

HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

9th Report of Session 2010–11

National Insurance Contributions Bill **Pensions Bill [HL]** **Postal Services Bill**

Ordered to be printed 26 January and published 27 January 2011

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 94

The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session with the terms of reference “to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006; and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments”.

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The members of the Delegated Powers and Regulatory Reform Committee are:

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Lord Blackwell

Rt Hon the Lord Butler of Brockwell

Lord Carlile of Berriew QC

Baroness Gardner of Parkes

Lord Haskel

Rt Hon. the Lord Mayhew of Twysden QC DL

Baroness O’Loan

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Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of the Delegated Powers and Regulatory Reform Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020-7219 3103 and the fax number is 020-7219 2571. The Committee’s email address is dpr@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006.

Ninth Report

NATIONAL INSURANCE CONTRIBUTIONS BILL

1. This short Bill increases the rate of National Insurance Contributions (NICs), and modifies liability for NICs for new small businesses in certain areas of the country. The Bill confers no new delegated powers, but it does contain one provision that affects what may be done under an existing power. The Treasury have prepared a memorandum which explains the nature of this minor change¹, and there is nothing in the Bill to which the Committee wishes to draw the attention of the House.

PENSIONS BILL [HL]

2. This Bill's main provisions are in four parts. Part 1 is concerned with the state retirement pension and includes in particular provision for increasing state pension age to 66. Part 2 makes changes to the arrangements under the Pensions Act 2008 (which are not yet in force) for the automatic enrolment of jobholders into pension schemes. Part 3 makes a variety of amendments to legislation about occupational pension schemes, and Part 4 introduces provision to require contributions to be made towards judicial pensions. The Department for Work and Pensions has prepared a memorandum explaining the delegated powers in the Bill: extracts relating to the matters covered in this report are printed in Appendix 2.²

Clause 10 – Alternative to Quality Requirement

3. Clause 10(5) of the Bill amends an existing power in section 28 of the Pensions Act 2008, which enables regulations to make provision about certification of quality requirements for automatic enrolment schemes. Those requirements are set out in that Act, though susceptible to some amplification or modification by negative regulations. Paragraph 39 of the memorandum explains why greater flexibility is now thought necessary in relation to the requirements that are to be certifiable as satisfied, and clause 10(5)(c) amends section 28(2) to enable a certificate to be given where the scheme is found to satisfy an alternative requirement prescribed in regulations. This is a significant power, because its exercise will enable a pension scheme to be regarded as acceptable as an 'automatic enrolment scheme' if it satisfies conditions other than those set out in the 2008 Act. But the delegation of provision of this kind to regulations is by no means unprecedented in pensions legislation and, in view of the limitations (inserted by clause 10(6)) on the exercise of the new power and the affirmative procedure that is to apply, we do not find the delegation inappropriate.

¹ The memorandum is available via the Committee's web pages:
<http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/bills-considered/>

² The full memorandum is available via the Committee's web pages:
<http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/bills-considered/>

Paragraph 42 of the Government's memorandum states that regulations under the amended section 28 could include provision requiring relevant persons "to comply with guidance" which would be issued by the Secretary of State and subject to no parliamentary control. If that were right, the Committee would be concerned at the sub-delegation of a power to *impose* obligations without any parliamentary scrutiny. However, the Committee is reassured to find that, in fact, section 28(6)(d) enables the regulations to impose only a requirement to *have regard to* guidance.

Schedule 4, paragraph 17 – Relaxation of Parliamentary Control

4. Part 2 of the Pensions Act 2004 established the Board of the Pension Protection Fund ("PPF") to assume responsibility for certain pension schemes, to manage their assets and to pay compensation to their members. Part 2 of the 2004 Act contains a large number of delegated powers. Schedule 4 to this Bill makes amendments to various provisions relating to the PPF, and paragraph 17 of the Schedule provides for three existing powers, which are currently subject to the affirmative procedure, to be subject instead to the negative procedure. In two of these cases the Secretary of State is required to exercise the power to increase two maximum amounts – the "ceiling" for pension protection levies, and the compensation cap – to reflect increases in the level of earnings, and in these respects the change to the negative procedure seems entirely appropriate.
5. In the other case, section 117 of the 2004 Act enables the Secretary of State to provide for an administration levy to be payable by pension schemes towards the running costs of the Board of the PPF. The Department explains in paragraph 61 of its memorandum why it is thought that the negative procedure might now be more appropriate for the exercise of those powers. The Committee observes that these powers are not (unlike the two considered in the previous paragraphs) restricted to specifying an amount in compliance with a set formula. However it notes that provision for a similar levy towards the running costs of the Pensions Regulator is made in negative procedure regulations, and it does not therefore regard a change to the negative procedure as necessarily inappropriate. The Committee accordingly invites the House to seek from the Minister an explanation of the relative financial significance for pension schemes of the administration levy in comparison with the pension protection levies and the Pensions Regulator levy, so that it may determine whether the negative procedure affords an adequate level of scrutiny in this case.

