty which can be issued. It is likely that different levels of penalties may be available depending on the status of the target – for example, it may be desirable that large employers or directors of large companies receive higher penalties than other individuals or that professional trustees receive higher penalties than a lay trustee.

Justification for delegation

- 1.316 The power is similar to the corresponding powers in the automatic enrolment legislation (section 40 of the Pensions Act 2008) and Master Trusts (section 18 of the Pension Schemes Act 2017) providing for the level of the fixed penalties, and for those penalties to be at different levels for different groups.
- 1.317 Also, having the level of penalties in secondary legislation means that the power will therefore provide the Secretary of State with the necessary flexibility to ensure the penalties remain at an appropriate level taking into account inflation, other wider economic factors, and the fining practices by other regulatory bodies.
- 1.318 Furthermore, the Government wishes to consult again on the detail of which groups might be subject to penalties higher than the standard level. Feedback during the summer 2018 consultation on the Regulator's powers, "Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator", supported higher penalties for larger companies or employers but indicated that number of employees, as used for automatic enrolment, may not be the most appropriate way of defining a large company for the purpose of information gathering penalties. Additionally, in some cases, professional trustees are currently subject to higher penalties from the Regulators because they are employed for their expertise. Feedback indicated there was no clear consensus as to whether they should be subject to higher penalties for not complying with information gathering requirements. Therefore, a further consultation is justified.

Justification for procedure

- 1.319 Regulations under this clause will be subject to the negative resolution procedure. The regulations setting out the level of fixed and escalating penalties for both automatic enrolment and Master Trusts are both subject to the negative resolution procedure. It is considered this is also the appropriate level of Parliamentary scrutiny for the power to set the details of the new fixed

penalty. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this would provide additional opportunities for scrutiny.

Clause 112 – new section 77B, subsection (5)(a) – Escalating penalty notices

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure

Context and Purpose

- 1.320 Presently, the Pensions Regulator has the power to issue fixed and escalating civil penalties for breaches of specific automatic enrolment and Master Trust legislation, including section 72 notices and connected interviews relating to automatic enrolment. This clause inserts a new section 77B (Escalating penalty notices) into the Pensions Act 2004 to introduce a new power to issue an escalating penalty notice for continued non-compliance with a section 72 notice or section 72A interview notice.
- 1.321 The escalating penalty may be imposed should non-compliance continue after a fixed penalty has been issued. Subsections (2) to (6) of the new section 77B set out when escalating penalties may be issued, the maximum amount and the detail which must be included in the penalty notice. In particular, subsections (4) and (5) contain a regulation-making power to prescribe how the daily rate is to be determined.
- 1.322 It is intended that regulations made under the power will indicate the level, or maximum level, of the penalty which can be issued. It is likely that different levels of penalties may be available depending on the status of the target – for example, it may be desirable that large employers or directors of large companies receive higher penalties than other individuals or that professional trustees receive higher penalties than a lay trustee.

Justification for delegation

- 1.323 The power is similar to the corresponding powers in the automatic enrolment legislation (section 41 of the Pensions Act 2008) and Master Trusts (section 19 of the Pension Schemes Act 2017) providing for the level of the escalating penalties, and for those penalties to be at different levels for different categories of people.
- 1.324 In addition, having the power to set the level of penalties in secondary legislation will provide the Secretary of State with the necessary flexibility to ensure the penalties remain at an appropriate level taking into account inflation, other wider economic factors, and the fining practices by other regulatory bodies.

1.325 Furthermore, the Government wishes to consult again on the detail of which groups might be subject to escalating penalties higher than the standard level. Feedback during the summer 2018 consultation on the Regulator's powers, "Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator", supported higher penalties for larger companies or employers but indicated that number of employees, as used for automatic enrolment, may not be the most appropriate way of defining a large company for the purposes of information gathering penalties. Additionally, in some cases, professional trustees are currently subject to higher penalties from the Regulator because they are employed for their expertise. Feedback indicated there was no clear consensus as to whether they should be subject to higher penalties for not complying with information gathering requirements. Therefore, a further consultation is justified before the details of the penalties are set.

Justification for procedure

1.326 Regulations under this clause will be subject to the negative resolution procedure, as is the case for other powers to set the level of escalating civil penalties which can be imposed by the Regulator. The regulations setting out the level of fixed and escalating penalties for both automatic enrolment and Master Trusts are both subject to the negative procedure. This, therefore, is considered to be the appropriate level of Parliamentary scrutiny for the new financial penalties and consistent with the framework for the fixed and escalating penalties for compliance with automatic enrolment and Master Trusts obligations. Furthermore, regulations made under the Pensions Act 2004 are subject to a consultation requirement and this would provide additional opportunities for scrutiny.

Clause 114 – new section 80B, subsection (1)(b) – provision of false or misleading information to trustees or managers

Power conferred On: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution procedure

Context and Purpose

1.327 The clause provides that a new £1 million financial penalty (see new section 88A of the Pensions Act 2004 inserted by clause 115) applies where the Pensions Regulator determines that a person has knowingly or recklessly provided false information or misleading information to the trustees or managers in certain circumstances under subsection (3).

1.328 The penalty will only apply to occupational pension schemes offering benefits other than money purchase benefits. Subsection (1)(b) of the new section 80B allows for regulations to disapply the financial penalty to a prescribed scheme or a scheme of a prescribed description. The penalty will apply where an occupational pension scheme provides a mixture of benefits.

Justification for delegation

- 1.329 The power to prescribe other types of pension schemes that would not be in the scope of the penalty is needed so to allow the Government to respond flexibly to emerging types of pension benefits and adjust the scope of which pension schemes are not in scope of these civil penalties as they emerge. Delegating this power would ensure the Government can act in a timely manner without the need to take up Parliamentary time.

Justification for procedure

- 1.330 Regulations under this clause will be subject to the negative resolution procedure. This is considered appropriate because this is a restrictive power to exclude certain schemes from the scope of the civil penalty's application. In addition, regulations made under the Pensions Act 2004 are subject to the consultation requirement and this would provide additional opportunities for scrutiny.

Clause 115 – new section 88A, subsection (3) – Financial penalties

Power Conferred On: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

- 1.331 This clause inserts new section 88A into the Pensions Act 2004 which provides a power for the Pensions Regulator to issue a new civil penalty of up to £1 million. This power is in addition to the Regulator's current powers to issue civil penalties under section 168 of the Pension Schemes Act 1993, section 10 of the Pensions Act 1995, sections 40 and 41 of the Pensions Act 2008, paragraph 3 of Schedule 18 to the Pensions Act 2014 and sections 17 and 18 of the Pension Schemes Act 2017.
- 1.332 Under subsection (3) there is a regulation-making power which enables the Secretary of State to increase the maximum amount set out at subsection (2) above the current maximum of £1 million.

Justification for delegation

- 1.333 The power will provide the Secretary of State with the necessary flexibility to ensure the penalty remains at an appropriate level taking into account inflation, other wider economic factors, and the fining practices by other regulatory bodies.
- 1.334 This power reflects existing provision in relation to the Regulator's existing power to issue civil penalties under section 10(2) of the Pensions Act 1995.

Justification for procedure

1.335 Regulations under this clause will be subject to the affirmative resolution procedure (see paragraph 15 of Schedule 7 to the Bill, which amends section 316(2) of the Pensions Act 2004). Although the regulation-making power mirrors the provisions under section 10(2) of the Pensions Act 1995, which is subject to the negative resolution procedure, the affirmative procedure is considered appropriate due to the need to consider the impact of the significantly higher maximum penalty amount of the new penalty, which on enactment will be set at a maximum of £1 million.

Schedule 7, paragraph 7(a) – section 90 of the Pensions Act 2004, subsection (2)(aa) – Codes of practice: employer insolvency and employer resources test

Power conferred on: The Pensions Regulator

Power exercised by: Codes of practice issued by the Pensions Regulator

Parliamentary procedure: Nil

Context and Purpose

1.336 Paragraph 7(a) of schedule 7 amends section 90(2)(aa) of the Pensions Act 2004 to require the Pensions Regulator to issue codes of practice relating to the circumstances in which the Regulator expects to issue contribution notices under section 38 of the Pensions Act 2004 as a result of the employer insolvency or employer resources test being met in relation to an act or failure. As the employer insolvency test and the employer resources test are new tests, it is important that individuals are aware how the Regulator would apply these tests.

Justification for delegation

1.337 As the Regulator will be responsible for determining whether a contribution notice should be issued, it is appropriate that the preparation of the codes of practice be delegated to the Regulator. This delegation also reflects the existing provision in section 90(aa) of the Pensions Act 2004 which requires the Regulator to prepare codes of practice in relation to the material detriment test under which the Regulator may issue a contribution notice.

