These notes refer to the Pensions Bill [HL]
as introduced in the House of Lords on 12th January 2011 [HL Bill 37]

PENSIONS BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Pensions Bill [HL] as introduced in the House of Lords on 12th January 2011. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

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

BACKGROUND

3. The measures contained within this Bill implement recommendations from one Government and two independent reviews and amend legislation introduced by previous Acts.

4. As part of the Coalition Agreement, in June 2010 the Government announced a review of the timetable for increasing state pension age to 66. The response to this review was published in the Government's White Paper, *A sustainable State Pension: when the State Pension age will increase to 66 (Cm 7956)*, in November 2010 which proposed changes to the timetable for increasing state pension age to 66 as previously legislated for in the Pensions Act 2007. This Bill implements the revised timetable set out in the White Paper.

5. A second and independent review was announced by the Government in June 2010 on automatic enrolment into workplace pensions. The review examined the scope of the automatic enrolment policy. The recommendations from this were published in October 2010 in the report, *Making Automatic Enrolment Work*, and provide the basis for several of the measures contained within this Bill. These measures expand upon previous reforms in the Pensions Act 2008.

6. The Independent Public Service Pension Commission (IPSPC) published its interim report in October 2010. This report recommended that the most effective way to make short-term savings on public sector pensions is to increase member contributions. This Bill introduces provisions into the current judicial pension schemes to allow contributions to be

taken towards the cost of providing personal pensions to members of those schemes. Contributions will only be taken during the period in which the individual judge is accruing pension benefits. However, if the judge retires, resigns or is removed from office during such period contributions will stop being taken from the date he or she leaves office**.**

7. For ease of reference when reading these explanatory notes, please note the following abbreviations for existing pieces of legislation amended by the Bill:

- SSAA 1992 – Social Security Administration Act 1992
- SSCBA 1992 – Social Security Contributions and Benefits Act 1992
- JUPRA 1993 – Judicial Pensions and Retirement Act 1993
- PSA 1993 – Pension Schemes Act 1993
- PA 1995 – Pensions Act 1995
- WRPA 1999 – Welfare Reform and Pensions Act 1999
- PA 2004 – Pensions Act 2004
- PA 2007 – Pensions Act 2007
- PA 2008 – Pensions Act 2008

SUMMARY

8. The Bill amends the timetable for increasing the state pension age to 66. Under the PA 2007, the increase to 66 was due to take effect between 2024 and 2026. This Bill will bring forward the increase so that state pension age for both men and women will begin rising from 65 in December 2018 to reach 66 by April 2020. As a result of bringing forward the increase to 66, the timetable contained in the PA 1995 for equalising women's state pension age with men's at 65 by April 2020 will be accelerated, so that women's state pension age reaches 65 by November 2018.

9. The Bill introduces amendments to primary legislation to amend the regulatory framework for the duty on employers to automatically enrol eligible workers into a qualifying pension scheme and to contribute to the scheme. These measures implement recommendations from the *Making Automatic Enrolment Work* review and revise some of the automatic enrolment provisions in the PA 2008.

10. The Bill amends existing legislation that provides for revaluation or indexation of occupational pensions and payments by the Pension Protection Fund.

11. The Bill introduces provisions into the current judicial pension schemes to allow contributions to be taken towards the cost of providing personal pension benefits to members of those schemes.

12. Finally, this Bill contains a number of measures to correct particular references in the existing body of pensions-related legislation and other small and technical measures to both state and private pension legislation. This includes the following measures:

- Increased flexibility in the date of consolidation of additional state pension;
- Abolition of new awards of Payable Uprated Contracted-out Deduction Increments (PUCODIs);
- Financial Assistance Scheme: amendments to legislation concerning transfer of assets, and amount of payments;
- Miscellaneous amendments to Pension Protection Fund legislation;
- Amendments to legislation concerning payments of surplus to employers;
- Amendments to legislation concerning the requirement for indexation of cash balance benefits; and
- Corrective amendments to legislation concerning the calculation of debt owing to a pension scheme.

THE BILL OVERVIEW

13. The Bill has five parts:

- Part 1 (which includes Schedules 1, 2 and 3) introduces provisions for amending the state pension framework. This includes bringing forward state pension age equalisation and the increase to 66 and changing the reference period and group for whom additional state pension will be consolidated.
- Part 2 contains measures to amend the automatic enrolment provisions for workplace pension schemes. This includes an earnings trigger at which an employee must be automatically enrolled into a workplace pension, and new uprating provisions for the qualifying earnings band on which contributions are made; the introduction of an

optional waiting period of up to three months before the automatic enrolment duty commences; a change to the timing of automatic re-enrolment, so that regulations must secure that there is not more than one automatic re-enrolment date in any period of two years and nine months, rather than in any period of three years; and changes to the way an employer can certify that their pension scheme meets the necessary quality test. Part 2 also amends incorrect references in previous legislation to ensure a coherent set of regulations on automatic enrolment.

- Part 3 (which includes Schedule 4) contains provisions about occupational pension schemes. These include amendments to existing pension legislation which contains indexation and revaluation requirements for occupational pensions and payments from the Pension Protection Fund (PPF). Part 3 also contains provisions relating to the PPF, the Pensions Regulator and the Financial Assistance Scheme (FAS). It also includes minor technical amendments to previous pension legislation.

- Part 4 (which includes Schedule 5) introduces provisions to allow contributions to be taken from members of the salaried judiciary towards the cost of providing personal pension benefits.

- Part 5 contains the miscellaneous measures and technical provisions in the Bill.

TERRITORIAL EXTENT

14. The amendments made by the Bill generally extend to England and Wales and to Scotland. The amendments made by the following provisions have UK extent –

- clause 18 (Financial Assistance Scheme: amount of payments); and

- clause 19 (Financial Assistance Scheme: transfer of assets).

15. Clause 24 and parts of Schedule 5 (contributions towards cost of judicial pensions etc) also have UK extent.

Territorial application: Wales

16. The Bill’s effect in Wales is the same as in England. The Bill contains no provisions that relate exclusively to Wales, or affect the National Assembly for Wales.

Territorial application: Scotland

17. The Bill’s effect in Scotland is the same as in England.

18. The 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.

Territorial application: Northern Ireland

19. Pensions in Northern Ireland are a devolved matter. However clauses 18 and 19, relating to the Financial Assistance Scheme, and clause 24 and Schedule 5 (contributions towards cost of judicial pensions etc) extend to Northern Ireland. Consent of the Northern Ireland Assembly to legislate has been sought with respect to these clauses.

COMMENTARY ON CLAUSES

Part 1: State Pension

Clause 1: Equalisation of and increase in pensionable age for men and women

20. *Clause 1* amends the rules for determining state pension age for men and women as set out in paragraph 1 of Schedule 4 to the PA 1995.

21. *Subsection (2)* amends sub-paragraph (1) to provide that only men born before 6th December 1953, rather than those born before 6th April 1959, will reach state pension age on their 65th birthday.

22. *Subsection (3)* omits sub-paragraph (4) as a woman born between the relevant dates will now reach state pension age on her 66th birthday.

