These notes refer to the Equitable Life (Payments) Bill as brought from the House of Commons on 11th November 2010 [HL Bill 28]

EQUITABLE LIFE (PAYMENTS) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Equitable Life (Payments) Bill as brought from the House of Commons on 11th November 2010. They have been prepared by the Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill authorises the Treasury to incur expenditure in order to make payments to persons adversely affected by Government maladministration in the regulation of the Equitable Life Assurance Society ('Equitable Life'). The purpose of the legislation is to enable the implementation of an Equitable Life payments scheme (the 'payments scheme').

4. Equitable Life is a mutual insurance company owned by its policyholder members. At its height, it had 1.5 million policyholders. From the 1950s until 1988 Equitable Life sold significant volumes of policies that included a guaranteed annuity rate. These policies provided a fixed rate at which policyholders were entitled to purchase an annuity on maturation of the policy.

5. In the 1990s interest rates and inflation made it more expensive for Equitable Life to pay out on its policies that included a guaranteed annuity rate. In order to try and manage these costs, it implemented a policy of offering differential terminal bonus rates. In July 2000 the court ruled that this policy was unlawful (*Equitable Life Assurance Society* v *Hyman* [2002] 1 AC 408). Equitable Life ran into financial difficulties when it was unable to meet £1.5bn in liabilities which the court's decision established that it owed. In an attempt to secure a fresh injection of capital, Equitable Life put itself up for sale. When no buyer could be found, it announced its closure to new business on 8th December 2000.

6. In July 2008, the Parliamentary Ombudsman published a report, *Equitable Life: a decade of regulatory failure.*[1] The report said that there was evidence of "serial regulatory failure" on the part of the Government in relation to its regulation of Equitable Life in the period before 1st December 2001. The report called on the Government to apologise to policyholders and to set up a compensation scheme.

7. The Government accepted some of the Ombudsman's findings of maladministration and of injustice resulting from the maladministration. Although it did not accept that it would be appropriate to provide compensation in the way suggested by the Parliamentary Ombudsman, it agreed that some payments would be justified, to the extent that some policyholders had suffered a disproportionate impact as a result of the maladministration.

8. In light of this, in January 2009 the Government asked Sir John Chadwick, a former Court of Appeal Judge, to advise the Treasury on issues relating to the determination of relative losses suffered by Equitable Life policyholders and the impact of those losses.

9. On 11th May 2010 the new Conservative-Liberal Democrat Government published its Coalition Agreement, setting out its early priorities.[2] This Agreement contained a pledge to "implement the Parliamentary and Health Ombudsman's recommendation to make fair and transparent payments to Equitable Life policy holders, through an independent payment scheme, for their relative loss as a consequence of regulatory failure." The purpose of this Bill is to enable the Government to fulfil this pledge.

10. Sir John Chadwick's final advice on the financial losses sustained by policyholders was published on 22nd July 2010.[3] The Government announced that it would consider the advice over the summer and provide a response in October as part of its Spending Review, along with a decision as to the amount that should be allocated to the scheme. Interested parties were invited to make representations to the Treasury.

11. Also on 22nd July 2010, the Government announced the establishment of the Independent Commission on Equitable Life Payments. The Commission is comprised of Brian Pomeroy, John Tattersall and John Howard. The role of the Commission is to:

- recommend how best to allocate fairly funds provided for the payments scheme in the first three years of the Spending Review to those persons found to have suffered

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[1] *Equitable Life: A Decade of Regulatory Failure,* Parliamentary and Health Ombudsman, 16 July 2008 www.ombudsman.org.uk

[2] *The Coalition: our programme for government*, May 2010 www.cabinetoffice.gov.uk

[3] http://www.chadwick-office.org/

relative losses as a result of accepted Government maladministration, excepting with-profits annuitants and their estates; and

- advise on any groups or classes of persons that should be paid as a priority with regard to the timing of payments, again excepting with-profits annuitants and their estates.

12. The Commission is expected to submit its report at the end of January 2011.

13. On 20th October 2010, the Government announced that the relative losses suffered by policyholders amount to £4.3 billion. This is considered by the Government to be the difference between what policyholders who invested from September 1992 onwards received from their policies, and what they would have received if they had invested elsewhere. It is in line with the Parliamentary Ombudsman's findings, all of which the Government now accepts.