Justification for procedure

1.338 In order to ensure there is sufficient scrutiny, under section 91 of the Pensions Act 2004, the Regulator is required to publish a draft of the proposed code which must be sent to the Secretary of State and laid before Parliament. If either of the Houses of Parliament resolve to block the code within 40 days of the date the draft is laid, no further proceedings may be taken. The Government's view is that this provides sufficient Parliamentary scrutiny. The Regulator needs to be able to amend and update the codes as more

determinations are made by the Determinations Panel to ensure the way these tests are assessed remains clear.

Schedule 7, paragraph 7(b) – section 90 of the Pensions Act 2004, subsection (ba) – “codes of practice” for the discharge of the duties imposed by section 69A

Power conferred on: The Pensions Regulator

Power exercised by: Codes of practice issued by the Pensions Regulator

Parliamentary procedure: Nil

Context and Purpose

1.339 Paragraph 7(b) of Schedule 7 inserts a new section 90(2)(ba) into the Pensions Act 2004 to require the Pensions Regulator to issue codes of practice relating to the circumstances in which the Regulator expects a person to have discharged their duties imposed by section 69A (duty to give notices and statements to the Regulator in relation to certain events) (see clause 109). The purpose of this test is to provide guidance to individuals of their obligations so that they are clear as to what they are required to do in order to comply with the new section 69A.

Justification for delegation

1.340 As the obligations imposed by section 69A of the Pensions Act 2004 are new, it is unclear how the Regulator would enforce these obligations. It is appropriate to delegate the preparation of the codes of practice to the Regulator as they will be responsible for enforcing these obligations.

Justification for procedure

1.341 In order to ensure there is sufficient scrutiny, under section 91 of the Pensions Act 2004, the Regulator is required to publish a draft of the proposed code which must be sent to the Secretary of State and laid before Parliament. If either of the Houses of Parliament resolve to block the code within 40 days of the date the draft is laid, no further proceedings may be taken. The Government’s view is that this provides sufficient Parliamentary scrutiny. The Regulator needs to be able to amend and update these as more determinations are made by the Determinations Panel to ensure the way they intend to enforce the obligations imposed is clear.

Schedule 8, paragraph 2(3) – new Article 34E, paragraph (2) – Article 34 contribution notice: meaning of “employer resources test”

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure

1.342 Schedule 8, paragraph 2(3) (which inserts Article 34E of the Pensions (Northern Ireland) Order 2005) provides for an equivalent power to that described for clause 103(4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 6(1) – new Articles 54A and 54B – new criminal offences for offence of avoidance of employer debt

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Powers under paragraph (1)(b) of each Article – Confirmatory procedure

1.343 Schedule 8, paragraph 6(1) (which inserts Articles 54A and 54B of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 107(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 6(2) – new Articles 54C and 54D – new financial penalties

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Powers under paragraph (1)(b) of each Articles – Confirmatory procedure

1.344 Schedule 8, paragraph 6(2) (which inserts Articles 54C and 54D of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 107(3) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 8(1) – new Article 64A, paragraph (1) – Duty to give notices and statements to the Regulator in respect of certain events – power to direct

Power conferred on: The Pensions Regulator

Power exercised by: Directions

Assembly procedure: None

- 1.345 Schedule 8, paragraph 8(1) (which inserts Article 64A of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 109(2) to be exercisable in relation to Northern Ireland by the Pensions Regulator.

Schedule 8, paragraph 8(1) – new Article 64A, paragraph (2) – Duty to give notices and statements to the Regulator in respect of certain events – notifiable event

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.346 Schedule 8, paragraph 8(1) provides for equivalent powers to those described for clause 109(2) relating to the meaning of “notifiable event” to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 8(1) – new Article 64A, paragraph (3) – Duty to give notices and statements to the Regulator in respect of certain events – appropriate persons

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.347 Schedule 8, paragraph 8(1) provides for equivalent powers to that described for clause 109(2) relating to “appropriate persons” to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 8(1) – new Article 64A, paragraph (4) – Duty to give notices and statements to the Regulator in respect of certain events – material change

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.348 Schedule 8, paragraph 8(1) provides for equivalent powers to those described for clause 109(2) relating to the meaning of a “material change” to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 8(1) – new Article 64A, paragraph (6) – Duty to give notices and statements to the Regulator in respect of certain events – prescribed period

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.349 Schedule 8, paragraph 8(1) provides for equivalent powers to those described for clause 109(2) relating to earlier notification in respect of certain events to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 8(1) – new Article 64A, paragraph (8) – Duty to give notices and statements to the Regulator in respect of certain events – content of accompanying statement

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.350 Schedule 8, paragraph 8(1) provides for equivalent powers to those described for clause 109(2) relating to the content of an accompanying statement to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 9(1) – new Article 67A – Interviews

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.351 Schedule 8, paragraph 9 (which inserts Article 67A of the Pensions (Northern Ireland) Order 2005) provides for an equivalent power to that described for clause 110(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 10(4) – Article 68, new paragraph (5B) – Inspection of premises

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

- 1.352 Schedule 8, paragraph 10(4) (which inserts Article 68(5B) of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 111(4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 10(5) – Article 68, new paragraph (6)(f) – Inspection of premises

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.353 Schedule 8, paragraph 10(5) (which inserts Article 68(6)(f) of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 111(4) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 11 – new Article 72A, paragraph (3)(a) – Fixed penalty notices

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.354 Schedule 8, paragraph 11 (which inserts Article 72A of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 112 relating to fixed penalty notices to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 11 – new Article 72B, paragraphs (4) and (5)(a) – escalating penalty notices

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.355 Schedule 8, paragraph 11 (which inserts Article 72B of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 112 relating to escalating penalty notices to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 13 – new Article 75B, paragraph (1)(b) – provision of false or misleading information to trustees or managers

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.356 Schedule 8, paragraph 13 (which inserts Article 75B of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 114 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 14 – new Article 83A, paragraph (3) – Financial penalties

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

- 1.357 Schedule 8, paragraph 14 (which inserts Article 83A of the Pensions (Northern Ireland) Order 2005) provides for an equivalent power to that described for clause 115 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 8, paragraph 21(a) – Article 85(2)(aa) of the Pensions (Northern Ireland) Order 2005 – Codes of practice: employer insolvency and employer resources test

Power conferred on: The Pensions Regulator

Power exercised by: codes of practice issued by the Pensions Regulator

Assembly procedure: nil

- 1.358 Schedule 8, paragraph 21(a) provides for equivalent powers to those described in Schedule 7, paragraph 7(a) to be exercisable in relation to Northern Ireland by the Pensions Regulator.

PART 4: THE PENSIONS DASHBOARDS

An Introduction to Pensions Dashboards

A pensions dashboard is an online digital service which will let people access their pensions information in a single place so as to better support engagement and planning for retirement. It will bring together pensions information from multiple sources and display it in a clear and simple form. The introduction of pensions dashboards requires the creation of a supporting infrastructure to enable the consumer to access their pensions information held by or on behalf of pension schemes.

The final design of the infrastructure has not yet been agreed. This is a task for the new Industry Delivery Group. The Industry Delivery Group is a team of industry experts, including pension providers, insurers, fintech, the regulators, consumer advocates and government, brought together under the guidance of the Money and Pensions Service (MaPS), to develop recommendations and solutions for the development and delivery of pensions dashboards. In the consultation response a proposed dashboard service infrastructure was put forward, but the final design will be determined by the Industry Delivery Group. Until further detailed design work has been completed it is not possible to specify exactly what components will be needed in the infrastructure, although some design principles were set out in the consultation, and some examples are provided below.

The Government's consultation *Pensions dashboards: Working together for the consumer*¹ stated that there should be a single pension finder service, acting as a central point through which consumer requests for information are passed to pension schemes. All pensions dashboards will need to connect to the pension finder service and the pension finder service will need to connect to all pension schemes. Creating a pension finder service through which requests for data must be routed, rather than expecting pension schemes to provide their information into a database, is a design principle that supports the security of consumer data. The pension finder service is also likely to be the gateway to an identity verification service.

The consumer will need to verify their identity before any pensions information can be presented to them, with verification at a standard level of identity assurance. It is the responsibility of the Industry Delivery Group to identify a suitable identity verification service and to bring that service into the infrastructure. Once a consumer's identity is verified, the pension finder service can send the consumer's request for information to connected pension schemes to establish whether the schemes hold information on that consumer.

There are many different types of pension schemes that will need to connect to the pension finder service. From schemes with millions of members to those with only a few members, the introduction of compulsion will require all of them to make their data available to the consumer via dashboards. Not all pension schemes administer information. There are organisations, such as third party administrators and Integrated

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792303/government-response-pensions-dashboards.pdf

Service Providers, that act on behalf of pension schemes to administer pension scheme information. These third parties will also need to connect to the Pension Finder Service.

Any pension scheme that holds information about the consumer will then need to respond to the consumer's request by making the pension data they control available to the consumer through their chosen dashboard.