23. *Subsection (4)* amends the timetable which sets out when a woman born on a particular date reaches state pension age during the transition from 60 to 65. The transition is accelerated, so that instead of increasing in one-month increments, state pension age increases in increments of three months, as laid out in the table below –

(1) date of birth	(2) date state pension age reached under current timetable	(3) age on date in (2) (years/ months)*	(4) date state pension age reached under revised timetable	(5) age on date in (4) (years/ months)*
6 April 1953 to 5 May 1953	6 May 2016	63.1 – 63.0	6 July 2016	63.3 – 63.2

6 May 1953 to 5 June 1953	6 July 2016	63.2 – 63.1	6 November 2016	63.6 – 63.5
6 June 1953 to 5 July 1953	6 September 2016	63.3 – 63.2	6 March 2017	63.9 – 63.8
6 July 1953 to 5 August 1953	6 November 2016	63.4 – 63.3	6 July 2017	64.0 – 63.11
6 August 1953 to 5 September 1953	6 January 2017	63.5 – 63.4	6 November 2017	64.3 – 64.2
6 September 1953 to 5 October 1953	6 March 2017	63.6 – 63.5	6 March 2018	64.6 – 64.5
6 October 1953 to 5 November 1953	6 May 2017	63.7 – 63.6	6 July 2018	64.9 – 64.8
6 November 1953 to 5 December 1953	6 July 2017	63.8 – 63.7	6 November 2018	65.0 – 64.11

*Note: those born on the last day of the period in column (1) will in fact be one day older than indicated in columns (3) and (5), for example, a woman born on 5th May 1953 will be aged 63 years, 0 months and 1 day on the day she would reach current state pension age.

24. *Subsection (5)* replaces Table 2, which provides for the transition from 65 to 66 for men and women between April 2024 and April 2026, with the revised timetable.

25. *Subsection (6)* amends sub-paragraph (6), which provides that people born on or after 6th April 1960 (namely those born after the last group affected by the schedule in Table 2) but before 6th April 1968 will have a state pension age of 66. With the revisions made by subsection (5), anyone born on or after 6th April 1954 but before 6th April 1960 will now also reach state pension age on their 66th birthday.

26. *Clause 1* gives effect to *Schedule 1.*

Schedule 1: Equalisation of and increase in pensionable age for men and women: consequential amendments

27. *Schedule 1* amends the definition of "pensionable age" in the following enactments –

- In performing their duties under the Gas Act 1986, the Secretary of State and Ofgem are required to protect the interests of consumers in relation to the conveyance of gas supply and to have regard to certain vulnerable groups, including pensioners (as defined);

- under the Consumers, Estate Agents and Redress Act 2007, the National Consumer Council – the statutory body established by that Act to represent consumer's interests (known as "Consumer Focus") – is similarly specifically required to have regard to the interests of consumers who are pensioners in carrying out its functions;

- Sections 2A, 2AA and 2D of the SSAA 1992 contain regulation-making powers under which regulations may be made requiring a person, or the partner of a person, claiming one of a specified list of social security benefits to attend a work-focused interview or engage in work-related activity to prepare them for returning to work, if that person (or the partner of that person) is under pensionable age, as defined.

28. *Paragraphs 1, 3 to 5, and 7* amend the definition of "pensionable age" in the above enactments where, for the purposes of ensuring that the relevant provisions apply equally to men and women, a man born before 6th April 1955 is deemed to be of pensionable age if he is the same age as a woman who has reached state pension age. With the acceleration in the timetable for state pension age equalisation, only men born before 6th December 1953 will have a higher state pension age than a woman born on the same day.

29. *Paragraph 6* amends section 126 of the PA 1995 which gives effect to Schedule 4 to that Act. The amendment merely modifies the descriptive words introducing the Schedule. *Paragraph 9(a)* makes an equivalent amendment of section 13 of the PA 2007 to amend the period over which the state pension age will increase from 65 to 68.

30. *Paragraph 9(b)* amends the date from which a number of consequential amendments made by the PA 2007 were to have taken effect. These amendments replace age 65 with "pensionable age" for the purposes of –

- the upper age for qualification for Disability Living Allowance;

- the minimum age for entitlement to Attendance Allowance;

- the maximum age for entitlement to Widow's Pension;

- the minimum age for entitlement to the savings credit element of Pension Credit; and

- the minimum age for eligibility for the £10 Christmas Bonus where the sole qualifying benefit is War Disablement Pension.

31. These age thresholds will change in line with state pension age once it exceeds 65. The amendment made by paragraph 9(b) inserts the new date from which that will now take place.

Clause 2: Abolition of certain additions to the state pension

32. *Clause 2* amends section 150 of the SSAA 1992 and Schedule 5 to the SSCBA 1992. This clause removes the provision from the state for new awards of small "top-up" amounts to a person's state pension from the specified date, where that person is a member of a salary-related contracted-out scheme who has delayed taking their private pension and earned "increments" on their Guaranteed Minimum Pension (GMP), or is the survivor of such a member. (The GMP is the minimum pension a scheme is required by law to pay to an individual who was in contracted-out employment between 1978 and 1997.)

33. The small "top-up" amounts, referred to as "Payable Uprated Contracted-out Deduction Increments" (PUCODIs) are paid by the State to take account of the fact that the occupational pension scheme is only responsible for providing limited indexation on the extra amounts gained by the individual for postponing their private pension – the GMP increments. For example, schemes are not required to provide any indexation on GMP increments accrued between 1978 and 1988, but must provide indexation at the rate of the general level of prices in Great Britain (currently gauged by RPI but will change to CPI from April 2011) capped at three per cent for accruals between 1988 and 1997. Hence the state will index any GMP increments at the rate of RPI/CPI for any 1978 to 1988 accruals, and in the event that RPI/CPI exceeds three per cent by anything over three per cent for accruals between 1988 and 1997.

34. PUCODIs do not apply to any periods of contracted out employment after April 1997 as the requirement to provide a GMP was replaced with the requirement to provide benefits which are broadly equivalent to those provided under the Reference Scheme Test.

35. Awards which have been made and are in payment before this date will not be affected.

36. *Clause 2* gives effect to *Schedule 2*.

Schedule 2: Abolition of certain additions to the state pension: consequential amendments etc

37. *Schedule 2* makes amendments in the SSCBA 1992 which are consequential on clause 2, and repeals amending enactments which are now spent.

Clause 3: Consolidation of additional pension

38. *Clause 3* gives effect to *Schedule 3.*

Schedule 3: Consolidation of additional pension

39. *Schedule 3* makes amendments to remove the references in the SSCBA 1992 and other relevant enactments (as inserted by the PA 2008) that link the start date for additional state pension consolidation to the flat rate introduction year. The amendments provide a power to set the consolidation start date by order.

40. The consolidation of additional state pension is a measure to provide a single value for a person's additional pension, the method for calculation of which has changed over time, so as to enable easier prediction of entitlement in retirement. The flat rate of additional pension is a measure by which, instead of bands of different rates by which additional pension is calculated, one flat rate is applicable. These measures were introduced to simplify the additional pension by the PA 2007 and the PA 2008; both are yet to have effect.

41. Consolidation will have no impact on a person's overall state pension income over the course of their retirement, but can affect the income flow for people who have been contracted-out.

42. In payment contracted-out pension rights are offset against additional state pension entitlement built up before 1997, meaning a number of people gain additional state pension for that period at some time after pensionable age. This is because differences in the way private pension schemes increase rights in accrual and pensions in payment, compared to the state scheme, can mean that at state pension age a person's additional state pension entitlement for that period might be small, or non-existent, but increase later on in retirement.

43. Under consolidation, actuarial factors would be applied to a person's contracted-out pension rights in order to smooth the disparities in entitlement that occur during retirement. This is likely to affect around 11 million people who built up contracted-out pension rights between 1978 and 1997. As a result, there are short-term costs to the Exchequer associated with consolidation, in that some additional state pension entitlement for the pre-1997 period would be brought forward to state pension age to smooth income over retirement.

44. This Schedule also removes the references which define those to whom the consolidation would apply, that is, those reaching state pension age from 6th April 2020, instead providing a power to set the relevant retirement date by way of order.

45. These measures provide flexibility to determine when the short-term costs outlined above will be incurred.

Part 2: Automatic enrolment

Clause 4: Automatic re-enrolment where employer interrupts scheme membership

46. *Clause 4* amends section 2 of the PA 2008. Under this section, where the jobholder is an active member of a qualifying scheme, the employer must not take any action or make any omission by which the jobholder ceases to be a member of the qualifying scheme, or the scheme ceases to be a qualifying scheme, unless a specified exception applies. One of those exceptions is where the employer arranges for the jobholder to become an active member of another qualifying scheme, within a prescribed period. (The definition of "jobholder" is set out in section 1 of the PA 2008.)