POSTAL SERVICES BILL

6. This Bill deals with the restructuring of the Royal Mail Group, the Royal Mail pension plan, the regulation of postal services and a special administration scheme for companies that are universal postal providers.
7. The Department for Business, Innovation and Skills have provided a memorandum on the delegated legislative powers in the Bill: extracts relating to the matters covered in this report are printed in Appendix 3.³ In the 2008-

³ The full memorandum is available via the Committee's web pages:
<http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/bills-considered/>

09 Session the Committee considered a Postal Services Bill introduced, but eventually not proceeded with, by the previous government (5th Report, Session 2008-09). Many of the delegated powers in this Bill are the same, or substantially the same, as those in the earlier Bill. Only the powers in the following provisions of this Bill are new:

- Clause 33(5)
- Clause 58
- Clause 68(2)
- Clause 80
- Clause 82
- Clause 84
- Schedule 9, paragraph 8(2)
- Schedule 10, paragraphs 9, 32(3) and 46
- Schedule 11
- Schedule 12, paragraph 84

8. There was nothing in the earlier Bill that the Committee found inappropriate, and the Committee does not here repeat the comments made in that earlier report.

Clause 33(5) – alteration of minimum requirements for universal postal service

9. Clause 29(1) requires OFCOM by order (subject to no Parliamentary procedure) to set out the services which a universal postal service should provide. Clause 29(2) requires the service to include, as a minimum, the services set out in clause 30 (minimum requirements such as daily delivery of letters Monday-Saturday, a uniform public tariff, etc). The order by OFCOM cannot alter the minimum requirements. However, clause 33 provides a power for OFCOM to review the extent to which the minimum requirements reflect the needs of users of postal services. If OFCOM carry out a review (and they may be directed by the Secretary of State to do so) the Secretary of State may then, by order subject to affirmative procedure, amend clause 30. The Secretary of State is not constrained necessarily to follow any conclusions of the review. The Committee makes no recommendation on clause 33(5), but draws it to the attention of the House as a significant power which would allow the Secretary of State to alter the minimum requirements for a universal postal service set out in clause 30.

Clause 58 – appeals to the competition commission

10. Clause 58(1) leaves matters of procedure etc. on appeals to the Competition Commission under clause 57 (price control decisions) to the Commission itself. But clause 58(6) enables the Secretary of State, by order subject to negative procedure, to apply (with or without modifications) to the appeals under clause 57 the provisions of sections 109 to 117 of the Enterprise Act 2002. Those provisions confer considerable powers on the Commission in connection with an investigation, and include provisions for criminal offences (sections 110(7) and 117(1) and (2)) and civil penalties (sections 110(1) and

(3) and 111). The 2002 Act provides that the maximum penalty on conviction for an offence is (on indictment) an unlimited fine or 2 years' imprisonment, or both; and that the civil penalty cannot exceed £30,000 (or £15,000 per day).

11. Paragraph 99 of the Government's memorandum justifies the negative procedure by reference to the fact that the full extent of the powers can be ascertained from the 2002 Act. The power is indeed circumscribed in this way, but the power to apply the provisions with modifications means that the maximum criminal or civil penalties set out in the 2002 Act may be disapplied or increased. In clause 46(4) of the Bill there is a provision which prevents regulations under clause 46 (relating to requirements for notification by postal operators) from adopting higher maximum penalties than those provided for in the legislation which is being applied. **The Committee recommends that provision analogous to that in clause 46(4) should be applied to the power in clause 58, in order to prevent a power subject only to the negative procedure from being broad enough to permit increases in criminal or civil penalties beyond the levels set out in the 2002 Act.**