The government expects MaPS will offer a dashboard which will sit alongside their existing free and impartial guidance functions. This dashboard can be described as a "non-commercial" dashboard. It is expected that other organisations will also want to provide dashboards. Any potential dashboard provider will need to meet a set of requirements, including standards on security and technical elements, before they can connect to the infrastructure. These standards will be based on recommendations made by the Industry Delivery Group.

The final element of the infrastructure is the governance register, which is a service owned and managed by the Industry Delivery Group. This records and assures that the providers of all the elements of the technical infrastructure are meeting the required standards to enable them to participate. It also allows for access to the infrastructure to be revoked if any provider is found to be operating incorrectly.

The Bill contains four broad regulation-making powers in respect of pensions dashboards with equivalent provision for Northern Ireland. Briefly, these provisions are:

- Clause 118, a framework that enables the creation of a set of requirements that potential dashboard providers must meet in order to be classified as qualifying pensions dashboards services;
- Clause 119, a power to impose requirements, by regulations, on trustees or managers of occupational pension schemes to enable their information to be available through pension dashboards, including the method, format and transmission of that information. This also includes penalties where schemes fail to comply with these requirements;
- Clause 120, is a corresponding provision for Northern Ireland reflecting the provisions in clauses 118 and 119;
- Clause 121, a power to require the Financial Conduct Authority to make rules relating to specified authorised persons in relation to personal pension schemes and stakeholder pension schemes, and reflecting the regulations made under clause 119; and
- Clause 122 inserts provision into existing legislation concerning the pensions guidance function for MaPS.

The powers being taken are broad as much of the detail relating to the design, development and delivery of dashboards will be subject to user testing leading to an iterative approach, and this work will be taken forward by the Industry Delivery Group and MaPS. Consequently, it is appropriate for this testing and development to inform the details of the secondary legislation rather than for significant detail, which is not yet available, to be set out in primary legislation. The delegated powers need to be

broad so that the evolving development and design of dashboards can inform the exercise of those delegated powers.

Clause 118 - Qualifying pensions dashboard service

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

- 1.359 This clause inserts three new sections, sections 238A, 238B and 238C, into the Pensions Act 2004. Section 238A, taken together with section 238B, creates a broad regulation-making power to specify the requirements that, if met, mean that a digital pension information service is “a qualifying pensions dashboard service”. The policy intention is to facilitate the establishment of multiple pension dashboard services so that consumers can choose the provider(s) through whom they access information. However, only pensions dashboard services that meet these requirements will be able to connect to an approved digital infrastructure that supports qualifying pensions dashboards, including a ‘pensions finder service’ through which individual consumers can be linked with the information about their pension schemes.
- 1.360 Trustees, managers and others running a pension scheme will only be required to facilitate the provision of pensions information through a pensions dashboard service where this meets the requirements set out in regulations for a “qualifying pensions dashboard service”. In a digital age, where many different types of dashboard services may be on offer, it is necessary to define the relevant dashboard services in legislation to protect the interests of consumers by ensuring that only approved and appropriate providers can connect to the qualifying dashboard infrastructure. This provides certainty to consumers that they are accessing information via an appropriate channel, and assures those responsible for pension schemes that requests are valid enquiries from a legitimate individual.
- 1.361 The requirements that pensions dashboard services will need to meet will need to evolve to keep pace with changing technology and pensions products and will need to reflect operational and technical solutions that are likely to change over time as delivery services and technological solutions develop. Sections 238A and 238B, however, contain examples of the type of provision that may be made in the regulations.
- 1.362 Section 238A(3)(a) makes it clear that the Secretary of State may impose requirements relating to what relevant and other information may be provided through pension dashboard services, how it may be provided in response to a request and in what circumstances. This enables regulations to set out what information must be provided to the consumer before the service can be a qualifying pensions dashboard service. Subsection (3)(b) makes it clear that

regulations under section 238A also allow the Secretary of State to impose requirements relating to the establishment, maintenance and operation of the pensions dashboard service. Regulations may specify, for example, which pension finder service, or identity verification service must be used by providers seeking to host a qualifying pensions dashboard service.

- 1.363 Section 238A(4) enables the Secretary of State to specify in regulations what “relevant information” means in relation to pensions dashboard services. This delegated power will allow the Secretary of State to make regulations for the provision of information by qualifying pensions dashboard services that reflect an improved understanding of consumer needs, and increased sophistication in the content and format of the information provided. The regulations may prescribe information about occupational and personal pensions, including information relating to the individual using the dashboard service (or a person authorised on their behalf) and a particular pension scheme. The regulations may also include information about state pensions, including information relating to the user and information about basic or additional retirement pensions.
- 1.364 Section 238A(5)(a) provides that regulations under section 238A(2) may, in particular, require that a pensions dashboard service meets certain standards, specifications or technical requirements published by the Secretary of State, MaPS, or another prescribed person, from time to time. These are likely to relate to the operational requirements of the dashboard digital infrastructure and will set out the technical requirements that a pensions dashboard service must meet to ensure that data is accurate and can be securely transmitted. These standards are likely to be detailed and to change over time as dashboards become more mature. The power to prescribe ‘another person’ in these new sections reflects that the long-term ownership of the dashboard infrastructure is not yet known. The power to prescribe ‘another prescribed person’ provides the flexibility to decide which entity is suited to take forward ownership of the dashboard infrastructure.
- 1.365 Section 238A(5)(b) provides that regulations may, in particular, require that the provider of a pensions dashboard service satisfies prescribed conditions. The intention is that this will include, for example, a condition that a provider of a qualifying pensions dashboard service must have an FCA authorisation under the Financial Services and Markets Act 2000 to undertake a specific regulated activity before being able to connect to the dashboard infrastructure. Without meeting these conditions, a provider will not be able to connect to the infrastructure and therefore will not be able to present information from pension schemes to scheme members via a qualifying pensions dashboard service.
- 1.366 The regulations may also require that the provider of a qualifying pension dashboard service is approved by the Secretary of State, MaPS or another prescribed person (subsection (5)(c)). This reflects the role of the Secretary of State and the expected role of MaPS in the development and delivery of the dashboard infrastructure. As set out in the Government’s response to the consultation on pensions dashboards *Pensions dashboards: Working*

together for the consumer, MaPS is well placed to bring together industry to develop and deliver dashboards that work in the interests of consumers and have a key role in determining the direction of the project. Provision has, however, also been made for the regulations to provide for approvals to be given by another person to take account of the way in which the pensions dashboards service may develop in future.

- 1.367 Section 238A(5)(d) provides that regulations may determine what information, facilities or services may or may not be provided by a qualifying pensions dashboard service. This power to restrict what a qualifying pensions dashboard is permitted to provide by way of information, facilities or services is an important means of protecting the consumer.
- 1.368 Section 238A(6) makes it clear that requirements under section 238A(2) may include that determinations may be made by the Secretary of State, MaPS and other persons specified in the regulations. This is to enable key stakeholders to make decisions, identified in the regulations, related to the establishment and running of qualifying pensions dashboard services and the related infrastructure.
- 1.369 Section 238B makes further provision as respects qualifying pensions dashboard services, supplementing section 238A. It reflects that for qualifying pensions dashboards to be a success, multiple parties, different technical services and a system of governance need to be connected to each other in a wider infrastructure. This is why the section allows for regulations to set conditions around the use of the different components of the infrastructure, especially relating to verifying the identity of the individual, transmitting information in a universally comprehensible format, and ensuring that the information is transmitted securely and comes from a legitimate source (see especially, subsections (2) to (4)). These are specific (in some cases detailed) and evolving requirements, which need to reflect the particular solutions being developed for pensions dashboard services.
- 1.370 Section 238B(1)(a) provides that the requirements under section 238A(2) may include how requests for pensions information are to be dealt with, including the use of intermediaries. These requirements may include, for example, that qualifying pension dashboard providers must use the defined infrastructure, including the use of third parties providing certain elements such as the connections between the Pension Finder Service and the scheme. Subsection (1)(b) goes on to provide that the regulations can make provision for the involvement of the dashboard service provider in dealing with requests for pensions information. Provision is to be made for these matters in secondary legislation to enable the detailed requirements to be identified and agreed during the development of pensions dashboard services and to make changes if, once the service is live, there are adjustments that need to be made to enable the system to evolve.
- 1.371 Section 238B(2) and (3) makes further provision relating to the operational requirements to which pensions dashboard service providers must adhere, principally concerning the use of electronic communications, facilities or

services needed to support requests for pensions information. It makes it clear that the regulations may require the dashboard service provider to assist in connection with establishing and running these facilities and services (subsection (2)(c)) and to also take part in, and comply with arrangements for establishing, maintaining and managing them (subsection (2)(d)). The intention is to set out detailed requirements in secondary legislation as the system is designed, developed and delivered. However, the Government expects the regulations to include requirements relating to the way that requests for information flow between the different elements of the infrastructure, the verification and security of data, and what dashboard providers need to do to support the establishment, development and operation of the overall infrastructure. As referenced previously, it is appropriate to delegate the detail here as the infrastructure is not yet developed and decisions about the technical and operational detail will be iterated as dashboard services are introduced.