47. As section 2 stands there is no duty on the employer to automatically re-enrol the jobholder into another qualifying scheme, where the employer takes an action or makes an omission as referred to in paragraph 46. The employer can put the jobholder into another qualifying scheme but only with the jobholder's consent. In the event that this consent is not forthcoming the employer could potentially be in breach of section 2 of the PA 2008 until the next automatic re-enrolment date arose.

48. *Subsection (1)* amends section 2 of the PA 2008 so that section 2 is not contravened if, in compliance with the duty to re-enrol under section 5, the jobholder becomes an active member of an automatic enrolment scheme within a prescribed period of time. This subsection should be read with clause 5 which inserts new subsections (1) and (1A) into section 5 of the PA 2008. Section 5, as amended, imposes a duty to re-enrol a jobholder specified in new subsection (1) or (1A), with effect from a date specified in regulations.

49. Subsection (1) of section 5 (as amended) applies to a jobholder who earns more than £7,475. Subsection (1A) applies to a jobholder who earns £7,475 or below, where the jobholder has ceased to be an active member of a qualifying scheme, or where the qualifying scheme of which the jobholder was an active member has ceased to be such a scheme, by reason of an action or omission by the jobholder. In both cases, certain other conditions need to be satisfied.

50. Regulations under section 5 of the PA 2008, as amended by the Bill, will therefore be able to provide for a duty to re-enrol to occur whenever the employer takes an action or makes an omission as referred to in paragraph 46, subject to any exceptions that may be provided for.

51. *Subsection (2)* amends section 5(4) of the PA 2008 (circumstances in which the duty to re-enrol does not apply) to allow for regulations to prescribe the circumstances where there is no duty to re-enrol in a case where –

- the jobholder, or the employer at the jobholder's request, takes an action or makes an omission such that the jobholder is no longer a member of a qualifying scheme; or

- the jobholder opts out of membership of a qualifying scheme, under section 8 of the PA 2008.

52. *Subsection (3)* amends section 6(4) of the PA 2008 (timing of automatic re-enrolment) to ensure that regulations may provide for a re-enrolment date to occur earlier than the time referred to in section 6(1)(b) of the PA 2008 where the jobholder ceases to be in a qualifying scheme or the scheme ceases to be a qualifying scheme by reason of an action or omission of the employer.

53. *Subsection (4)* corrects a technical error in section 54(1)(b) of the PA 2008 (inducements). The reference to "the period prescribed in section 2(3)" does not work in this provision, given that the period will need to start with the date when the jobholder ceases to be an active member of a qualifying scheme or the scheme ceases to be a qualifying scheme. However, where a jobholder opts out under section 8, the jobholder is treated as not having been such an active member (see section 8(2)(a)). The subsection therefore substitutes a reference to "the prescribed period" so that regulations can prescribe an appropriate period.

Clause 5: Earnings trigger for automatic enrolment and re-enrolment

54. *Clause 5* amends sections 3 and 5 of the PA 2008. Section 3 provides that an employer is under a duty to enrol a jobholder (see section 3(7)) into an automatic enrolment scheme, with effect from the automatic enrolment date, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met. Section 5 provides that an employer is under a duty to re-enrol a jobholder into an automatic enrolment scheme, on a date as set out in regulations, where the jobholder is aged at least 22 and under pensionable age, and certain other conditions are met.

55. The clause provides that a jobholder will not be eligible for automatic enrolment under section 3 (or, with some exceptions, re-enrolment under section 5) unless, in addition to complying with the above conditions, the jobholder earns in excess of £7,475 per annum (the "earnings trigger").

56. The earnings trigger is distinct from the band of "qualifying earnings" in section 13 of the PA 2008 (which concerns the earnings on which contributions are payable in the case of a "qualifying scheme" which is a money purchase or personal pension scheme). Therefore, where the jobholder has been automatically enrolled or re-enrolled, employers and jobholders must still pay contributions if the jobholder's earnings fall below the earnings trigger, but are above the lower limit of the qualifying earnings band (see section 13(1)(a) of the PA 2008).

57. *Subsections (2) and (4)* define the term "earnings" for the purposes of sections 3 and 5 of the PA 2008 and permit an employer to use a proportionate amount of the earnings trigger

where a pay reference period is shorter or longer than one year. For example, employers may wish to convert the amount of the earnings trigger to a monthly or weekly figure.

58. *Subsection (3)* inserts new subsections (1) and (1A) into section 5 of the PA 2008 (automatic re-enrolment). Subsection (1) provides that the earnings trigger applies to automatic re-enrolment except in the circumstances set out in subsection (1A). This has the effect that the earnings trigger does not apply to automatic re-enrolment where –

- the jobholder ceases to be an active member of a qualifying scheme, or the scheme ceases to be a qualifying scheme, by reason of something other than an action or omission by the jobholder (this therefore in particular creates a re-enrolment obligation where the action or omission is that of the employer); or

- there is a period where the jobholder fails to meet certain eligibility criteria and so ceases to be a jobholder. This could be because they are not working or ordinarily working in Great Britain for that period or because they are not in receipt of "qualifying earnings" for that period (see the definition of "jobholder" in section 1 of the PA 2008).

59. In the situations set out in subsection (1A), the employer is under a duty to re-enrol the jobholder where the jobholder is aged at least 22 and has not reached pensionable age and the other conditions set out in section 5 are met.

Clause 6: Postponement or disapplication of automatic enrolment

60. *Clause 6* introduces an optional waiting period into the automatic enrolment process. This allows employers to defer the automatic enrolment date of a worker for up to three months by providing them with a notice. The notice must state that the employer intends to use a waiting period, together with details of the worker's new enrolment date.

61. The employer may apply the waiting period from one of three dates (according to their relevant situation):

- the employer's staging date (the date from which an employer is required to comply with the automatic enrolment duty);

- the worker's first day of employment with that employer (where that falls after the employer's staging date); or

- the first day on which a worker is eligible for automatic enrolment whilst employed by that employer. This could be, for example, the day on which the worker turns 22 or their earnings change, so that they become a jobholder who is eligible for automatic enrolment.

62. In the first two cases, the employer does not have to check the worker's eligibility to be automatically enrolled in a pension scheme before applying the waiting period. In all cases the employer must confirm the worker's eligibility at the end of the waiting period before automatically enrolling them.

63. The clause amends section 7 of the PA 2008 so that the worker may opt into pension saving at any point during the waiting period. Regulations under the substituted section 4 (see below) may provide that the worker will be advised of this right in the notice provided by the employer.

64. *Subsection (2)* substitutes a new section 4 into the PA 2008. In the case of all three dates on which the employer may apply the waiting period, in meeting the conditions for using the waiting period, the employer must have made an active choice to use the waiting period. The employer indicates this choice by giving the worker a notice.

65. The provision for deferral at the staging date includes the following –

- Under section 4(1) a deferral notice may be given in the case of a worker who is employed on the employer's staging date. An employer may defer such a worker's automatic enrolment date to a date specified in the notice the employer gives to the worker – "the deferral date"- if, on that date, the worker satisfies certain eligibility criteria. The eligibility criteria in sections 1 and 3 of the PA 2008 determine whether the worker is eligible to be automatically enrolled. The employer must automatically enrol the worker, with effect from the deferral date, if the worker is eligible to be automatically enrolled on the deferral date. If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

- *Section 4(1)(a)* provides that an employer must give a notice to all the workers whose automatic enrolment date he intends to defer. This notice should state the employer's intention to defer the automatic enrolment date of that worker until the date specified in the notice.

- *Section 4(1)(b)* provides a power to prescribe further requirements in relation to the notice, such as its form and content.