Clause 80 – regulatory powers during postal administration

12. Clause 68 enables the Secretary of State or OFCOM (with the Secretary of State's consent) to apply to the court for a postal administration order in relation to a company that is a universal service provider. The court may make the order if satisfied, in particular, that the company is unable to pay its debts. While the order is in force, the company's affairs are managed by a person appointed by the court (the postal administrator).
13. Clause 80(2) enables the Secretary of State, if a postal administration order has been made, to modify the universal postal service order made by OFCOM under clause 29 (see paragraph 5 above). This is explained at paragraphs 107 to 110 of the memorandum. The Committee accepts the need for a power of this sort, and notes that the power applies only in limited circumstances. However, the Committee is entirely unconvinced by the rationale given by the Government at paragraph 110 for the order being subject to no Parliamentary procedure: that because there is no parliamentary procedure when an order is made by a regulator, there need be none where an order is made by the Secretary of State. It is appropriate for there to be no Parliamentary procedure where OFCOM makes the order, only because OFCOM is an independent regulator. If the powers in clause 29 were conferred on the Secretary of State, the Committee would expect a Parliamentary procedure. **The Committee recommends that the negative procedure should apply to orders under clause 80(2) (unless combined with an order under clause 80(5)).**
14. There is also a power in clause 80(5) for the Secretary of State to amend the minimum requirements set out in clause 30. This power is subject to the 'made affirmative' procedure, under which an order can be made and come into force, but lapses unless approved by resolutions of each House of Parliament within 28 days of being made. **We draw to the attention of the House that in the case of this power, the limitations imposed by clause 33 on the attraction of the minimum requirements (e.g. a review by OFCOM and a bar on different provision for different parts of the UK) do not apply.**

Schedule 11, paragraph 9: postal transfer schemes

15. Schedule 11 provides for transfer schemes to achieve the objects of a postal administration. The company in respect of which the administration order has been made (“the old company”) may make a scheme for the transfer of property, rights and liabilities to a company (“the new company”) which is to take on all or part of the business of the old company as a going concern. The Secretary of State must approve the scheme, but neither the scheme itself, nor the Secretary of State’s approval, is subject to a Parliamentary procedure.
16. These are not ordinary property transfer schemes, because under paragraph 9 of Schedule 11 the scheme may contain provision for the transfer of statutory functions of the old company. It is unusual for a body on which statutory functions are conferred to be able to divest itself of those functions to another person, without any Parliamentary control. We are aware that the arrangements in the Bill are preceded in the Energy Act 2004, the Railways Act 1993 and the Water Industry Act 1991. We accept that the power is exercisable only in limited circumstances (postal administration) and that the statutory functions to be transferred may not be significant. However, we are concerned at the absence of any Parliamentary control. **The Committee therefore invites the House to consider whether the Secretary of State’s approval, so far as it relates to the exercise of power in paragraph 9, should be subject to negative procedure.**

APPENDIX 1: ATTENDANCE AND DECLARATION OF INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at www.publications.parliament.uk/pa/ld/ldreg.htm. The Register may also be inspected in the Parliamentary Archives and is available for purchase from The Stationery Office.

For the meeting held on 26 January 2011 no interests were declared.

Attendance:

The meeting was attended by Baroness Andrews, Lord Butler of Brockwell, Baroness Gardner of Parkes, Lord Mayhew of Twysden, Baroness O'Loan, Lord Soley and Baroness Thomas of Winchester.

APPENDIX 2: PENSIONS BILL [HL]

Extracts from the Memorandum by the Department for Work and Pension

Paragraphs 39 to 43 of the memorandum

“Clause 10 – certification that alternative to quality requirement is satisfied

39. Section 28 of the Pensions Act 2008 already provides for money purchase occupational pension schemes, personal pension schemes and certain hybrid schemes to which subsection (1)(a) of section 24 applies to be certified as having satisfied the relevant quality requirement and enables regulations and guidance to prescribe the detail. However, feedback from stakeholders has indicated that the certification model envisaged should be further simplified. The regulatory framework, however, remains the same with detailed requirements set out in a combination of regulations and guidance.

40. Using regulations and guidance to prescribe the finer details enables the Secretary of State to road test the detailed processes with employers who will be the end users of certification. This approach is also consistent with the regulatory framework in which scheme quality requirements for defined benefits schemes operate.

41. The regulation making power in section 28(1) enables regulations to prescribe that a scheme satisfies the relevant quality requirements, if there is a certificate in force in relation to the employer. Section 28(2) provides that the person giving the certificate must state that in their opinion it is able to satisfy the relevant quality requirements. The clause amends section 28(2) to provide that the person giving the certificate may state instead, that in their opinion, the scheme is able to satisfy prescribed alternative requirements.