- 1.372 Section 238B(4) provides that regulations under section 238B(2)(b) may include requirements that a facility or service which forms part of the dashboard infrastructure must comply with standards, specifications or technical specifications published from time to time by the Secretary of State, MaPS or another person specified in the regulations (subsection (4)(a)) and that the provider of a facility or service be a person approved from time to time by the Secretary of State, MaPS or a person specified in the regulations (subsection (4)(b)). This is intended to allow for a set of detailed technical requirements to be published, which a pensions dashboard service must meet before a connection to the infrastructure may be made, for example a requirement that the provider agrees not to store pension information or that they have met the necessary security standards. These requirements are also likely to develop over time, as a better understanding is gained about consumer behaviour and user needs during implementation and live running of the qualifying pensions dashboard infrastructure.
- 1.373 In order for pensions dashboards to work as intended, there will need to be co-operation and co-ordination between various parties involved in their delivery. For example, the Government expects the relevant parties to work with the Pensions Regulator and MaPS to help prepare for dashboards and in order to test connections with the Pension Finder Service and other parts of the pensions dashboard infrastructure. Section 238B(5), therefore, provides that regulations under section 238B(2)(d) (participation in, and compliance with, arrangements for establishing, maintaining and managing facilities and services) may require the provider of a pensions dashboard service to co-operate and co-ordinate activities with key stakeholders involved in the provision of pensions dashboards, including MaPS. As the qualifying pensions dashboard infrastructure will need to be monitored to ensure it is performing as intended, the clause allows the regulations to provide that a qualifying pensions dashboard service provider must allow MaPS, the Secretary of State or another individual specified in the regulations to monitor and audit compliance by the provider (subsection (5)(c)).

- 1.374 Finally, section 238B(6) allows the regulations to provide that the processing of personal data under section 238A is not to be a breach of any obligation of confidence owed by the person processing the data or other restriction on the processing. However, this provision is subject to an important safeguard and does not extend to authorising or requiring processing which would contravene the data protection legislation (as defined in section 238C(4)).

Justification for delegation

- 1.375 In order to create a qualifying pensions dashboard infrastructure that reflects the needs of consumers while being consistent with the practices of the industry, the enabling infrastructure will be developed and delivered by an Industry Delivery Group overseen by MaPS. This will enable the Government to ensure that the system works securely and effectively, that qualifying pensions dashboards are designed to meet the needs of consumers and that testing can take place to understand how consumers want to interact with pensions dashboards.
- 1.376 Until the construction and testing of the infrastructure is underway, it is necessary to support a “test and learn” approach. It is not possible to specify fully in primary legislation the requirements with which qualifying pensions dashboard services must comply in order to connect to, and maintain connection with, the infrastructure. Making provision for the requirements to be specified in regulations will enable user testing to influence the design, development and delivery solution for qualifying dashboards, in order to meet the needs of consumers and to reflect changes as the infrastructure functionality evolves and improves.
- 1.377 The Industry Delivery Group has been tasked with developing a detailed delivery plan. User testing will support the development of data, technical and consumer standards, which will inform both the development of the supporting infrastructure and the Government’s approach to any requirements placed on schemes in secondary legislation. It is envisaged that a significant degree of flexibility is needed as the service is designed, iterated and implemented. It would, therefore, not be appropriate to include such matters in primary legislation as this would hinder service development and delivery. For example, elements such as what pensions information is displayed by qualifying pensions dashboard services will be an iterative process, with changes required regularly to reflect increased understanding of user needs and to keep pace with technological and pensions product changes to ensure that qualifying pensions dashboards work in the best interests of pension scheme members.
- 1.378 There are a number of subsections which allow requirements to be set with reference to standards, specifications, technical requirements published from time to time, or approvals given, by MaPS, or a person specified or of a specified description, as well as by the Secretary of State (sections 238A(5) and (6) and 238B(4)). This reflects the expected role of MaPS in overseeing the delivery of qualifying pensions dashboards. It is expected that this will

include maintaining a governance register, which will be a list of approved (“qualifying”) pensions dashboard providers, providers of elements of the infrastructure and, potentially, pension schemes that have successfully connected to that infrastructure.

Justification for procedure

- 1.379 Section 118(3) provides for regulations under this section to be made by statutory instrument and subject to the affirmative resolution procedure.
- 1.380 The Government recognises that these are broad delegated powers and that the regulations may impose significant requirements in relation to the provision of qualifying pensions dashboard services. The regulations should, therefore, be the subject to debate and a requirement for approval by Parliament before coming into force.
- 1.381 The publication from time to time of standards, specifications or technical requirements, the giving of approvals and the making of determinations are not themselves subject to any Parliamentary procedure. However, the circumstances in which such requirements will apply will be set out in the regulations, which will be the subject of Parliamentary scrutiny.
- 1.382 These matters relate to the practical operation of pensions dashboard services and the digital infrastructure and commissioning arrangements needed to support them. The service requirements are likely to be detailed and to change over time as the service matures. As a digital service, there needs to be an opportunity for changes in service requirements to be updated in a simple and timely manner, in a way which could not be achieved in regulations subject to the Parliamentary process. The published standards will be developed closely with industry, the Pensions Regulator and the Financial Conduct Authority and will be subject to oversight from the Secretary of State.
- 1.383 The Government believes that this strikes the right balance between the appropriate level of Parliamentary scrutiny, whilst also maintaining the necessary operational flexibility required to deliver pensions dashboard services.

Clause 119 - Information from occupational pension schemes

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

- 1.384 This clause inserts three new sections, sections 238D, 238E and 238F, into the Pensions Act 2004. Section 238D, read together with section 238E gives

the Secretary of State a regulation-making power which may impose requirements on the trustees or managers of relevant occupational pensions schemes (as defined in section 238F(8)) to provide pensions information to individuals via a qualifying pension dashboard service or any pension dashboard service provided by MaPS (subsection (1)(a)). It also allows the regulations to impose requirements on such persons with respect to facilitating the provision of pensions information by those services (subsection (1)(b)).

- 1.385 The Department's consultation response *Pensions dashboards: Working together for the consumer* identified the importance of compulsion in securing the successful delivery of pensions dashboards. In particular, the Government asked whether a legislative framework that compels pensions providers to participate is the best way to deliver dashboards within a reasonable timeframe. The proposal was met with overwhelming support. The delegated power in this section is intended to support the delivery of pensions dashboards by ensuring that consumers using approved pensions dashboard services have accurate information about all of their pensions in one place.
- 1.386 The pensions information to which this section applies is defined in subsection (2) and is made the subject of regulations. This may include general information about a relevant occupational pension scheme, such as information about its constitution, along with information to help the individual:
- (i) understand what pensions and other benefits they have;
 - (ii) understand their rights and obligations under the scheme; and
 - (iii) identify pension schemes of which they are a member, but with which they have lost contact
- 1.387 The information required from scheme trustees or managers is the subject of a delegated power because it is important that the pensions information provided to individuals using a qualifying pensions dashboard service can be tailored to reflect the development of these services and can be changed over time to reflect the needs of consumers.
- 1.388 Section 238D(3) provides that the regulations may set out matters such as to whom the information should be provided, the format in which this information is to be provided and the time period pensions schemes have to respond. This will ensure that individuals using qualifying pensions dashboard services are presented with a comparable level of information and that this information is provided in a consistent manner. It is accepted that different types of pension scheme will be required to provide different types of information.
- 1.389 In particular, section 238D(3)(d) provides that regulations made under section 238D(1) may impose requirements as to the manner and the form in which pensions information is provided. Qualifying dashboards are expected to process information in a digital format. Qualifying dashboards may be required to conform to certain standards and specifications required by the IT infrastructure which enables pensions dashboard services to function. Section 238D(4) therefore provides that the regulations may require pension scheme trustees or managers to comply with standards, specifications or technical

requirements published from time to time by the Secretary of State, MaPS or another person identified in the regulations. As with section 238A, the scope for issuing standards, specifications or technical requirements, reflects the expected role of MaPS in the delivery and oversight of qualifying pensions dashboard services and the need for flexibility so that standards and technical specifications relating to the transmission of information can be readily updated and keep pace with technological and industry developments.