66. Under *section 4(2)* a deferral notice may be given to a new worker who joins the company after the employer's staging date. An employer may defer the automatic enrolment date of such a worker to a date specified in the notice the employer gives to the employee – "the deferral date"- if, on that date, the worker satisfies certain eligibility criteria. The eligibility criteria in sections 1 and 3 of the PA 2008 determine whether the worker is eligible to be automatically enrolled. The employer must automatically enrol the worker, with effect from the deferral date, if the worker is eligible to be automatically enrolled on the deferral

date. If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

67. Under *section 4(3)* a deferral notice may be given to a worker who becomes a jobholder to whom section 3 applies after the employer's staging date. The eligibility requirements which must be satisfied for a worker to become such a jobholder are set out in sections 1 and 3 of the PA 2008 and include the age, earnings and residency of the worker. If the worker satisfies those conditions, but only if they satisfy them after the employer's staging date, the employer may defer that worker's automatic enrolment date to a date specified in the notice the employer gives the employee – "the deferral date". If the worker is not eligible to be automatically enrolled, the employer is under no duty to automatically enrol that worker into a pension scheme (and see section 4(4)).

68. *Section 4(4)* applies when the worker does not satisfy certain eligibility criteria on the deferral date specified in a notice under this section. In that case the duty under section 3(2) of the PA 2008 on employers, to automatically enrol certain workers into pension schemes, does not apply to the employer in relation to that worker. Section 4(4) provides that where the worker fails to satisfy the eligibility requirements in sections 1 and 3 of the PA 2008 on the "deferral date", but did satisfy those criteria before the deferral date, the employer is not required to automatically enrol the worker with effect from the date when he did satisfy the criteria.

69. *Section 4(5)* provides that the employer may give a worker a notice on or before the starting day, as defined in section 4(8), or within a prescribed period after that day. The employer, if he wishes to defer the worker's automatic enrolment date, must give the notice to the worker within this timeframe.

70. *Section 4(6)* provides that the employer can defer the automatic enrolment date of a worker under this section for a maximum of three months from the starting day.

71. *Section 4(7)* has the effect that an employer cannot defer the automatic enrolment date of a worker for more than three months. The subsection provides that an employer cannot give a worker more than one notice, which could extend the deferral of that worker's automatic enrolment date beyond three months.

72. *Section 4(8)* defines the "staging date" as the first day on which the automatic enrolment duties in section 3 apply to that employer. It also defines "starting day" for the purposes of subsections (1), (2) and (3) of the new section 4.

73. *Subsection (3)(a)* repeals subsections (3) and (6) of section 6 as a consequence of replacing section 4 with a new provision.

74. *Subsection (4)* repeals subsection (2)(b) of section 7 as a consequence of this amendment of section 4. In effect, it allows a jobholder to opt in during the waiting period.

75. *Subsection (5)* amends section 30(7) to ensure that an employer, who uses a transitional period under section 30 to defer their automatic enrolment duties, may use a waiting period at the end of that transitional period.

76. *Subsection (5)(b)* corrects a drafting error in section 30(7). It also ensures consistency with new subsection (7)(b) of section 30.

77. *Subsection (5)(c)* inserts a new provision into section 30. This allows an employer, who uses the transitional period under section 30, to use section 4 to defer the automatic enrolment date of a worker by up to three months from the end of that transitional period.

Clause 7: Timing of automatic re-enrolment

78. *Clause 7* amends section 6(1)(b) of the PA 2008 to stipulate that automatic re-enrolment will not happen more frequently than once in every period of two years and nine months. The two years and nine months interval applies to the employer rather than the jobholder.

79. This clause is relevant only where the Secretary of State chooses to make provision under section 6(1)(b) rather than section 6(1)(a).

Clause 8: Review of earnings trigger and qualifying earnings band
Clause 9: Rounded figures for earnings trigger and qualifying earnings band

80. *Clause 8* substitutes a new section 14 and *clause 9* inserts a new section 15A. These clauses introduce a new mechanism to review and revise the new automatic enrolment earnings trigger and introduce a new mechanism to review and revise the qualifying earnings band in section 13 of the PA 2008.

81. The new section 14 provides that the Secretary of State must consider in each year whether the amounts for the automatic enrolment earnings trigger, or the upper or lower limits of the qualifying earnings band, should be increased or decreased. The clause provides that the Secretary of State may take into account national insurance earnings limits and thresholds, the income tax personal allowances, the level of basic state pension for single adults, or the general level of prices and earnings. The Secretary of State may also consider any other factors that are considered relevant. Any changes will be made by order.

82. The amounts for the automatic enrolment earnings trigger, and the upper and lower limits of the qualifying earnings band, relate to a jobholder's gross earnings in a nominal pay reference period of 12 months. Sections 3, 5 and 13 provide that, where an employer's pay reference period is less or more than 12 months, then those amounts will be proportionately less or more. The new section 15A provides a power for the Secretary of State to specify

rounded figures for any specified pay reference period in place of the exact proportionate amount that would otherwise apply. This allows the Secretary of State, for example, to specify rounded monthly or weekly figures. The Secretary of State may choose to round up or down.

Clause 10: Certification that alternative to quality requirement is satisfied

83. *Clause 10* amends section 28 of the PA 2008 and introduces alternative self-certification arrangements for employers.

84. Employers using money purchase occupational pension schemes, personal pension schemes or certain types of hybrid schemes to discharge their enrolment duties will be able to use section 28 to certify that their scheme satisfies the relevant quality requirements, providing the scheme satisfies certain alternative requirements, to be prescribed in regulations.

85. *Subsections (2) and (3)* make minor consequential amendments as a result of the changes to section 28.

86. *Subsection (4)* inserts a new subsection (1A) into section 28. This subsection defines “relevant jobholder” as a jobholder to whom a certificate applies, and provides that a reference to a “scheme” in the clause includes a reference to part of a scheme.

87. *Subsection (5)* amends section 28(2) to include a new paragraph (b). The amended section 28(2) provides that the certificate must state that, in the opinion of the person giving it, the scheme being certified either satisfies the relevant quality requirements, or an alternative prescribed requirement, throughout the certification period.

88. *Subsection (6)* inserts new subsections (2A) and (2B) into section 28. These subsections provide that the alternative requirements that the Secretary of State prescribes must meet certain conditions. The Secretary of State must be satisfied that, in respect of most schemes, the total contributions paid by the employer, and the employer and the jobholder together, will not be less than if the scheme had met the relevant quality requirement. This must be the case both for a majority of the jobholders in the scheme, and all of the jobholders taken together.

Clause 11: Transitional period for defined benefits and hybrid schemes to be optional

89. *Clause 11* amends section 30 of the PA 2008. Section 30 of the PA 2008 allows employers using defined benefits and hybrid schemes to adjust gradually to the additional costs of the automatic enrolment reforms. Currently, section 30 provides that for certain jobholders, where the conditions in section 30(2) are met, the automatic enrolment date under section 3 of the PA 2008 is automatically deferred until the end of a transitional period as set out in regulations. This clause amends section 30, so that employers can choose whether or not to defer automatic enrolment until the end of that transitional period.

90. *Subsection (2)* amends subsection (3) of section 30 to provide that deferral of the automatic enrolment date will only apply where an employer serves a notice on the jobholder, within a period set out in regulations, stating that the employer intends to defer.

91. *Subsection (3)* amends subsection (4) of section 30 (provision where certain conditions in section 30(2) cease to be satisfied during the transitional period) to take account of the fact that the employer has to give a notice in order to defer the automatic enrolment date.

92. *Subsection (4)* inserts a new subsection (7A) into section 30, allowing the Secretary of State to make regulations regarding the form and content of that notice.

Clause 12: Power of managers to modify by resolution

93. *Clause 12* extends section 32 of the PA 2008. Section 32 of the PA 2008 provides that the trustees of an occupational pension scheme may by resolution modify the scheme so that it complies with the requirements for an automatic enrolment scheme in section 17 of the PA 2008 or the requirements as to payment of contributions in sections 20 and 24 of the PA 2008.

