

PENSIONS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Pensions Bill, as brought from the House of Lords on 11th July 2007. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 61, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Amendments 1, 12 to 24, 28 and 73, which were opposed by the Government. (In the following Commentary, an asterisk appears in the heading to each of the paragraphs dealing with non-Government amendments.)

COMMENTARY ON LORDS AMENDMENTS

****Lords Amendment 1***

5. Lords Amendment 1 would allow people who do not have enough years in their working lives to satisfy the contribution conditions for a full basic state pension and other benefits, to make voluntary Class 3 contributions in respect of up to 9 years with a view to making up that shortfall. A person would be able to make the contributions at any time before reaching state pension age. The new provision would have effect from two months after Royal Assent or 1st November 2007, whichever is earlier.

6. Under the existing regulations relating to voluntary contributions there is no limit on the number of years in respect of which a person can pay Class 3 contributions provided that they are paid within 6 years of the year in question.

Lords Amendments 2 to 5

7. Lords Amendments 2 to 5 relate to the setting of the lower earnings limit once the provisions of the Bill providing for the basic state pension to be uprated by reference to earnings come into force.

8. Lords Amendment 3 would provide that regulations setting the rate of the lower earnings limit are subject to the affirmative procedure in line with the recommendation of the Delegated Powers and Regulatory Reform Committee (“the DPRRC”). Lords Amendment 5 would make parallel provision for Northern Ireland.

9. Lords Amendments 2 and 4 would have the effect of ensuring that regulations setting the lower earnings limit for the tax year following the designated tax year (as defined in clause 5(4) of the Bill) and subsequent years will be made subject to the affirmative procedure. It is from the tax year following the designated tax year that the basic state pension will be uprated by reference to earnings.

Lords Amendment 6

10. Lords Amendment 6 would insert 5 new subsections into clause 14. At present a person in receipt of deferral increases to his guaranteed minimum pension (“GMP”) has those increases partly protected against inflation by the private pension scheme, with the balance being met through increases to his state retirement pension. When a GMP is converted under the new provisions contained in clause 14, actuarial equivalence will ensure the member gets the value of the inflation increases payable by the scheme. Subsections (8) and (9) inserted by this amendment would allow for the continuation of the partial protection given through increases to the state retirement pension.

11. The new subsection (10) would ensure that a survivor of any scheme member who had his GMP converted prior to his death will continue to have entitlement to certain GMP additions awarded with their state retirement pension. These amounts will also continue to be protected against future inflation through increases to these additions.

12. The new subsection (12) would, in line with a recommendation made by the DPRRC, provide that regulations about the provision of survivors’ benefits by a converted scheme are to be subject to the affirmative procedure.

Lords Amendments 7 to 10

13. Lords Amendment 7 would remove the delegated power in clause 15(2) that was inserted at Commons Committee. The power allows for the rules applying to protected rights to be abolished or varied by regulations made by the Secretary of State. Protected rights are rights under contracted-out money purchase schemes which

are derived from the contracted-out rebate and the investment return on the rebate. The removal of the power would follow the recommendation of the DPRRC that provisions abolishing or varying the rules relating to protected rights should be the subject of primary not secondary legislation. (Lords Amendments 38 to 40 would include such provisions on the face of the Bill.)

14. Lords Amendments 8 to 10 would make the consequential amendments to clause 15 which would be required as a result of Lords Amendment 7.

Lords Amendment 11

15. Lords Amendment 11 would make a minor change to clause 16 to ensure it works as originally intended.

16. The intention is that the procedures provided for internal dispute resolution arrangements for occupational pension schemes must include a reasonable time limit for applications from a person whose interest in a scheme has ceased and for those from a person whose claimed interest has ceased. For other applications the inclusion of a time limit is optional.

17. As originally drafted, clause 16 required dispute resolution arrangements to include a time limit for all applications from someone claiming an interest in the scheme, not just where the claimed interest has ceased.

****Lords Amendments 12 to 14***

18. Lords Amendments 12 to 14 would insert 3 new clauses making provision about retirement income funds (“RIFs”) – i.e. vehicles to draw an income in retirement as an alternative to the existing options (i.e. a scheme pension, an annuity, income drawdown or (from age 75) an alternatively secured pension). Lords Amendment 13 would insert a new clause which in turn inserts a new section 152A into the Finance Act 2004. This defines RIFs and sets out the conditions of their operation. Lords Amendment 14 would insert a new clause amending section 165 of the Finance Act 2004 to enable a registered pension scheme to pay pension benefits in the form of income withdrawals from a RIF.