42. The regulation making power in amended subsection (5) of section 28 will be used to set out the detailed certification processes in regulations and in particular regulations may provide for:

- the person(s) that can give a certificate,
- the period for which a certificate can be in force,
- the procedures to be complied with for giving a certificate,
- requiring the person giving the certificate to comply with guidance,
- arrangements for phasing in contributions,
- a modification for certain hybrid schemes,
- the timeframe for completing certain processes,
- the employer to calculate the amount of contributions that should have been paid during the certification period,
- cases where the requirements or any section 26 agreements in relation to the contributions payable in respect of any relevant jobholders during the certification period did not satisfy prescribed conditions, and

- where the payment of contributions did not satisfy prescribed conditions, for the scheme not to be treated as having satisfied the relevant quality requirement unless prescribed steps are taken.

43. The parliamentary procedure for this power is affirmative because it is recognised that a power to prescribe an alternative requirement is a wide power and that Parliament will wish to consider the detail of proposed regulations.”

Paragraphs 48 to 68 of the memorandum

“Clause 17 and Schedule 4 – Pension Protection Fund

48. Paragraphs 1 to 13 of Schedule 4 (requirements to obtain actuarial valuations) make amendments to the Pensions Act 2004 so as to permit the Board of the Pension Protection Fund (“the Board”), 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 requirement in section 143(2) or 158(3) of the Pensions Act 2004. Paragraph 5(1) and (2) of Schedule 4 substitutes subsection (2) of and inserts a new subsection (2A) into section 143 of the Pensions Act 2004. Existing powers in subsection 143(3) permit regulations to provide that specified debts and obligations may, in prescribed circumstances, be regarded as assets or liabilities of a scheme for the purposes of an actuarial valuation. Section 143(4) and (5) also provide powers to prescribe how the assets and protected liabilities of schemes eligible for the Pension Protection Fund are to be determined, calculated and verified. The amendments made by paragraph 5(3) and (4) of Schedule 4 apply the regulation making powers in section 143(3) to (5) to cases where the Board makes a funding position determination under the substituted section 143(2)(a).

49. Paragraph 5(6) of Schedule 4 inserts a new subsection (5C) into section 143 of the Pensions Act 2004. This subsection requires the Board to issue a statement setting out how (subject to any regulations made under subsection (4)) it will make a funding position determination.

50. Paragraph 6 of Schedule 4 inserts a new section 143A, dealing with the procedure for making, and the effect of, a funding position determination under section 143(2)(a) (substituted by paragraph 5(2) of Schedule 4). Subsection (5) of section 143A requires a notice under subsection (4) to be in the prescribed form and contain the prescribed information. Since, in particular, section 143A deals with the binding effect of a funding position determination, the Department considered it appropriate to provide powers to prescribe the form and content of the notice.

51. Paragraph 11 of Schedule 4 amends section 158 of the Pensions Act 2004, permitting the Board to make a funding position determination without obtaining an actuarial valuation in suitable cases. Paragraph 11(2) of Schedule 4 substitutes a new section 158(3). Paragraph 11(3) and (4) of Schedule 4 amends subsections (4) and (5) of section 158 so as to extend the regulation-making powers in section 143 to apply to the making of a funding position determination (under new section 158(3)(a)) as well as to an actuarial valuation (made under new section 158(3)(b)).

52. There are numerous provisions in the Pensions Act 2004 governing the assets and liabilities which may be taken into account for the purposes of ascertaining the

funding position of an occupational pension scheme and the process by which a determination may be reached. These provisions need to be flexible in order to ensure that novel or unusual types of assets and liabilities are covered. This provides clarity for the Board and for trustees and managers of eligible pension schemes. The Department's view is that it is appropriate for secondary legislation to set out the detail, both as to substantive matters and as to process. It is envisaged that the regulations made under this power will be used to amend, or to make provision similar to, that in the Pension Protection Fund (Valuation) Regulations 2005 (SI 2005/672).

53. Paragraphs 14 and 15 of Schedule 4 (requirement to obtain protected benefits quotation) amend sections 151 and 152 of the Pensions Act 2004 so as to provide an alternative route of entry to the Pension Protection Fund ("PPF") for eligible pension schemes which otherwise meet the criteria for transfer to the PPF, but are unable to obtain a quotation (normally from an insurance provider) of the costs of providing for the scheme's liabilities to members. Section 152 permits schemes (particularly those which are only marginally under-funded) another chance to transfer to the PPF where the scheme has initially failed to satisfy the funding test. Where the trustees or managers of such schemes have used their best endeavours to obtain a 'protected benefits quotation' but have been unable to do so, the amended provisions will require the Board to assume responsibility for the scheme if satisfied that the value of the assets of the scheme at the time of reconsideration is less than the amount of the protected liabilities at that time.