94. The clause extends section 32 of the PA 2008 so that managers, as well as trustees, of occupational pension schemes are able to use this power to modify a scheme.

Clause 13: No indemnification for civil penalties

95. *Clause 13* extends the prohibition (in section 256 of the PA 2004) on a pension scheme trustee or manager being reimbursed out of scheme funds for fines or penalties payable by the trustee or manager.

96. The extension covers penalties payable by a trustee or manager under section 40 or 41 of the PA 2008. A trustee or manager in receipt of a fixed or escalating penalty under the PA 2008 will not be able to take monies from scheme funds in order to pay those penalties.

Part 3: Occupational pension schemes

Indexation and revaluation

Clause 14: Indexation and revaluation

97. *Clause 14* amends three provisions concerning the indexation of defined benefit pensions in payment and the revaluation of the deferred pensions of early leavers from occupational pension schemes following the Government's decision to use the CPI as the measure of increase in the general level of prices in place of RPI.

98. *Subsections (1) to (3)* amend section 84 of the PSA 1993 so that schemes which provide full uncapped revaluation of deferred members’ preserved pensions (including GMP rights) may do so without reference to the statutory revaluation requirements contained in section 84 provided they maintain (in the opinion of the Secretary of State) the value of pensions by reference to the rise in the general level of prices in Great Britain.

99. *Subsections (4) and (5)* amend section 51(4) of the PA 1995 to allow schemes to continue increasing pensions in payment under provisions in scheme rules rather than under the statutory requirement contained in section 51(2). In place of increasing by reference to the RPI, schemes will be able to increase by RPI, the CPI or a combination of the two, depending on the rules of the individual scheme. Where schemes continue to increase pensions by RPI and have done so continuously from January 2011 (or when the pension first comes into payment if later), the amendments will ensure they need not carry out an annual comparison of the RPI under scheme rules and CPI under the statutory requirements and pay the higher of the two.

100. *Subsections (6) to (8)* amend section 40(1) of the WRPA 1999 to allow the Secretary of State to prescribe that (as a minimum) pension credit benefit (arising from a pension share on divorce) paid by an occupational pension scheme must be increased by reference to the percentage increase in the general level of prices determined by the Secretary of State for the purpose of the statutory revaluation requirements.

Clause 15: Pension compensation: annual increases in periodic compensation

101. *Clause 15* amends Schedule 7 to the PA 2004 and Schedule 5 to the PA 2008. The clause removes references to the RPI when calculating indexation increases for pension compensation paid by the PPF. The reference to a specific inflation measure is replaced by a reference to the general level of prices in Great Britain.

102. The clause enables the Secretary of State to decide, as the Secretary of State thinks fit, the manner in which percentage increases in the general level of prices are to be determined for this purpose (for example, by reference to CPI) and requires the Secretary of State to publish any such decision. As a result of these amendments, a redundant definition of RPI is omitted from the PA 2004.

Clause 16: Indexation requirements for cash balance benefits

103. *Clause 16* removes the requirement for cash balance benefits to be indexed under section 51 of the PA 1995.

104. Cash balance benefits are benefits which the member accrues in the form of a lump sum or fund, the level of which can be determined in advance, is guaranteed to reach a particular minimum, or is determined by the application of a notional accrual rate or rate of interest. The fund is then used to buy an annuity or to provide a pension from scheme funds.

105. Current legislation requires that members with cash balance benefits buying or receiving an annuity or being paid a scheme pension must receive Limited Price Indexation. This means that accruals between 1997 and 2005 must be indexed to at least the lower of the RPI or five per cent and accruals post 2005 must be indexed at the lower of RPI or 2.5 per cent.

106. Pensions or annuities already in payment prior to this section coming into force will continue to be indexed and will not be affected by the changes. This section also does not apply to cash balance benefits under any scheme which is or has been contracted-out by virtue of satisfying the requirements of section 9(2) of the PSA 1993 on or after 6th April 1997, for as long as accrued rights or pensions attributable to a period of contracting-out are retained within the scheme.

Pension Protection Fund

Clause 17: Pension Protection Fund

107. *Clause 17* gives effect to *Schedule 4.*

Schedule 4: Pension Protection Fund

108. *Paragraphs 1 to 13* make amendments to the PA 2004 permitting the Board of the PPF, where it is able to do so, to determine the funding position of an eligible pension scheme without obtaining a fresh actuarial valuation in accordance with the requirements of section 143(2) of the PA 2004, which is used by the PPF Board to decide whether it must accept responsibility for the scheme.

109. A scheme's protected liabilities are the cost of providing benefits equivalent to pension compensation, any non-pension liabilities of the scheme, and the estimated cost of winding up the scheme. The amendments provide the PPF Board with the power to decide whether it can use other information for the purpose of determining whether the assets of the scheme are less than the protected liabilities (for example, a valuation undertaken for the purposes of calculating a scheme's pension protection levy), or whether an actuarial valuation is needed to determine the funding position of the scheme.

110. *Paragraph 11* makes equivalent provision in relation to valuations for closed schemes under section 158. Where a scheme has been through an assessment period and has not initially transferred into the PPF, but where the scheme's assets have subsequently fallen below its protected liabilities, the PPF Board will also have the power to determine whether an actuarial valuation under section 158 is required or whether it can use other information it has in order to decide if the scheme should transfer into the PPF.

111. *Paragraph 13* amends Schedule 9 to the PA 2004 (which lists matters that are reviewable by the PPF Board) so that a determination made by the PPF Board, in cases where it has decided that an actuarial valuation is not required, is reviewable.

112. *Paragraphs 14 and 15* remove the requirement in section 151 of the PA 2004 that an application for reconsideration must include a "protected benefits quotation". A protected benefits quotation is a quote, from an insurance company, of the cost of purchasing annuities providing each scheme member with benefits equivalent to the lower of the compensation which they would receive if their scheme transferred to the PPF and their scheme benefits.

113. The amendments secure that the trustees or managers of an eligible scheme that has not initially transferred to the PPF because it was not sufficiently underfunded may apply for reconsideration if the trustees or managers are unable, despite their best efforts, to obtain a protected benefits quotation. The amendments provide the PPF Board with a power to determine whether the value of the assets of the scheme at the reconsideration time is less than the amount of the protected liabilities at that time. If so, the scheme may transfer into the PPF, without the trustees or managers obtaining a protected benefits quotation. The PPF Board will be able to use any information it has available and any additional information it may request in order to determine the value of the assets and liabilities of the scheme at that time.

114. *Paragraph 15(5) and (7)* amends section 152 of the PA 2004 to enable the PPF Board to issue a determination notice under that section in a form and containing such information as may be decided by the PPF Board.

115. *Paragraph 16* removes the requirement in section 172 of the PA 2004 that an assessment period for the PPF must last for a minimum of 12 months. An assessment period starts when the employer of a scheme that is eligible for the PPF has a qualifying insolvency event. An assessment period may also start when an employer in relation to a scheme is unlikely to continue as a going concern and the PPF Board receives either an application for transfer from the scheme's trustees or managers under section 129(1) of the PA 2004 or a notification from the Regulator under section 129(4) of the PA 2004. During an assessment period the PPF Board assesses whether or not it must assume responsibility for a scheme. The removal of the requirement in section 172 of the PA 2004 that an assessment period must last for a minimum of 12 months will enable the PPF Board to transfer some schemes into the PPF earlier.

116. *Paragraph 17* removes the requirements in section 316 of the PA 2004 that the statutory instruments listed below must not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament. As a result, those statutory instruments will be subject to the negative resolution procedure. The statutory instruments affected are:

- Regulations on the PPF administration levy, which is collected on behalf of the Secretary of State to recoup any money paid by the Secretary of State out of money provided by Parliament to meet the administrative expenses of the PPF Board (section 117 of the PA 2004);

- Orders to increase annually the levy ceiling that limits the amount that the PPF Board may estimate it will collect through the pension protection levy (section 178 of the PA 2004); and

- Orders to increase annually the pension compensation cap that is applied to compensation paid to people who are below their scheme's normal pension age at the start of an assessment period (paragraph 27 of Schedule 7 to the PA 2004).