19. The new section 152A of the Finance Act 2004 sets out how the annual minimum and maximum income amounts that could be withdrawn from a RIF would work. A “maximum withdrawal” allowance would be set by the provider of the fund for each member and will be based on an assessment of his or her life expectancy. A member’s income withdrawals from the fund in any year may not exceed that allowance.

20. The “minimum withdrawal” allowance must also be set by the provider, and a member must withdraw income of at least that amount each year.

21. In setting the maximum and minimum income withdrawal allowances, the provider of the RIF would have to ensure the member’s total annual income was at least equivalent to a minimum retirement income (“MRI”) level. Lords Amendment 12 would insert a new clause which provides that this MRI would be set each year by

the Chancellor of the Exchequer. The MRI is to be set by order at the level of the standard minimum guarantee prescribed under section 2 of the State Pension Credit Act 2002. The Chancellor is required to consult such persons as he thinks appropriate before setting the MRI.

22. The new section 152A also provides that where there are insufficient funds to enable the annual minimum income withdrawal allowance to be set so that a member's total income is at least equivalent to the MRI level, that allowance will be set at the highest level consistent with the assessment of the member's life expectancy.

23. A further condition that must be satisfied by a RIF is that the maximum and minimum income withdrawal allowances must be set at the same level if a member's total annual income, including their maximum withdrawal allowance, is lower than the MRI level.

24. In the event of a member choosing not to declare their total annual income to the provider, they must withdraw funds equivalent to the level of the MRI level or their annual maximum withdrawal allowance, whichever is the lower.

25. The final condition is that the RIF and any income drawn from it must not be capable of being assigned or surrendered by the member.

****Lords Amendment 15***

26. Lords Amendment 15 would insert a new clause which amends the Financial Assistance Scheme Regulations 2005 (S.I 2005/1986) ("the FAS Regulations") to transfer the management of the Financial Assistance Scheme ("the FAS") from the Secretary of State to the Board of the Pension Protection Fund ("the PPF"). The new clause also makes consequential amendments to the FAS Regulations as a result of that transfer.

****Lords Amendment 16***

27. Lords Amendment 16 would insert a new clause which removes regulations 9(1)(c) and 11 to 13 of the FAS Regulations. Those provisions relate to insolvency conditions that must be satisfied by the relevant employer in order for an occupational pension scheme to qualify for the FAS. By removing those provisions, the new clause allows schemes that meet other qualifying criteria (such as those relating to the date that the scheme started to wind-up) to qualify for the FAS regardless of whether or not an insolvency event has occurred in relation to the scheme's employer.

****Lords Amendment 17***

28. Lords Amendment 17 would insert a new clause which provides for the setting up of a Pension Protection Lifeboat Fund ("the Lifeboat Fund") to be administered by the Board of the PPF. Under subsection (2), the Lifeboat Fund would make supplementary payments to qualifying members of schemes which are qualifying pension schemes for the purposes of the FAS who had reached their qualifying scheme retirement age. Subsection (3) provides that those payments would

supplement payments made under the FAS and by a member's pension scheme (or annuity) to a total amount equal to the amount that the member would receive if their scheme were to qualify for the PPF. Under subsection (4), funds for supplementary payments and administration would be provided by loans from the Secretary of State and from unclaimed assets transferred to the Lifeboat Fund (as to which, see Lords Amendment 21). Subsection (5) provides for the Secretary of State to have regard to various factors in making such loans.

29. Subsection (6) of the new clause provides that any loans made must be repaid to the Secretary of State as soon as the Board of the PPF considers it prudent to do so, taking into account the obligations of the Lifeboat Fund, the amount of its assets and any claims on the assets transferred to the Fund.

30. Subsections (7) and (8) provide for loans to be interest free and for the assets of the Lifeboat Fund to be held separately from any other fund under the control of the Board of the PPF.

31. Subsections (9) and (10) provide a regulation-making power (subject to the negative procedure) for the Secretary of State to make further provision in connection with the Lifeboat Fund.

****Lords Amendment 18***

32. Lords Amendment 18 would insert a new clause which requires the setting up of a Pensions Unclaimed Assets Recovery Agency ("the Agency") within 3 months of Royal Assent. The clause requires the Secretary of State to appoint 6 to 12 members of the Agency, preferably with knowledge or experience of matters relevant to the proposed functions of the Agency, and allows him to remunerate members and meet the expenses of the Agency. The clause also sets maximum periods that members of the Agency can hold office, 6 years for the chair and 4 years for other members.