- 1.390 Section 238D(5) mirrors 238A(6) in that it makes it clear that regulations under section 238D(1) may provide for determinations to be made by the Secretary of State, MaPS and other persons specified, or of a specified description, in the regulations. This is to enable key stakeholders to make decisions, which are to be identified in the regulations, related to the establishment and running of pensions dashboard services and the related infrastructure.
- 1.391 The dashboard infrastructure will be monitored to ensure it is operating as intended. Section 238D(6) therefore provides that regulations made under section 238D(1) may also require trustees or managers to provide information relating to their carrying out of the prescribed requirements to the Pensions Regulator, MaPS or another specified person, or to a person of a specified description.
- 1.392 Section 238D(7) requires that, in complying with requirements prescribed in this section, trustees or managers must have regard to guidance issued from time to time by the Secretary of State, a specified person or a person of a specified description. It is envisaged that guidance will assist scheme trustees and managers by setting out, in more practical and operational detail than would be appropriate in legislation, the factors they must take into account when complying with particular responsibilities under the regulations.
- 1.393 Section 238E makes further provision about the content of regulations under section 238D. In particular, it makes it clear that pension scheme trustees or managers may be required by the regulations to work within a particular infrastructure and provide information in a way which is compatible with the way in which pensions dashboards are designed and function, which may change over time.
- 1.394 Section 238E(1)(a), therefore, ensures that regulations may require trustees or managers to provide pensions information when that request is made via an approved infrastructure, even where elements of that infrastructure are provided by an intermediary, for example a third party acting under a contractual arrangement with MaPS. Subsection (1)(b) ensures that trustees or managers can be required to take certain steps in relation to dealing with requests, for example, to support the implementation of IT solutions that enable the scheme to connect to the digital infrastructure that supports the transmission of information to an individual via a pensions dashboard service.
- 1.395 Section 238E(2) to (5) makes, in relation to the trustees or managers of a relevant occupational pension scheme, similar provision to that made in section 238B (2) to (5) and for similar purposes. In particular, subsection (2)(c)

provides that regulations made under section 238E(1) may require trustees or managers to provide assistance in relation to the establishment and maintenance of facilities and services to support pensions dashboard services and to participate in arrangements for establishing, maintaining and managing them (subsection (2)(d)), for example, by supporting testing of elements of the infrastructure.

- 1.396 Regulations made under section 238E(3) may require that pension schemes have the functionality to connect to the infrastructure expected to be provided by MaPS, for example that information must be transmitted in a prescribed manner. It is intended that there will be an identity verification solution specified and, once a user's identity has been verified, the scheme must operate on the basis the user has the right to request their information.
- 1.397 Section 238E(6) and (7) replicate the provisions in section 238B(6) and (7) concerning the exercise of regulation-making powers in relation to data processing.

Justification for delegation

- 1.398 In order to successfully deliver qualifying pensions dashboards that allow a user to see all their pensions information in a single place, the Government considers that it is necessary to place a clear requirement on pension schemes to make their data available to consumers in an organised and consistent way. Compulsion is considered the most appropriate route to facilitating this. As set out in the Government's consultation response, international comparators provide evidence that compulsion is the only feasible approach to ensuring that dashboards are able to provide the consumer with full and complete information regarding their pension savings.
- 1.399 As the technical infrastructure is expected to be developed and delivered by MaPS, and because development will be informed by user testing and ongoing discussion with the wider pensions industry, it is not possible to state precisely what requirements will be placed on pension schemes. Those requirements will, in any event, need to reflect the operational needs and technical solutions developed for qualifying pensions dashboard services, which will change over time. It would not be practicable or appropriate to include such detail in primary legislation. The Government will work with MaPS which will enable considered decisions to be taken on what requirements need to be included in secondary legislation and what should be the subject of guidance. This approach will enable the iterative development of elements such as the display of information and what information users say is necessary to support them to have a better understanding of their own pension entitlement. Development of the infrastructure will be supported by the development of a published rollout (implementation) schedule. The rollout schedule will be reactive, with sufficient flexibility to accommodate lessons learned as the rollout continues. The roll out will be capable of changing speed to allow learning to be reflected in the development of the infrastructure.

Justification for procedure

- 1.400 The Government acknowledges that the delegated powers provided for in sections 238D and 238E will impose new and extensive requirements in relation to a significant number of occupational pension schemes. It is, therefore, only right that the regulations, whether they are first or subsequent regulations to be made using these powers, are subject to adequate scrutiny by Parliament. The regulations are, therefore, subject to the affirmative resolution procedure.
- 1.401 Regulations under this section allow certain requirements to be determined by those involved in the establishment or operation of pensions dashboards, namely the publication of standards, technical requirements and also permit the giving of approvals and the making of determinations (sections 238D(4) and 5 and 238E(4)). The circumstances in which such delegations will be permitted will be set out in the regulations. For the reasons explained in the context of section 238A, the Government considers that this strikes the right balance between allowing the opportunity for Parliamentary scrutiny whilst supporting the operational requirements for dashboard services.
- 1.402 The guidance referred to in section 238D(7) is not subject to Parliamentary procedure. This is consistent with other provisions in pensions legislation, for example those in section 113(2A) of the Pension Schemes Act 1993 (as inserted by the Pension Schemes Act 2015), and is considered appropriate as greater flexibility will be needed to ensure that the guidance can reflect the particular operational context for dashboards and be easily up-dated. The guidance will be developed in conjunction with key stakeholders concerned in the delivery of pensions dashboards, including MaPS and the Pensions Regulator, and it will be published.

Clause 119 - Compliance

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

Context and Purpose

- 1.403 The clause inserts new section 238G into the Pensions Act 2004. This new section provides that regulations may make provision to secure that trustees or managers of a relevant occupational pension scheme comply with regulations made under section 238D (read together with section 238E) to make information available to dashboards to enable individuals to receive information relating to their pension savings.
- 1.404 In particular, regulations may allow the Pensions Regulator to issue compliance notices, third party compliance notices and penalty notices and may confer other functions on the Regulator in connection with compliance

(subsection (2)). Section 238G(3) enables the regulations to specify the amount or the maximum amount of the penalty for non-compliance which is capped at £5,000 in the case of an individual or £50,000 in any other case (subsection (4)). The provisions in this section are consistent with similar compliance provisions relating to pension schemes in paragraph 3 of Schedule 18 to the Pensions Act 2014.

Justification for delegation

1.405 The detailed obligations which will apply to the trustees or managers of occupational schemes will be set out in secondary legislation under the provisions of new section 238D and 238E. It therefore follows that provision will also need to be made in regulations concerning compliance and enforcement so that this takes account of the particular duties that apply to trustees or managers.

Justification for procedure

1.406 It is considered that regulations concerning compliance and sanctions should be subject to the same level of Parliamentary scrutiny as the rest of the dashboard provisions. It is for this reason that we consider the affirmative resolution procedure is most appropriate.

Schedule 9, paragraph 2: Qualifying pensions dashboard service

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

1.407 Schedule 9, paragraph 2 (which inserts Articles 215A to 215C of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 118(2) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 9, paragraph 3: Information from occupational pension schemes

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

1.408 Schedule 9, paragraph 3 (which inserts Article 215D to 215F of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 119(2) relating information from occupational pension schemes to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 9, paragraph 3: Compliance

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory

1.409 Schedule 9, paragraph 3 (which inserts Article 215G of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for clause 119(2) relating to compliance to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Clause 121 - Information from personal and stakeholder pension schemes

Power conferred on: The Financial Conduct Authority

Parliamentary Procedure: None

Context and Purpose

1.410 This clause inserts three new sections, sections 137FAA, 137FAB and 137FAC, into the Financial Services and Markets Act 2000 (“FSMA”). Subject to certain exceptions which are provided for in section 137FAC, section 137FAA places a duty on the Financial Conduct Authority (“the FCA”) to exercise its general rule making powers (found in section 137A FSMA) to make rules to require specified authorised persons to provide pensions information to an individual via a qualifying pensions dashboard service or any pensions dashboard service provided by MaPS (section 137FAA(1)(a)). The rules must (again subject to certain exceptions) also impose obligations on such persons to facilitate the provision of pensions information by such dashboard services (subsection (1)(b)). The purpose of this section, which broadly mirrors section 238D, is to ensure that particular persons authorised and regulated by the FCA are also required to support the provision of pensions information via approved pensions dashboard services so that the consumer can see all of their pensions information in one place.

1.411 This delegated power applies to the authorised persons specified in the rules. This enables the rules to target those who have particular roles in relation to the pension schemes to which this section applies, for example, the person who operates the scheme at a particular time.

1.412 Subsection (2) enables the rules to specify, in relation to a personal pension scheme or a stakeholder pension scheme (which are both defined in section 137FAC(5)), the pensions information to which the rules apply. This may cover general information about these schemes along with information to help the individual:

- (i) understand what pensions and other benefits they have;
- (ii) understand their rights and obligations under the scheme; and

(iii) identify pension schemes of which they are a member, but with which they have lost contact.