54. Paragraph 14 of Schedule 4 amends section 151(4)(a) so as to provide a power to prescribe the form of the evidence required to accompany an application for reconsideration under section 151. Paragraph 15(5) and (7) amends section 152 so as to omit subsections (4) and (8), which provide powers to prescribe the form of determination notices under (respectively) subsections (3) and (7).

55. Paragraph 15(9) of Schedule 4 (inserting subsections (10A) to (10D) into section 152 of the Pensions Act 2004) provides the Board with the power to obtain a valuation of the scheme's assets and protected liabilities as at the reconsideration time. New subsection (10B) provides a power for the Secretary of State to prescribe the requirements which apply to a valuation under subsection (10A). New subsection (10C) applies the regulation making powers, duty to issue a statement and power to issue guidance in subsections (3) to (6) of section 143 (with modifications) to a determination under subsection (2B) and a valuation under subsection (10A), as they apply in relation to a determination under section 143(2)(a) and a valuation obtained under subsection (2)(b) of section 143. These powers are provided so as to ensure that valuations for the purposes of section 152 may be made on a basis consistent with the assumptions which apply for the purposes of valuations obtained under section 143.

56. Paragraph 17 (parliamentary control of subordinate legislation) amends section 316(2) of the Pensions Act 2004 so as to change the Parliamentary procedure for instruments made under sections 117(1) or (3), and (with exceptions) instruments made under section 178(1) or paragraph 26(7) of Schedule 7 from affirmative to negative.

57. Paragraph 17(2) of Schedule 4 omits paragraph (a) of section 316(2) of the Pensions Act 2004 so as to require regulations made under section 117(1) or (3) to be subject to negative resolution. Regulations made under section 117(1) impose the PPF administration levy, which is paid by schemes eligible for the PPF. The administration levy funds money paid by the Secretary of State towards the expenses of the Board, other than those paid out of the PPF or the Fraud

Compensation Fund. Regulations made under section 117(3) set the rate and time at which the administration levy is payable.

58. Paragraph 17(3) of Schedule 4 amends paragraph (f) of section 316(2) (the levy ceiling) so as to require orders made by the Secretary of State under section 178(1), except those made by virtue of section 178(8), to be subject to negative resolution. The Board is required by section 175 to impose the pension protection levies, payable by schemes eligible for the PPF for each financial year. Orders made under section 178(1) set the amount which is to be the levy ceiling for the coming financial year. That amount must (in accordance with section 178(3)) be increased in line with increases in earnings during the previous year. Section 178(8) provides power in certain circumstances to increase it by a greater amount.

59. Paragraph 17(4) of Schedule 4 amends paragraph (s) of section 316(2) (the compensation cap) so that orders made under paragraph 26(7) of Schedule 7 (orders specifying the compensation cap in respect of payments from the PPF) by virtue of paragraph 27 of Schedule 7 are subject to negative, rather than affirmative, resolution. The compensation cap is applied to limit the amount of periodic compensation paid to those scheme members who are below their scheme's normal pension age at the start of an assessment period (this is usually triggered by the insolvency of the sponsoring employer). The Secretary of State is required by paragraph 27 of Schedule 7 to make an order under paragraph 26(7) increasing the compensation cap annually in line with any increase in the general level of earnings.

60. The Department considers that the negative resolution procedure is more appropriate for instruments made under these sections since (with the exception of regulations made under section 117(1)) the setting of levy rates and increases in the compensation cap are routine matters which depend on increases in the general level of earnings. The Secretary of State has very little flexibility in these processes. Orders made by under section 178(1) by virtue of subsection (8) of that section, which permits the Secretary of State to make an order which exceeds the increase in the general level of earnings, will remain subject to affirmative resolution. Similarly, only orders under paragraph 26(7) made by virtue of paragraph 27, which increase the compensation cap in line with earnings, will be subject to negative resolution. The Department considers that the changed procedure for routine instruments will generate a saving of Parliamentary and Departmental time.