****Lords Amendment 19***

33. Lords Amendment 19 would insert a new clause which defines the functions of the Agency. These are to obtain information about unclaimed assets, to provide this information to the Secretary of State and to administer a scheme to transfer unclaimed assets to the Lifeboat Fund (such scheme to be established by virtue of the new clause that would be inserted by Lords Amendment 21). The specifics about the information to be obtained and provided and the classes of unclaimed assets to which the requirement will apply would be prescribed in regulations.

****Lords Amendment 20***

34. Lords Amendment 20 would insert a new clause which sets out the powers of the Agency to require the provision to it of such information as it considers necessary to carry out its functions (as to which, see Lords Amendment 19). The clause provides that any person required to provide information must do so within timescales set by the Agency and failure to comply (without reasonable excuse) is to be a criminal offence, punishable by a fine as laid down in subsection (3). Persons supplying false

or misleading information also commit an offence and are liable to a fine or, on conviction on indictment, imprisonment. Only persons operating a business in the UK can be required to provide information but those persons can be required to provide information which is held by a connected person or undertaking abroad.

****Lords Amendment 21***

35. Lords Amendment 21 would insert a new clause requiring the Secretary of State to make regulations (under the negative procedure and within a year of Royal Assent) to establish a scheme to transfer unclaimed assets to the Lifeboat Fund. The regulations will define which unclaimed assets can be transferred (and will make provision about the extent to which assets can be transferred where an owner is known or could be found). The regulations will also determine what proportion of those assets is to be transferred to the Lifeboat Fund, make the Lifeboat Fund liable for any claims on those assets and set out penalties to be imposed on those who fail to transfer assets when required.

****Lords Amendment 22***

36. Lords Amendment 22 would insert a new clause which requires the Secretary of State to make regulations as soon as practicable to prohibit the purchase of annuities by trustees of qualifying pension schemes which have not yet completed winding-up, unless they are subject to a binding contractual commitment to purchase such annuities on or before 18th April 2007. This moratorium would apply until 18th January 2008.

****Lords Amendment 23***

37. Lords Amendment 23 would insert a new clause obliging the Secretary of State to make regulations as soon as practicable to require trustees of qualifying pension schemes to make 'on-account' payments to qualifying members who have reached their qualifying scheme retirement age. Subsection (2) of the new clause also provides for the Secretary of State to make loans to fund on-account payments if it appears that assets of the qualifying scheme would otherwise be unavailable.

38. The regulations may prescribe that such loans are recoverable when the qualifying scheme completes wind-up (subsection (2)). The regulations must also provide that the on-account payments made by trustees of schemes should equal the amounts that would be payable if the scheme were to be accepted by the PPF and for payments to be made to those trustees by the FAS or by the Lifeboat Fund in respect of periods for which on-account payments were made (subsections (3) and (4)).

****Lords Amendment 24***

39. Lords Amendment 24 would insert a new clause which requires the Secretary of State to make regulations to ensure that payments made to a person by the FAS equal the amount that would be payable if that person were entitled to compensation under the PPF.

Lords Amendments 25 to 27

40. Lords Amendment 25 would prevent an order winding up the Authority under clause 22 from providing that the property, rights or liabilities of the Personal Accounts Delivery Authority (“the Authority”) are to be transferred to anyone other than the Secretary of State.

41. Lords Amendments 26 and 27 would make consequential changes to clause 22, removing references to dividing property, rights and liabilities between different persons, which would be required as a result of Lords Amendment 25.

****Lords Amendment 28***

42. Lords Amendment 28 would impose an obligation on the Secretary of State to arrange for post-legislative scrutiny of the Bill 4 years after Royal Assent. It would also give him a power to arrange further scrutiny at a later stage.

Lords Amendment 29

43. Lords Amendment 29 would amend clause 23 to provide that the free-standing powers in clauses 15(6) and 18(9) to make regulations relating to occupational pensions, are, other than in certain exceptional cases, subject to the pre-condition that consultation must take place with interested parties. This puts the position for these powers in line with those under other occupational pensions legislation.

Lords Amendments 30, 35 and 52

44. Lords Amendment 35 would correct a repeated error in Schedule 5 to the Social Security Contributions and Benefits Act 1992 which could result in double deductions being made to the amount inherited by survivors under the provisions contained in paragraphs 5 to 9 of that Schedule.

45. Lords Amendment 52 would insert the entries into Schedule 7 (repeals and revocations) required by Lords Amendment 35 and Lords Amendment 30 would amend clause 25 to deal with when those repeals come into force.