117. The levy ceiling and the pension compensation cap are increased annually in line with increases in the general level of earnings. The Secretary of State may also make orders to increase the levy ceiling above the annual increase in line with increases in the general level of earnings and orders to change the pension compensation cap other than because of an annual increase in the general level of earnings. The amendment does not change the requirement that such orders must not be made unless a draft of the instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

118. *Paragraph 18* replaces paragraph 21 of Schedule 7 to the PA 2004 so that the calculation of pension compensation paid to pension credit members includes revaluation, if revaluation would have been applied under the rules of the relevant scheme to the pension credit member's benefits. Under section 83 of the PSA 1993, occupational pension schemes are required to revalue benefits payable by virtue of pension credit rights only where the rights involve the pension credit member being credited by the scheme with notional pensionable service. New paragraph 21 of Schedule 7 deals with the case where the member is not credited with notional pensionable service (so that no revaluation is required). New paragraph 21A deals with the case where the member is credited with notional pensionable service (so that revaluation is required).

119. Under new paragraph 21A, the revaluation would be based on:

- scheme rules for the period from the implementation of a member's pension credit to the day before the start of an assessment period for the PPF; and

- statutory rules for the period from the start of the assessment period to a member's normal benefit age (the equivalent, for pension credit members, to normal pension age).

120. As a consequence, *paragraph 19* repeals paragraphs 10 and 11 of Schedule 8 to the PA 2008.

121. *Paragraphs 20 to 26* replace an existing regulation-making power within paragraph 25A of Schedule 7 to the PA 2004 (as inserted by paragraph 13 of Schedule 8 to the PA 2008) so that people may postpone payment of their pension compensation past their normal pension age.

122. The paragraphs provide that, if a person does postpone payment of pension compensation:

- the pension compensation cap would apply as at the time the person first becomes entitled to pension compensation (their normal pension age);
- revaluation would apply up to a member's normal pension age; and
- the PPF Board must provide an appropriate increase in pension compensation when it comes into payment, calculated on an actuarial basis to take account of the postponement of the start of payment.

123. *Paragraphs 27 to 33* make amendments parallel to those in paragraphs 20 to 26. These paragraphs omit an existing regulation-making power in paragraph 11 of Schedule 5 to the PA 2008, replacing it with a similar power to prescribe circumstances where a person who is entitled to pension compensation by virtue of pension compensation sharing may choose to receive compensation from a later date than normal benefit age. This power will permit postponement whether or not the person entitled to compensation is below or above normal benefit age at the time that they first become entitled to payment of compensation.

124. *Paragraph 34* amends paragraph 35 of Schedule 7 to the PA 2004. This paragraph requires recent changes to scheme rules which have the effect of increasing the amount of a scheme's protected liabilities to be disregarded in calculating the amount of compensation to which members of the scheme are entitled. Paragraph 35, in conjunction with paragraph 3(5) and 5(6) of Schedule 7, also stipulate that discretionary increases to pensions that are either in payment or postponed in the three-year period before the start of an assessment period, which have the effect of increasing the protected liabilities, are disregarded.

125. The amendments clarify the operation of these provisions.

Financial assistance scheme

Clause 18: Financial assistance scheme: amount of payments

126. *Clause 18* amends section 286 of the PA 2004 and section 18 of the PA 2007. These amendments allow regulations to prescribe the circumstances in which the minimum percentages of annual and initial payments specified in those sections do not apply.

127. Currently certain individuals are paid less than the specified minimums where–

- members are in receipt of an ill health payment where, because payments are being made earlier than normal, an actuarial reduction is applied. As a consequence they may get less than the 80 per cent specified in the PA 2004 by way of annual payment and less than the 90 per cent specified in the PA 2007 by way of initial payment; and

- survivors of a polygamous marriage who share the amount payable to a single survivor. As a result each will get less than half the member's payment specified in the PA 2007.

128. This is not intended to allow for changes in the amounts of assistance currently paid to any member of the FAS. It will allow for the FAS Regulations to be made simpler to understand.

Clause 19: Financial assistance scheme: transfer of assets

129. *Clause 19* amends section 286(3) of the PA 2004 by providing for the property, rights and liabilities of pension schemes that qualify for the FAS to be transferred to a 'prescribed person' rather than 'the scheme manager' as currently stated. It is the intention that the prescribed person will be the Secretary of State.

130. Regulations currently provide for assets to transfer to the Secretary of State by using the FAS Regulations to modify parts of the PA 2004. This change will allow for the FAS Regulations to make it explicit that assets are transferring to the Secretary of State, making the system more transparent.

Miscellaneous

Clause 20: Payment of surplus to employer: transitional power to amend scheme

131. *Clause 20* amends section 251 of the PA 2004. Section 251 provided trustees with a transitional power to confirm or amend powers in scheme rules to make payments to the employer in the light of changes to the taxation regime for pension schemes, and to the requirements relating to payments of surplus to employers as stated in section 37 of the PA 1995.

132. Section 251 came into force from 6th April 2006. It specifically allowed trustees to pass a resolution to confirm or amend powers in their scheme's rules to make payments to the employer, or allow them to cease to be exercisable. Trustees were required to pass a resolution within five years of the commencement of the provision (before 6th April 2011) and to satisfy prescribed requirements for notifying scheme members.

133. This clause ensures that section 251 does not apply to payments which trustees can make without having to satisfy the general requirements relating to payments of surplus in section 37 of the PA 1995. It extends the transitional period during which section 251 will apply to 6th April 2016. This will allow trustees more time to review any powers in their scheme's rules to make payments to the employer, decide how such powers should be exercised in the future, and take whatever action they consider is necessary under section 251.

Clause 21: Contribution notices and financial support directions

134. *Clause 21* amends sections 38, 43 and 96 of the PA 2004. Section 38 provides the Pensions Regulator with the power to issue a contribution notice where certain conditions are satisfied. Section 43 provides the Pensions Regulator with the power to issue a financial support direction where certain conditions are satisfied. Section 96 describes the standard procedure for consideration of certain of the Pensions Regulator's functions.

135. At present the Regulator must determine to exercise its regulatory functions to issue a contribution notice or a financial support direction within certain statutory periods. The amendments to sections 38 and 43 provide that those periods end with the Regulator giving a warning notice of its intention to exercise its regulatory functions instead of ending with the determination to exercise the relevant regulatory function. The amendment to section 96 also creates a power to prescribe a period after giving a warning notice beyond which the Regulator cannot exercise the relevant regulatory function.

Clause 22: Technical amendment to Schedule 4 to the Pensions Act 2007

136. *Clause 22* amends a consequential amendment made to Schedule 4 to the PSA 1993 and contained within paragraph 60 of Schedule 4 to the PA 2007.

137. Where an employer becomes bankrupt, the amount of debt (in respect of the contributions owed to a salary-related contracted out pension scheme) is calculated according to the rebate percentages specified in Schedule 4 to the PSA 1993. The consequential amendment as currently drafted would substitute out of date rebate percentages into Schedule 4 to the PSA 1993. This amendment will ensure the most recent rebate percentages are retained in that Schedule.

Clause 23: Technical amendment to section 42(6) of the Pension Schemes Act 1993

138. *Clause 23* amends an inaccurate cross-reference in section 42(6) of the PSA 1993. A missed consequential amendment, in provisions which amended Schedule 4 to the PSA 1993 contained within the PA 1995 and the WRPA 1999, means that the power in section 42(6) is unclear.

139. The power specified previously allowed the percentages stated in Schedule 4 to the PSA 1993 (in respect of contributions owed by bankrupt employers of salary-related contracted-out schemes) to be changed in line with changes to the rebate percentages. The amendment will ensure that this power is clear and refers to the correct paragraphs in Schedule 4 which contains the rebate percentages.