- 1.413 In a similar vein to section 238D, section 137FAA(3) provides that the rules may impose obligations on authorised persons concerning what pensions information must be provided, the format in which this information is to be provided and the time period schemes have to respond. This will enable the rules to reflect the particular operational requirements for pensions dashboard services and that individuals using the service are presented with information in a consistent manner.
- 1.414 As those authorised in relation to personal and stakeholder pension schemes will need to participate in the same pension dashboard infrastructure as occupational schemes, the clause allows the FCA to impose similar requirements in its rules to those in regulations under section 238D. In particular, the rules may require authorised persons to comply with standards, specifications or technical requirements published from time to time by the Secretary of State, MaPS or a person specified or a person of a specified description. Authorised persons will need to participate in this infrastructure and ensure that the information is transmitted in a secure and accurate manner, working with MaPS (see especially section 137FAA(4)). This mirrors the provisions in section 238D and reflects the expected role of MaPS in the delivery and oversight of pensions dashboard services and the need for flexibility so that the standards and technical specifications relating to the transmission of information can be easily updated. As previously stated, the dashboard infrastructure will need to be monitored to ensure it is operating as intended. Section 137FAA(6) therefore enables the rules to require specified authorised persons to provide information relating to compliance with the requirements to the FCA, MaPS or another person. This could, for example, be information which enables the FCA or MaPS to assess how well the service is performing.
- 1.415 In complying with requirements prescribed in section 137FAA, specified authorised persons must have regard to guidance issued from time to time by a person specified in the rules. It is envisaged that guidance will assist specified authorised persons by setting out, in more detail, the factors they must take into account when complying with the particular responsibilities under the rules (section 137FAA(7)).
- 1.416 The rules may require, for example, that information provided by specified authorised persons will be transmitted using a digital format. The Government anticipates that this information will need to conform to certain standards and specifications required by the IT infrastructure which enables qualifying pensions dashboard services to function.
- 1.417 It is important that specified authorised persons are required to work within this infrastructure and that they provide information in a way which is compatible with the way in which pensions dashboards are designed and function, which may change over time. As explained in the context of section 238D, this may

involve the use of identity verification or other services, such a Pension Finder Service, developed by MaPS to process requests for information.

- 1.418 Section 137FAB(1) therefore provides that the FCA's power to make general rules in section 137FAA(1) includes the power to make rules about how pensions information must be provided, including the use of intermediaries. It also provides that the rules may make provision about the steps to be taken in relation to dealing with requests, for example to support the implementation of IT solutions that enable the scheme to connect to the digital infrastructure that supports the transmission of information to an individual via a pensions dashboard service. In this way it mirrors provisions in section 238E.
- 1.419 Section 137FAB(2) to (7) makes, in relation to specified authorised persons, similar provision to that made in section 238E(2) to (7) in the case of occupational pension scheme trustees and managers and for similar purposes. In particular, subsection (2) makes it clear that rules may require specified authorised persons to provide assistance in relation to the establishment, maintenance and operation of facilities and services to support pensions dashboards and to participate in arrangements for establishing, maintaining and managing them, for example, by supporting testing of elements of the infrastructure.
- 1.420 The rules may, therefore, include a requirement that the schemes for which specified authorised persons are responsible can connect to the infrastructure expected to be provided by MaPS and that information must be transmitted in a prescribed manner. It is intended that there will be an identity verification solution specified and, once a user's identity has been verified, the scheme must accept that the user has the right to request their information. There will be an authentication process (that enables, for example, the pension scheme to know that a request has been made via the Pension Finder Service expected to be provided by MaPS that must be followed. The intention is that the rules will also make provision to the effect that the transmission of information through the infrastructure and being presented to the consumer must be secured to an appropriate agreed standard.
- 1.421 Section 137FAA(8) requires the FCA to have regard to any regulations made under section 238D or corresponding provision in relation to Northern Ireland in determining what provision to include in the rules. This is intended to ensure that regulations made by the Secretary of State and the rules made by the FCA on the same issues, work together and serve a common purpose as they will both apply to the same qualifying pensions dashboard services and infrastructure.
- 1.422 In a similar vein, section 137FAC(2) makes it clear that the duty on the FCA in this section to make rules, is not to be treated as requiring it to do so before the Secretary of State has made regulations, under section 238D which are in force.
- 1.423 Section 137FAC(3) ensures that the duty in this section does not prevent the FCA making exceptions in relation to particular types of scheme, for example

small schemes, and to support a phased rollout of pensions dashboards, with the rules applying to different authorised persons and schemes over time.

Justification for delegation

- 1.424 Creating pensions dashboards that meet consumer needs requires the ability to react to, and implement, changing approaches. Given that the dashboard infrastructure is expected to be designed, developed and delivered by MaPS, working in concert with the wider pensions industry, it is not practicable to set out this level of detail in primary legislation. The reasons for seeking delegated powers are explained in more detail in relation to sections 238A and 238D. Those reasons apply equally to the requirements to be imposed on persons authorised by the FCA in relation to personal and stakeholder pension schemes. These provisions are all part of a framework which is intended to ensure that consumers may access all of their pensions information in one place using pensions dashboard services that are approved for that purpose.
- 1.425 The delegated power provided for in this section is in the form of a duty. As explained above, it is important, in the interests of ensuring that pensions dashboard services meet the needs of consumers, that the FCA is under a clear obligation to make rules in a case where the Secretary of State has made regulations which apply to relevant occupational pension schemes.

Justification for procedure

- 1.426 The rules made by the FCA are not made by statutory instrument and are not subject to Parliamentary procedure. This reflects the general rule-making powers in section 137A of FSMA. There are, however, significant safeguards to ensure that the rules are subject to proper scrutiny by those concerned with their operation. Before the FCA publishes a draft of the rules, it must consult the Secretary of State and the Treasury (section 137FAC(1)). The existing provisions in section 138I of FSMA relating to consultation by the FCA will also apply in relation to the rules made under new section 137FAA and 137FAB. In particular, subject to certain exceptions in the case of urgency, the FCA must publish a draft of the proposed rules and take into account representations made in relation to them. It is, therefore, considered appropriate that the procedural requirements which apply to the rules made by virtue of section 137FAA and 137FAB are consistent with those that apply to the FCA's general rule-making powers.

PART 5: FURTHER PROVISION RELATING TO PENSION SCHEMES

Clause 123 and Schedule 10 – funding of defined benefit schemes

Context and purpose

1.427 Clause 123 of and Schedule 10 to the Bill make amendments to Part 3 of the Pensions Act 2004. These measures make provision relating to funding of defined benefit schemes and the Pensions Regulator's scheme funding powers. Broadly, the measures will require trustees and managers:

- Under new section 221A, to determine a funding and investment strategy for the scheme to ensure pensions and other benefits can be paid over the long term. The strategy must refer to the assets and liabilities in the scheme at key milestones.
- Under new section 221B, to have a written statement setting out that strategy and information about it, including trustees' assessment of whether they are on track to deliver the strategy, how they intend to mitigate key risks and their reflection on past decisions. This statement of strategy is to be submitted to the Regulator with other relevant information. The statement must be signed by a chair of trustees on behalf of the trustee board.

1.428 The measures also amend the statutory funding objective so it takes into account the scheme's funding and investment strategy. In addition, they ensure that Government can make clear in legislation what is an appropriate recovery plan when the trustees are not on track to deliver the strategy.

1.429 Further, the measures strengthen the Regulator's scheme funding powers so that it can take action when trustees and managers fail to comply with their new duties, in particular in respect of their duty to determine a suitable funding and investment strategy.

1.430 This package of measures is intended to help improve trustee and sponsoring employer behaviours and decision-making, and support the Regulator with their enforcement action where there is concern that the scheme's long term funding and investment strategy is not suitable or cannot be achieved.

Paragraph 2 of Schedule 10 – new sections 221A and 221B Pensions Act 2004

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure:

Affirmative resolution procedure on first use, negative resolution procedure thereafter: new sections 221A (4)(a) and (b), new section 221B(2)(d) and (8)(a) and (b)

Negative resolution procedure: all other regulation-making powers.

New section 221A(3)(b) and (4)

Context and purpose

- 1.431 Section 221A(3)(b) and (4) allows the Secretary of State to make regulations which make various provisions in relation to the scheme's funding and investment strategy.
- 1.432 Subsection (3)(b) enables the regulations to prescribe how particular dates referred to in the strategy are to be determined. For example, the relevant date may be a date in the future when the scheme can pay out pensions and benefits without further contributions from the sponsoring employer. Other dates (milestones) may also be included in the strategy to set out what the funding level is expected to be in order to achieve the strategy at the relevant date.
- 1.433 Subsection (4)(a) allows the regulations to require trustees or managers to take into account prescribed matters and follow prescribed principles in determining or revising the scheme's strategy. The matters and principles trustees or managers will be required to take into account may include information about the maturity of the pension scheme, whether it is open or closed to new members or accruals, or the strength of the sponsoring employer. These matters and principles will be subject to further consultation.
- 1.434 Subsection (4)(b) will allow the regulations to require sufficient detail is included in the statement to support trustees' decision making and to support the Regulator in its regulatory enforcement. Subsection (4)(c) will allow regulations to set out how long trustees have to determine their strategy. Subsection (4)(d) allows regulations to set out the frequency with which trustees should review and revise the strategy, for example to ensure the strategy remains suitable for the scheme in light of experience i.e. actual investment returns, changes to the contributions to the scheme from employers, corporate events that affect the sponsor or external shocks including those that influence the defined benefit landscape.