Lords Amendments 31 to 33

46. Lords Amendment 31 would remove clause 27, which provides that an Order in Council making provision for Northern Ireland corresponding to that in the Bill is subject to the negative procedure. The removal of clause 27 would take account of the fact that devolved government in Northern Ireland has now been restored. Lords Amendments 32 and 33 would make consequential changes to clause 28.

Lords Amendment 34

47. Lords Amendment 34 would amend paragraph 18 in Part 4 of Schedule 1. Part 4 contains consequential amendments stemming from the abolition of Adult Dependency Increases (“ADIs”) in Category A and Category C retirement pensions from April 2010 by virtue of clause 4. This amendment would correct a drafting error

in the consequential amendment to Part 4 of Schedule 4 to the Social Security Contributions and Benefits Act 1992 by removing references to the specific rates for ADIs applicable in 2006 (which have been rendered obsolete by subsequent up-ratings).

Lords Amendment 36

48. Lords Amendment 36 would add a further reference to new section 150A of the Social Security Administration Act 1992 (which is to be inserted by clause 5) in section 159C of that Act alongside the other amendments to section 159C made by paragraph 27 of Schedule 1. This reference had been inadvertently omitted.

Lords Amendments 37 and 41 to 44

49. Lords Amendments 37 and 41 to 44 would insert various minor amendments to the Pension Schemes Act 1993 (“the 1993 Act”) and the Welfare Reform and Pensions Act 1999 into Schedule 4. These are largely consequential on the provisions in clause 15 and Schedule 4 abolishing contracting-out for defined contribution pension schemes. The amendment omitting section 31 of the 1993 Act relates to the provisions made about protected rights by Lords Amendments 38 to 40.

Lords Amendments 38 to 40

50. Lords Amendment 40 would insert provisions into Schedule 4 making further amendments to the 1993 Act. The amendments remove all the existing rules that apply in relation to giving effect to protected rights and insert a new section 27A into the 1993 Act. The new section 27A has the effect of retaining the rule that requires provision to be made out of protected rights for a surviving spouse or civil partner. It also re-enacts (with some modifications) regulation making powers under section 28 of the 1993 Act to make provision in relation to survivors’ benefits.

51. Lords Amendments 38 to 40 would also ensure that the new limited requirements relating to giving effect to protected rights apply to any pension scheme to which protected rights have been transferred (see Lords Amendments 38 and 39) and in cases where such rights are given effect to under an insurance policy (see new section 32A which would be inserted into the 1993 Act by Lords Amendment 40).

Lords Amendment 45

52. Lords Amendment 45 would alter one of the grounds on which the Secretary of State may, by notice in writing, remove a non-executive member of the Authority from office, replacing ‘has been guilty of misbehaviour’ with ‘is unfit for office by reason of misconduct’. References here and below to non-executive members include the chairman.

Lords Amendments 46, 47, 49 and 50

53. Lords Amendment 46 would remove the Authority’s ability to pay, or make provision for paying, pensions for its non-executive members.

*These notes relate to the Lords Amendments to the Pensions Bill,
as brought from the House of Lords on 11th July 2007 [Bill 146]*

54. Paragraph 4 of Schedule 6 (as amended by Lords Amendment 46) would instead provide for the Authority to pay to the non-executives such remuneration as may be determined by the Secretary of State and to pay to, or in respect of, the non-executives such sums representing allowances or gratuities as may be determined by the Secretary of State.

55. Lords Amendments 47, 49 and 50 would make consequential amendments removing references to non-executives' pensions which would no longer be needed as a result of Lords Amendment 46.

Lords Amendment 48

56. Lords Amendment 48 would remove the provision which gives the chairman of the Authority and the Secretary of State power to give directions to the deputy chairman about when and how he can discharge the chairman's functions. The amendment would instead ensure that if there is a vacancy in the office of chairman or if the chairman is absent or otherwise unable to act, the deputy may discharge the functions of the chairman. But when discharging the chairman's functions the deputy must have regard to any guidance given by the chairman.

Lords Amendment 51

57. Lords Amendment 51 would change who is responsible for laying the Authority's audited accounts (and the Comptroller and Auditor General's report on them) before Parliament. Under the Schedule as originally drafted, the Comptroller and Auditor General (National Audit Office) is the person responsible. Amendment 51 would change this so that it is the Secretary of State that lays them before Parliament.

Lords Amendments 53 to 72

58. Lords Amendments 53 to 72 would amend Schedule 7 (repeals and revocations) to reflect the repeal and revocation of legislation arising from Lords Amendments 38 to 44 and to insert entries for various other provisions repealed or revoked by the Bill.