Part 4: Judicial Pensions

Clause 24: Contributions towards cost of judicial pensions etc

140. *Clause 24* inserts a new section 9A into the JUPRA 1993. This clause introduces provisions into the current judicial pension scheme to allow contributions to be taken towards the cost of providing personal pension benefits to members of the scheme. Contributions will only be taken during the period in which the individual judge is accruing full pension benefits. However if the judge retires, resigns, or is removed from office during such period contributions will stop being taken from the date he or she leaves office.

141. The judicial pension scheme under the JUPRA 1993 applies to those salaried judicial office-holders listed in Schedule 1 to the JUPRA 1993 who were appointed to judicial office on or after 31st March 1995 or to those judicial office-holders in other judicial pension schemes who have transferred their pension benefits into the JUPRA 1993 scheme. The JUPRA 1993 scheme is, in practice, the main judicial pension scheme applicable to the majority of current salaried judicial office-holders. It also applies to some senior public investigative officers in certain circumstances (section 25 of, and Schedule 4 to, the JUPRA 1993).

142. *Clause 24* gives effect to *Schedule 5.*

Schedule 5: Contributions towards cost of judicial pensions etc

143. *Schedule 5* introduces equivalent provisions into the District Judges (Magistrates' Courts) Pensions Act (Northern Ireland) 1960 (the 1960 Act) and the Judicial Pensions Act 1981 (the 1981 Act).

144. These provisions will affect those members of schemes under the 1960 Act, the Sheriffs' Pensions (Scotland) Act 1961 and the 1981 Act who are –

- district judges (magistrates' courts) in Northern Ireland;
- sheriffs;
- judicial office-holders referred to in section 7 of the 1981 Act; or
- judicial office-holders listed in Schedule 1 to the 1981 Act;
- and have yet to accrue full pension benefits under their respective schemes.

145. Schedule 5 also makes minor technical amendments to the provisions relating to appeals in the Sheriffs' Pensions (Scotland) Act 1961 and the 1981 Act respectively.

Part 5: Miscellaneous and General

Miscellaneous

Clause 25: Grants by the Secretary of State to advisory bodies etc

146. *Clause 25* amends section 174 of the PSA 1993 to enable the Secretary of State to make grants to pensions advisory bodies or those undertaking such other functions in relation to pensions as may be specified in regulations. As these grants will be made under section 174 the expenditure can be recouped under the general levy which is imposed on occupational and personal pension schemes under section 175 of the PSA 1993 and is collected by the Pensions Regulator on behalf of the Secretary of State.

147. The clause will enable the Secretary of State to make grant-in-aid payments directly to The Pensions Advisory Service. These payments are currently made by the Pensions Regulator.

Clause 26: Service of documents and electronic working

148. *Clause 26* introduces a ‘service rule’ covering Part 1 (Chapters 2 and 3 and section 60(1)(c)) and Part 3 (Chapter 1) of the PA 2008. This clause applies the service rule as set out in sections 303 to 305 of the PA 2004 and makes minor consequential amendments to section 60(1)(c).

149. A service rule provides a means of proving that a notice or other document authorised or required by this legislation was sent to its intended recipient. It specifies the persons to whom the notification or documents are to be sent and the manner in which they can be properly served on them.

FINANCIAL EFFECTS OF THE BILL

Tax and benefit payment costs

150. With reference to clause 1 changes to the timetable for increasing state pension age to 66, together with accelerating the timetable for state pension age equalisation, are expected to result in net total gains to Government in income tax and National Insurance receipts of £8 billion (in 2010/11 price terms) over the period 2016-2026, due to increased employment.

151. The change to the timetable for increasing state pension age to 66 is expected to result in net total savings to Government of approximately £30 billion (in 2010/11 price terms) in expenditure on pensions-related and working-age benefits over the period 2016-2026.

152. With reference to clause 2 the abolition of new awards of PUCODIs from April 2012 is expected to result in net total savings to Government of under £1 million (in 2011/12 price terms) per annum between 2011/12 and 2015/16.

153. With reference to clauses 5, 6, 8 and 9 the introduction of i) a 3-month waiting period, and ii) the increase in the earnings threshold combined is expected to reduce overall volumes of savings into private pensions. Therefore, the measures are expected to result in savings to Government of £90 million (in 2011/12 price terms) per annum, over the period 2012-2050, due to reduced expenditure on income tax relief on pensions contributions. However, it is also expected that tax revenue of £50 million per annum (in 2011/12 price terms) over the period 2012-2050 will be foregone.

154. The combined impact of a waiting period and a higher earnings threshold is an expected average increase in income-related benefit expenditure by Government of £20 million (in 2011/12 price terms) per annum, over the period 2012-2050.

155. With reference to clause 25, it is intended to use the grant making power to enable the Secretary of State to make grant-in-aid payments directly to The Pensions Advisory Service. These payments are currently made by the Pensions Regulator. The cost of The Pensions Advisory Service is expected to be £3.7m in 2011/12 however these costs will be recouped through the general levy on occupational and personal pension schemes. There are no current plans to make grants to any other pensions advisory bodies.

156. No other measures in the Bill are expected to have implications for public expenditure on benefit payments.

Administrative costs

157. With reference to clause 1 the change to the timetable for increasing state pension age to 66 is expected to incur administrative costs to Government of approximately £10 million (in 2010/11 price terms) in total over the period 2016-2026. These costs include changes to IT systems and the communication of changes to individuals affected.

158. With reference to clause 2 the abolition of PUCODIs is expected to result in savings to Government from reduced training and administration costs of around £100,000 (in 2011/12 price terms) per annum, between 2011/12 and 2015/16.

159. With reference to clause 24 the introduction of a requirement for members of the Judicial Pension Scheme to contribute to a personal element of their pension is expected to result in minimal administrative costs to Government, which can be subsumed within existing resources.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

160. The overall effect of the Bill on public service staffing levels is considered to be marginal.

SUMMARY OF THE IMPACT ASSESSMENT

161. A full Impact Assessment is published at the same time as the Bill. Copies are available for Members from the Printed Paper Office and Vote Office. Copies are also available from the Department for Work and Pensions website (www.dwp.gov.uk).

Impact on Government

162. The legislative proposals of the Bill will deliver significant savings to Government. This is primarily due to changes to the timetable for increasing state pension age to 66, together with accelerating the timetable for state pension age equalisation, which are expected to result in net savings of approximately £30 billion (in 2010/11 price terms) in expenditure on pensions-related and working-age benefits over the period 2016-2026 (with reference to clause 1).

Impact on Employers

163. The Bill is deregulatory with respect to burdens on the private sector and civil society.

164. The measures of the Bill will see decreases overall in administrative costs and pensions liabilities for employers. The combined effect of the auto-enrolment measures is expected to be a reduction in employer contribution costs of £170 million per annum and a reduction in administration costs of an average of £10 million per annum (in 2011/12 price terms) over the period 2012-2050.

165. Allowing schemes that currently increase pensions in payment by the RPI under the rules of the scheme to continue doing so without having to increase by the statutory minimum (which this year is calculated according to the CPI) in any year when it is higher (clause 14) is expected to reduce employer liabilities associated with existing occupational pension rights by £2.3 billion (in 2010/11 price terms) over the period 2010-2070. Changes to the indexation of payments from the PPF (clause 15) are also expected to result in a reduction in liabilities to employers sponsoring Defined Benefit Pension Schemes who fund the PPF through a compulsory levy.

Impact on Industry

166. The Bill is deregulatory with respect to burdens on the private sector and civil society. The measures of the Bill will see decreases overall in administrative costs and pensions liabilities for pensions providers.

167. Minor amendments to legislation concerning the PPF (clause 17) combined are expected to deliver estimated savings of less than £500,000 (in 2010/11 price terms) per annum in administrative costs over the period 2010-2020, to both schemes in an assessment period and the PPF.