Justification for delegation

- 1.435 Delegation in relation to the matters at new section 221A(3)(b) and (4) is considered appropriate as the regulations are likely to contain a range of

technical detail relating to the particular circumstances and nature of the scheme. The requirements will be assessed in light of experience including that of the Regulator and they are likely to need amending and updating from time to time in light of developments to the defined benefit funding landscape.

Justification for procedure

- 1.436 As the power to specify how to determine the relevant date is limited in scope and technical, it is appropriate for this to be subject to the negative resolution procedure. Also the powers under subsections (4)(c)-(d) are procedural, and therefore the negative resolution procedure is appropriate.
- 1.437 The requirement to determine a funding and investment strategy is a new provision and it is important that the regulatory requirements on this are carefully considered. There will be further consultation with stakeholders but for the key requirements, regarding matters and principles to be followed and the level of detail required, it is considered appropriate to subject the regulations to the affirmative resolution procedure on first use and the negative resolution procedure thereafter.

New sections 221B (2)(d), (4), (6)(b) and (8)

Context and purpose

- 1.438 Section 221B requires the trustees and managers to prepare a written statement of the funding and investment strategy (required under new section 221A) and supplementary matters: a “statement of strategy”.
- 1.439 The supplementary matters are set out under subsection (2). These include: the extent to which, in the opinion of the trustees or managers, the strategy is being successfully implemented; the main risks faced by the scheme in implementing the strategy; reflections on significant decisions taken by the trustees or managers; and (subsection (2)(d)) such other matters as may be prescribed. This regulation-making power can be used to ensure the statement of strategy contains information that is relevant in order to support the Pensions Regulator’s enforcement functions. Other prescribed matters may, for example, include a views of the sponsoring employer following consultation.
- 1.440 Subsection (4) enables regulations to set the frequency and circumstances in which trustees must review and revise the supplementary matters.
- 1.441 Under subsection (6) a statement of strategy must be signed by a person who is the chair of the trustees. Subsection (6)(b) provides a power for the Secretary of State to prescribe requirements regarding who is able to hold the role of chair of the trustee board of a defined benefit pension scheme.
- 1.442 Under subsection (8), various provisions may be made by regulations in relation to the statement of strategy as follows:

- subsection (8)(a): to require the trustees or managers in preparing the statement, to take account of prescribed matters and to follow prescribed principles, which will be informed by consultation with stakeholders;
- subsection (8)(b): to ensure sufficient detail is included in the statement of strategy, to support trustee's decision making and to support the Regulator in their regulatory enforcement;
- subsection (8)(c): to require trustees to provide the information required in the statement in a particular form i.e. a template;
- subsection (8)(d): to say when, and on which occasions, 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 revise their funding and investment strategy.

Justification for delegation

- 1.443 In relation to subsection (2)(d), it is considered delegation is appropriate because any regulations in respect of further supplementary matters may be required in light of further consultation and the view of the Regulator.
- 1.444 Subsection (6)(b), enables the Secretary of State to specify criteria which it considers appropriate that the chair of the board of trustees of a defined benefit pension scheme must meet.
- 1.445 In relation to subsections (8)(a) and (b), the regulations are likely to contain a range of technical detail relating to different circumstances and types of scheme. The requirements will be assessed in light of experience including that of the Regulator and may need amending and updating from time to time in light of developments to the defined benefit funding landscape.
- 1.446 In relation to subsections (4) and (8)(c) and (d), it is considered that this level of technical detail regarding the form of the strategy and timing for preparing and reviewing the strategy and sending it to the Regulator is appropriate for secondary legislation. The regulations would also allow more flexibility for the provision to be revised in the light of operational experience and evidence, and is consistent with the approach taken for other documentation prepared by trustees such as the statement of funding principles (s.223 of the Pensions Act 2004).

Justification for procedure

- 1.447 In relation to subsection (2)(d), it is considered that the affirmative resolution procedure on first use, and negative resolution procedure thereafter is appropriate because on first use the regulations will contain information about a new requirement on trustees and managers of pension schemes such that it is appropriate for the requirements to be subject to a higher level of scrutiny. Subsequent revisions are likely to be less significant and therefore are appropriate for negative resolution procedure.

- 1.448 In relation to subsection (6)(b), it is considered that the negative resolution procedure is appropriate because these will be technical requirements which are not expected to be controversial.
- 1.449 In relation to subsections (8)(a) and (b), as preparing the statement of strategy will be a new requirement on trustees and managers, although there will be further consultation with stakeholders it is considered appropriate to subject the regulations regarding matters to be taken into account, principles to be followed and level of detail required to the affirmative resolution procedure on first use. Subsequent amendments are not likely to be significant and it is appropriate that these can be made by the negative resolution procedure.
- 1.450 The regulation-making powers in subsection (4) and in subsections (8)(c) and (d) are technical and process related and can appropriately be made by the negative resolution procedure.

Other amendments to Pensions Act 2004

Paragraphs 4 and 5 of Schedule 10

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative resolution procedure.

Context and purpose

- 1.451 Paragraph 4(2) of Schedule 10 inserts new subsection (7A) into section 224 of the Pensions Act 2004 (actuarial valuations and reports). New subsection (7A) requires that the trustees or managers must send a copy of the actuarial valuation to the Pensions Regulator as soon as reasonably practicable after receiving it, together with such information as may be prescribed. This power will ensure that the certified actuarial valuation is submitted with the statement of strategy, a qualitative narrative of the valuation. It will complement the scheme funding information generally submitted to the Regulator every three years. Other key documents, such as the statement of funding principles may also be required to be sent to the Regulator at the same time.
- 1.452 Paragraph 5 inserts new subsection (3A) into section 226 of the Pensions Act 2004 (recovery plan). New subsection (3A) allows regulations to make provision as to the matters to be taken into account, or principles to be followed, in determining for the purposes of subsection (3) (which requires a recovery plan to comply with any prescribed requirements) whether a recovery plan is appropriate having regard to the nature and circumstances of the scheme. New subsection (3A) allows regulations to define more clearly what is appropriate in the context of a recovery plan. There have been concerns raised, particularly by the pensions industry that there is ambiguity around the meaning of this term i.e. whether it is fair to the pension scheme members whilst also fair to the sponsor. This lack of clarity has not supported the Regulator in their regulatory enforcement to balance effectively the interests of

the scheme members with the sustainable growth of the sponsor. This lack of clarity may be seen to compromise members' pensions and increase the risks to the Pension Protection Fund. This power will enable regulations to clarify what is meant by "appropriate".

Justification for delegation

- 1.453 In relation to new subsection (7A), it is considered delegation is appropriate because regulations requiring information to be provided alongside an actuarial valuation will contain provision which is technical in nature and not controversial, and about matters relating to a maturing defined benefit funding landscape, and so may need updating from time to time.
- 1.454 In relation to subsection (3A), a consultation is proposed on what provision is to be made in regulations and how the regulations may set out what trustees must take into account informed by consultation with stakeholders. Therefore, delegation of this power to secondary legislation is appropriate.

Justification for procedure

- 1.455 In relation to new subsection (7A), it is considered the negative resolution procedure is appropriate for this provision which does not raise issues requiring a more stringent level of scrutiny.
- 1.456 In relation to new subsection (3A), (the Occupational Pension Scheme (Scheme Funding) Regulations 2006), the proposed procedure is in-line with the current regulations which make provision in this area. The Government intends to consult on the draft regulations and to take on board views of the Regulator. In light of this, we consider the negative resolution procedure will provide a sufficient level of Parliamentary scrutiny.

Paragraph 7 of Schedule 10

Power conferred on: the Pensions Regulator

Power exercised by direction

Parliamentary Procedure: None.

Context and purpose

- 1.457 Where trustees do not comply with their new duties in relation to the funding and investment strategy it is important the Pensions Regulator can take proportionate action. Paragraph 7 inserts subsection 231(1)(aa) into the Pensions Act 2004 to extend the Regulator's powers to give directions under Part 3 of that Act (scheme funding) so they may direct trustees or managers of a pension scheme to revise the scheme's funding and investment strategy in accordance with the direction.

Justification for delegation

1.458 To enable the Regulator to ensure trustees and managers of a pension scheme set an appropriate funding and investment strategy it is important that, where necessary, the Regulator can give a specific direction to trustees or managers who have failed to comply with any of the requirements regarding the strategy, setting out how their strategy should be amended. The power is consistent with other powers of the Regulator in section 231, for example the Regulator has power under section 231 to direct the manner in which a scheme's technical provisions are to be calculated, to modify the scheme as regards the future accrual of benefits and to impose a schedule of contributions.