14. In light of the Parliamentary Ombudsman's recommendation that it "is appropriate to consider the potential impact on the public purse of any payment of compensation", and the pressures on the public purse, the Government decided that £1.5 billion should be made available for the payments scheme, £1 billion of which should be paid over the first three years of the Spending Review period.

15. The Government also recognised the issues facing with-profits annuitants. They are a group of policyholders who are "trapped" in their policies, in receipt of a declining income in their retirement and generally the eldest. In view of these factors, the Government decided that a fair balance between the interests of policyholders and taxpayers would be achieved by:

- covering the full cost of losses to holders of with-profits annuity policies – approximately £620 million. This is intended to be paid through regular payments; and

- allocating £1 billion as part of the Spending Review, to cover the first three years' payments to with-profits annuity policyholders and lump sum payments to all other policyholders.

TERRITORIAL EXTENT AND APPLICATION

16. The Bill is a UK-wide bill. The main subject matter of the Bill, namely payments in consequence of maladministration in the regulation of a specified insurance society, is not a matter which is devolved to the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly.

17. The Bill makes provision for certain matters to be dealt with through secondary legislation, such as the provision to allow for payments to be disregarded in the consideration of a

person's liability to pay for certain goods and services. This may include, for example, health and social care, which are devolved matters. However, such provisions are incidental to the main subject matter of the Bill.

Wales

18. The Bill applies to Wales in the same way as to England. It does not change the position of the National Assembly for Wales and has no effect on the powers of the Welsh Ministers.

Scotland

19. The Bill applies to Scotland in the same way as to England. It does not change the position of the Scottish Parliament and has no effect on the powers of Scottish Ministers.

20. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

Northern Ireland

21. The Bill applies to Northern Ireland in the same way as to England. It does not change the position of the Northern Ireland Assembly and has no effect on the powers of the Northern Ireland Assembly Government.

COMMENTARY

Clause 1: Payments

22. *Subsections (1)* and *(2)* allow the Treasury to incur expenditure in connection with the making of payments to persons adversely affected by Government maladministration before December 2001 in the regulation of Equitable Life.

23. *Subsection (3)* confers on the Treasury the power to make provision for the payments to be disregarded for the purposes of tax, entitlement to tax credits, and liability to make a payment in respect of the provision under an enactment for goods and services, (for example social care), and for the purposes of connected reporting requirements. Under the power the

Treasury could provide for the payments to be tax free in the hands of recipients and/or that the payments would not affect recipients' access to certain means-tested support from public funds. *Subsection (4)* allows this power to be used selectively, so an order made under it could provide that the payments should affect eligibility for some, but not all state funded means-tested support. *Subsection (7)* allows it to be used in relation to enactments made by the devolved administrations.

24. *Subsection (5)* states that, should the Treasury decide to exercise the powers set out in *subsection (3)*, the affirmative resolution procedure will apply.

25. *Subsection (6)* would enable National Savings and Investments (through its head, the Director of Savings) to act as payments scheme delivery partner if appointed by the Treasury.

FINANCIAL EFFECTS

26. The Bill will enable a scheme to be funded to make payments to persons adversely affected by Government maladministration before December 2001 in the regulation of Equitable Life. The scheme will entail public expenditure. The Government has announced that it will make £1.5 billion available for the payments scheme. The costs of delivering the scheme will not be known until the delivery partner is appointed. Although the Bill would enable National Savings and Investments to act as scheme delivery partner if appointed, at present it has not been appointed.

PUBLIC SECTOR MANPOWER

27. The Bill has no effect on public sector manpower. The effect on public sector manpower of the scheme itself will not be known until the details of the scheme are determined.

IMPACT ASSESMENT

28. This Bill does not have a cost impact on the private sector, public services or the third sector and an impact assessment is not required.

29. A separate Equalities Impact Assessment is available on the Treasury website.[4]

[4] http://www.hm-treasury.gov.uk/fin_equitable_life.htm

EUROPEAN CONVENTION ON HUMAN RIGHTS

30. The Treasury consider that the Bill does not give rise to any Convention rights issues. Lord Sassoon has made a statement pursuant to section 19 of the Human Rights Act 1998. This states that in his view the provisions of the Equitable Life (Payments) Bill 2010 are compatible with the Convention rights.

COMMENCEMENT

31. The Bill will come into force on Royal Assent.

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