Impact on Individuals

168. The Bill will have costs to individuals affected by state pension reforms, primarily the increase in state pension age; measures relating to automatic enrolment into workplace pensions; measures relating to the indexation of occupational pensions and payments made by the PPF; and measures relating to contributions to judicial pensions.

169. Changes to legislated increases in state pension age (clause 1) will affect approximately 5 million people in Great Britain. The majority will qualify for their state pension a year later than under the legislated timetable.

170. With respect to auto-enrolment measures, the impact of a waiting period (clause 6) and a higher earnings threshold (clauses 5, 8 and 9) is that the number of individuals automatically enrolled into a workplace pension will decrease by up to 0.5 million and 0.6 million people respectively.

171. Changes to the indexation of occupational pensions (clause 14) are expected to result in a decrease in the value of pensions in payment of £2.3 billion (in 2010/11 price terms) over the lifetime of pensions payable arising from existing Defined Benefit liabilities. Changes to the indexation of pensions compensation (clause 15) are also expected to result in a decrease in the total value of pension compensation to individuals.

Gender Impacts

172. Women have longer average life expectancy than men, and have therefore faced historical inequalities in pensions provision. Past reforms of the state and private pensions system, as legislated for in the PA 2007 and the PA 2008 respectively, began to correct historical inequalities in pensions provision. However, due to these persisting underlying factors, the measures of the Bill are likely to have a stronger effect on women than on men.

173. Figures show that there are more male judges overall. However, there is a more equal split of women and men among younger judges, who may be expected to pay any additional contributions for longer.

Race Impacts

174. There is some evidence that the change to the timetable for increasing state pension age (clause 1) may have an impact on certain ethnic minority groups. This is due to underlying socio-economic factors such as different life and healthy life expectancies, and rates of participation in the labour market. However, evidence is not conclusive.

Disability Impacts

175. The evidence suggests that the change to the timetable for increasing state pension age to 66 (clause 1) will have a greater impact on disabled people relative to non-disabled people in terms of the probability of adjusting to a new state pension age, due to relative labour market disadvantage.

EUROPEAN CONVENTION ON HUMAN RIGHTS

176. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act). The statement has to be made before second reading. The Parliamentary Under-Secretary of State and Minister for Welfare Reform (Lords), Lord Freud, has made the following statement:

> "In my view the provisions of the Pensions Bill [HL] are compatible with the Convention rights."

Part 1: State Pension

177. Clause 1 brings forward state pension equalisation and the increase to 66. Those affected by this proposal will not start receiving their state pension until a later date than they will have been expecting according to the currently-legislated timetable. This clause may engage Article 14 read in conjunction with Article 1 of the First Protocol ("A1P1") – interference of a possession on the grounds of discrimination relating to age or of sex.

178. In the Government's view A1P1 has not been breached by this clause as the conditions of entitlements to social security benefits, such as a state pension, may be changed. Specifically, A1P1 does not confer a benefit to a particular date from which it would be payable.

179. In respect of discrimination, in the Government's view, the increase to state pension age is a necessary policy change due to factors of increasing longevity, affordability of the state pension and fiscal stability. The amended state pension age timetable is considered the fairest way to proceed. Similarly in order to achieve equality between men and women, women's state pension age must be increased when men's is not.

180. Clause 2 may engage A1P1 as occupational pension rights are considered property rights, and the Payable Uprated Contracted-Out Deduction Increment (PUCODI) is thus considered part of an individual's pensions rights. In the government's view it is arguable as to whether the PUCODI is characterised as a social security benefit or rather as an occupational pension right.

181. The government believes the abolition of the PUCODI is justified. This is because the value of the payment to the individual is very low (on average 0.6% of a person's state pension income), awards already in payment will not be affected by this provision, and the removal of this increment assists the pension simplification process.

Part 2: Automatic enrolment

182. Clauses 5, 8 and 9 potentially engage A1P1 as the introduction of a new automatic enrolment trigger is an interference with a property right, namely an individuals' earnings. The earnings trigger may also engage Article 14 through indirect discrimination of women who would be disproportionately impacted by this measure as women are the majority of low earners.

183. In the Government's view the lower earnings threshold is reasonably justified as low earners are unlikely to benefit from saving at this level and will receive greater benefits from the state provisions. In addition, those wishing to opt in to a workplace scheme may do so, but will be entitled to employer contributions only once they earn over the lower earnings limit.

184. Clause 6 allows an employer to postpone automatic enrolment for a period of up to three months. Article 14 may be engaged as those who would be potentially excluded from automatic enrolment are likely to be non-whites and under-25s as a higher proportion of these groups are short term workers compared to their opposing counterparts. As is the case with the earnings trigger, any worker who wishes to opt in to automatic enrolment is able to do so during a waiting period and can benefit from employer contributions if eligible. In the Government's view the three month waiting period is justified as many workers on short term contracts may not wish to be enrolled into a pension scheme.

Part 3: Occupational pension schemes

185. Clause 14 may engage A1P1 as changes to the indexation and revaluation of occupational pensions potentially interferes with scheme members' rights. The ECHR states that it is for national legislation to specify what a person's possessions are and, as such, existing legislation has specified that the right to revaluation based on RPI is determined up until the end of 2010. As the legislation does not specify the revaluation rights for beyond

2010, the Secretary of State is able to make legislation specifying revaluation rates for beyond this date. The same position applies to indexation.

186. Clause 21 potentially interferes with the possessions of a target of the Pensions Regulator. The "target" is the scheme employer, and/or any person connected or associated with the employer to which contribution notices and financial support directions can be issued. This may occur as the target may be planning to use their funds in a particular way (as due to current legislation the Regulator must issue a determination notice before the end of the statutory period), only to find on commencement of this clause that the Regulator is not out of time to exercise its regulatory powers.

187. In the Government's view, the need to allow the Regulator longer to conclude its investigation is justified. If this change is not made the Regulator runs the risk of being timed out before it can exercise its function to protect members' benefits, or the target may have insufficient time to respond.

Part 4: Judicial Pensions

188. In the Government's view the provision to ensure members of the current judicial pension schemes contribute towards the cost of their personal pensions is compliant with the ECHR and does not constitute an interference with a possession, namely a member's salary.

189. Specifically, the Bill specifies that contributions will only be taken before judicial office-holders become entitled to receive a judicial pension. The effect is that no entitlement to a possession has arisen, and therefore A1P1 does not apply in this instance.

190. The measure follows a model already in place for contributions to be taken from members of judicial pension schemes towards the costs of widow's, widower's and surviving civil partner's benefits payable under the judicial pension schemes. There have been no A1P1 challenges to the legislation providing for these contributions to be made.

191. This proposal is considered necessary and justified as it reduces the cost to the public purse as recommended by the Independent Public Service Pension Commission chaired by Lord Hutton, and contributions will allow the judicial pension provision to be sustainable in the long term.

TRANSPOSITION NOTES

192. None of the measures in this Bill has any effect on or is affected by any European Directive.

COMMENCEMENT

193. The provisions of this Bill would be brought into force by an order or orders to be made by the Secretary of State with the following exceptions –

- those provisions in Part 2 that modify an existing power to make an order or regulations, or provides for such a power, would come into force, for the purpose of exercising the power, on the day on which the Bill becomes an Act.

- sections 1, 20, 22 and 23 (increase in state pension age, payment of surplus to employer, amendment to Schedule 4 to the PA 2007 and amendment to section 42(6) of the PSA 1993 respectively) would come into force two months from the day on which the Bill becomes an Act.

- sections 27, 28 and 29 would come into force on the day on which the Bill becomes an Act.

PENSIONS BILL [HL]

EXPLANATORY NOTES

These notes refer to the Pensions Bill [HL]
as introduced in the House of Lords on 12th January 2011
[HL Bill 37]

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