****Lords Amendment 73***

59. This amendment would remove the requirement that an annuity may only offer repayment on death of an amount representing the initial capital value of an individual's pension or annuity, less any income paid before death, in a case where the person concerned dies before he turns 75.

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

Additional Class 3 National Insurance Contributions

60. Lords Amendment 1 would have significant increased cost implications. It is not possible to accurately quantify these.

61. As an indicator, the annual cost in 2020 of allowing people to pay an extra 6 years of Class 3 Contributions at State Pension age, assuming a 15 per cent take-up rate, is estimated to be in the region of £260 million (2007/08 price terms).

62. Allowing people to buy an extra 9 years would increase this cost.

Retirement Income Fund

63. Lords Amendments 12 to 14 would have significant increased cost implications, but it is difficult to quantify these because it is not clear how the minimum income requirement will work nor how RIF withdrawals and death benefits will be taxed.

Financial Assistance Scheme

64. The Financial Assistance Scheme (“the FAS”) provides help to those people who have lost significant amounts of their final salary pension when their pension scheme started winding up between 1st January 1997 and 5th April 2005 as a result of employer insolvency. In its current form, the FAS provides help only to those qualifying members of qualifying pension schemes who were within 15 years of their scheme’s normal retirement age (“NRA”), or above, as at 14th May 2004. Payments are also made to surviving spouses or civil partners of those qualifying members on their death.

65. Assistance to qualifying members is currently tapered depending on the proximity of the member to their NRA on 14th May 2004. FAS payments are also subject to a cap of £12,000 and a de minimis rule which means that assistance is not provided where it is calculated to be worth less than £520 a year (£260 a year in the case of survivors). The costs of providing FAS assistance as currently configured are estimated to be £2.4 billion cash (£830 million Net Present Value (“NPV”)).

66. The financial effect of clause 18 (inserted at the Report stage in the Commons), which provides that the Secretary of State must make provision for assistance at not less than 80% of expected core pension to all qualifying members (and for proportional help to their survivors), would depend on the precise rate of assistance that was set down in regulations. If assistance were provided at 80% of expected core pension then costs are estimated to be £6.9 billion cash (£1.6 billion NPV) on top of the current costs indicated above.

67. The financial effect of Lords Amendments 17 and 24, which would insert new clauses providing, in essence, that payments under the FAS should be made at the same level as under the Pension Protection Fund (“the PPF”), is estimated at £3 billion cash (£0.7 billion NPV) (on top of the costs of providing 80% of expected core pension to all qualifying members indicated in relation to clause 18 above). Some of these costs might be offset by the use of unclaimed assets. However there is no information available about the amount of any such assets.

68. The financial effect of Lords Amendment 16, which would insert a new clause extending the provision of FAS assistance at PPF levels to all relevant schemes regardless of whether or not an insolvency event has occurred to the relevant employer, is estimated to be in the range of £950 million to £2.5 billion cash (£220 million to £580 million NPV). The wide range of this estimate reflects the limited information available on such schemes.

69. Lords Amendment 18 provides for the establishment of the Pension Unclaimed Assets Recovery Agency. It would provide for members to be appointed to the Agency, for such members to be paid by the Secretary of State, and for their expenses and any other expenses of the Agency to be paid. The precise financial effect of the amendment would depend on the number of members appointed, the amount they were paid, the costs of support staff that may be employed and the costs of implementing and operating the Agency. Such costs are likely to be significant.

70. Lords Amendment 23 would provide that the Secretary of State must make regulations to require trustees to make on account payments at a rate equivalent to the Pension Protection Fund to certain members of schemes that qualify for the FAS. The amendment allows the Secretary of State to make such loans as necessary to fund such payments and provides for the repayment of any on account payments by the FAS or by the Lifeboat Fund. The precise financial effect of the amendment cannot be estimated as we have insufficient information on the funds already held by relevant schemes and the details that would enable relevant payments at PPF rates to be calculated. Some costs might be borne by the Lifeboat fund by use of unclaimed assets. However there is no information available about the amount of any such assets. The full cost could thus fall on the Secretary of State (whether by loan or by repayment). That cost would be significant.

Removal of annuity protection lump sum death benefit

71. Lords Amendment 73 would adversely affect tax revenue. It would enable tax relief which currently applies specifically to pension fund contributions to be returned as tax-advantaged capital on death during any stage of an individual's retirement. It is difficult to quantify this impact accurately.

EUROPEAN CONVENTION ON HUMAN RIGHTS

72. Lords Amendment 22 would potentially engage Article 1 of the First Protocol in that it would affect property rights. The Government are not in a position to say whether any such interference could be justified.

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