Justification for procedure

1.459 The direction making power under section 231 is appropriate for this level of intervention in a pension scheme by the Regulator. Powers under this section are reserved regulatory powers (paragraph 42 of Schedule 2 to the Pensions Act 2004) and are exercised by the independent Determinations Panel.

Clause 124: Exercise of right to cash equivalent

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution procedure

Context and purpose

1.460 This clause relates to the right of a member to transfer their accrued pension rights (including their rights to pension credits) to a different pension scheme – this right is contained in Chapter 1 of Part 4ZA and Chapter II of Part IVA of the Pension Schemes Act 1993 (sections 93-101P). A member's accrued pension rights are the cash equivalent transfer value ("cash equivalent") placed on the member's pension benefits. This is the amount that is available to the member, to transfer to another pension scheme in exchange for giving up their rights in the scheme that the member wants their rights to be transferred out of.

1.461 Clause 124(2) inserts subsections (6ZA) and (6ZB) into section 95 of the Pension Schemes Act 1993 and clause 124(6) inserts subsections (5A) and (5B) into section 101F of that Act. Sections 95(6ZA) and 101F(5A) provide a power for the Secretary of State to make regulations to restrict this right so that it will only apply when conditions set out in the regulations are met. Sections 95(6ZB) and 101F(5B) provide a non-exhaustive list of conditions about which the Secretary of State may make regulations including matters concerning the member's employment and residency. These will include (but will not be limited to) matters relating to: period of residency and the provision of information to establish a genuine employment link between the member and the employer of the "receiving scheme". The receiving scheme is the scheme the member wants their pension benefits to be transferred into.

- 1.462 The Government intends to set out in regulations the evidence about employment which must be supplied to the trustees of the scheme the member wants to transfer their benefits out of (“the ceding scheme”). This would enable those trustees to assess whether: a member qualifies for a right to transfer their pension benefits and whether the employer is a participant in the receiving scheme. It is the Government’s intention that the regulations include a requirement for the member to give the trustees of the ceding scheme payslips and bank statements covering a three-month period to evidence that their level of earnings in each of those months was at least equal to the national insurance lower level earnings limit (currently £512 per month). This earnings threshold mitigates against the risk criminals will make a fraudulent transfer appear legitimate by making payments of nominal earnings, but is not set so high as to disadvantage lower paid pension members. It is also intended that the regulations will include a requirement for trustees of the ceding scheme to request information from the employer, including a statement that they employ the member and that they participate in the pension scheme the member’s pension pot would be transferred to.
- 1.463 In relation to the transfer of pension benefits to a Qualifying Recognised Overseas Pension Scheme (QROPS), the potential conditions will depend on the UK’s on-going relationship with the European Union. If the UK has a relationship that treats all EU member states as third countries then, as with other non-EU or European Economic Area countries the intent is the regulations will require the member to provide evidence that they have lived in the same country where the QROPS is located for at least six months. If the UK’s relationship is specific to EEA it is envisaged the member will be required to demonstrate that both they and the QROPS are in the EEA, though not necessarily the same EEA country. The Government envisages using the regulations to enable the trustees of the ceding scheme to determine the evidence the member should provide to them to prove their residency. Once the United Kingdom leaves the EU, it is intended that the latter approach will apply to all QROPS transfers.
- 1.464 Clause 124(3) inserts a reference in section 98 to the inclusion of new subsection (2ZA) in section 99. This will remove the right of a member to take a transfer of pension benefits if there is a failure to satisfy the prescribed conditions in section 95(6ZA).
- 1.465 Clause 124(4) and (5) insert new subsections (2ZA) and (2ZB) respectively into section 99 and clause 124(7) and (8) insert new subsections (2AA) and (2AB) respectively into section 101J. Both sections 99 and 101J deal with the time period for facilitating a transfer request. Sections 99(2ZA) and (2ZB) and sections 101J(2AA) and (2AB) will exempt trustees or managers from the requirement to meet the time limit for carrying out a member’s request to transfer their accrued rights to cash equivalent to a different scheme if the prescribed conditions of section 95(6ZA) or 101F(5A) are not met. It is intended that members who do not qualify for the statutory right to transfer will still be able to seek a discretionary transfer of their pension benefits subject to scheme rules allowing this.

Justification for delegation

- 1.466 Fraudsters will continually seek out new opportunities to take advantage of their victims. The models and mechanisms used will likely be adapted to circumvent the protections that are put in place to better protect members from pension scams, which can put their life savings at risk. Government believes it is necessary that requirements remain flexible to counter this evolving threat to pension savers. Regulations are better placed to capture the operational detail and can more easily be adapted, than if the same requirements were put in primary legislation. This is why the Government considers it appropriate for the Secretary of State to retain the power in secondary legislation to ensure that the Government will be able to act quickly to protect members.
- 1.467 In relation to new subsections (2ZA) and (5A), the Government intends to carry out formal public consultation on the draft regulations, which will help ensure that they meet the policy intent.

Justification for procedure

- 1.468 Regulations made under new paragraph (c) of section 99(2) would be subject to the negative resolution procedure. Regulations made under Pensions Schemes Act 1993 are subject to the negative resolution procedure. The regulation-making powers relate to amendments made under that Act and therefore will follow that procedure.
- 1.469 Government therefore considers in relation to subsections (2ZA) and (5A) that the negative resolution procedure is appropriate. This aligns with the transfer procedural powers in existing legislation.

Schedule 11, paragraph 2 – new Articles 200A and 200B – funding and investment strategy

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Confirmatory procedure on first use, negative resolution

thereafter: new Article 200A(4)(a) and (b), new Article 200B(2)(d) and (8)(a) and (b)

Negative resolution: all other regulation-making powers

- 1.470 Schedule 11, paragraph 2 (which inserts Articles 200A and 200B of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for Schedule 10, paragraph 2 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 11, paragraphs 4 and 5 – new Articles 203(7A) and 205(3A) – actuarial valuations and reports and recovery plans

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.471 Schedule 11, paragraphs 4 and 5 (which insert paragraph (7A) of Article 203 and paragraph (3A) of Article 205 of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for Schedule 10, paragraphs 4 and 5 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 11, paragraph 7 – new Article 210(1)(aa) – powers of the Regulator

Power conferred on: the Pensions Regulator

Power exercised by direction

Assembly procedure: None

1.472 Schedule 11, paragraph 7 (which inserts Article 210(1)(aa) of the Pensions (Northern Ireland) Order 2005) provides for equivalent powers to those described for Schedule 10, paragraph 7 to be exercisable in relation to Northern Ireland by the Pensions Regulator.

Schedule 11, paragraph 12(2) – new section 91(6ZA) – ways of taking right to cash equivalent

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

1.473 Schedule 11, paragraph 12(2) (which inserts section 91(6ZA) of the Pension Schemes (Northern Ireland) Act 1993) provides for equivalent powers to those described for clause 124 relating to ways of taking right to cash equivalent, to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Schedule 11, paragraph 12(6) – new section 97F(5A) – power to give transfer notice

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule

Assembly procedure: Negative resolution

- 1.474 Schedule 11, paragraph 12(6) (which inserts section 97F(5A) of the Pension Schemes (Northern Ireland) Act 1993) provides for equivalent powers to those described for clause 124 relating to power to give transfer notice, to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

PART 6: FINAL

Clause 130 – subsections (1), (2), (5) and (6) - Commencement

Power conferred on: Secretary of State (subsections (1) and (5)), Department for Communities in Northern Ireland (subsections (2) and (6))

Power exercised by: Regulations made by Statutory Instrument (subsections (1) and (5)), regulations made by Statutory Rule (subsections (2) and (6))

Parliamentary Procedure: none

Content and purpose

1.475 This clause makes provision for the coming into force of the Bill. Subsection (3) sets out which provisions come into force on the day on which the Act is passed. Subsection (2) sets out the provisions which come into force on the day appointed by regulations made by the Department for Communities in Northern Ireland. Subsection (3) provides that the remaining provisions of the Bill come into force on the day appointed by regulations made by the Secretary of State. Subsections (4) to (8) make further provision about regulations under this clause including that they may make transitional, transitory or saving provision in connection with the commencement of a provision.

Justification for delegation

1.476 It is appropriate for the provisions of the Bill which do not come into force on Royal Assent to come into force on a date appointed by regulations. It ensures that the necessary regulations and guidance is in place when the provisions come into force and that the timing is appropriate taking account of the interests of the parties affected by the provisions. It is also necessary for the ordered commencement of the provisions that the commencement regulations can make provision for matters such as transitional, transitory and saving provisions.

Justification for procedure

1.477 The procedure provided for is the usual procedure for commencement regulations made by the Secretary of State and by the Department for Communities in Northern Ireland.

Department for Work and Pensions
7 January 2020