61. Different considerations apply to regulations under section 117(1), which provide for the imposition of an administration levy. However, the Department has used the power to make the Occupational Pension Schemes (Levies) Regulations 2005 (SI 2005/842), which both impose the levy and set the rate and time at which it is payable. If regulations under section 117(1) and (3) were to be subject to a different Parliamentary procedure, the change is less likely to generate savings in time. Furthermore, it is not uncommon to find that the first use of such a power is subject to affirmative resolution, with subsequent instruments being subject to negative resolution. The changes are also consistent with the Parliamentary procedure (negative resolution) which applies to the setting of the general levy (which funds, among other things, the Pensions Regulator) under section 175 of the Pension Schemes Act 1993. The Department considers, therefore, that it is appropriate for regulations under section 117(1) to be subject to the negative resolution procedure.

62. Paragraph 21 amends Schedule 7 to the Pensions Act 2004, substituting a new paragraph 25A. This paragraph replaces an existing regulation-making power to

prescribe circumstances in which, and conditions subject to which, a person who is entitled to pension compensation may choose to receive it from a later date than normal pension age. (The Board will decide an appropriate increase calculated on an actuarial basis due to the postponed payment.) The intention is to use the power to provide for situations where a person may be required to receive compensation from their normal pension age under Schedule 7 to the Pensions Act 2004 even though they may, given the choice, wish to receive payment at a higher rate from a later date.

63. Paragraph 28 amends Schedule 5 to the Pensions Act 2008 to provide powers parallel to those in paragraph 25A of Schedule 7 to the Pensions Act 2004, permitting pension compensation credit members of the Pension Protection Fund to postpone payment of compensation. Paragraph 28 of Schedule 4 omits paragraph 11 of Schedule 5 and inserts new paragraph 16A, which replaces an existing regulation-making power in paragraph 11. This permits the Secretary of State to prescribe circumstances in which, and conditions subject to which, a person who is entitled to pension compensation by virtue of a pension compensation sharing order may choose to postpone payment of their compensation to a date beyond normal benefit age.

64. These provisions replace existing delegated powers in the Pensions Acts 2004 and 2008. The 2004 Act contains various other incidences of powers which allow the Secretary of State to set out the circumstances in which payment of compensation may be made to PPF members (see, for example, section 168(2), and paragraph 25 of Schedule 7). The Department considers that delegated powers are appropriate to deal with the technical and administrative detail attached to the process of postponing payment of compensation.

65. The parliamentary procedure for each of the delegated powers introduced by the amendments in Schedule 4 is negative. This procedure has been selected for the following reasons.

66. The powers for scheme valuations prior to transfer are similar to those in section 143(3)–(5) of the Pensions Act 2004 under which regulations subject to negative scrutiny have already been made.

67. The powers for reconsideration of schemes that have not transferred are similar to those in section 151(12)(a) of the Pensions Act 2004 under which there is provision for regulations subject to negative scrutiny to be made.

68. The powers for pension compensation – postponement of compensation replace existing regulation-making powers under which there is provision for regulations subject to negative scrutiny to be made. This procedure has also been selected in view of the uncontroversial nature of the amendments.”

APPENDIX 3: POSTAL SERVICES BILL

Extracts from Memorandum by the Department for Business, Innovation and Skills

Paragraphs 64 to 71 of the memorandum

“Clause 29: Universal Postal Service Order

Powers conferred on: Office of Communications (“OFCOM”)

Power exercised by: Order

Parliamentary procedure: None

64. Clause 29 confers a duty on OFCOM to make a universal postal service order to set out a description of the services they consider should be part of the universal postal service and the standards with which those services must comply.

65. OFCOM must ensure that this order includes as minimum certain services as part of the universal postal service. These services include the requirements of the (amended) Postal Services Directive and go beyond them. The services are set out in clause 30 and include at least one delivery and one collection of letters every Monday to Saturday; a service of conveying postal packets from one place to another by post at affordable prices determined in accordance with a uniform public tariff; a registered and insured items service; certain services free of charge to the blind or partially sighted; and a free service to convey certain legislative petitions and addresses. OFCOM as independent regulator of postal services can determine what else in addition to this is needed in the UK as part of the universal postal service, following a review of the market.

66. The procedure that applies to this order-making power and to all powers for OFCOM to make orders and regulations under Part 3 is, by virtue of clause 61 of the Bill that of section 403 of the Communications Act 2003. This provides amongst other things that before making an order OFCOM must give notice of their proposal to do so to such persons or representative of the persons likely to be affected by the proposals as OFCOM thinks fit; to publish a notice of their proposal in such a manner as they think appropriate; and to consider any representation made to OFCOM before the time specified in the notice.

67. The Department considers it appropriate that an order under clause 29 will not be subject to parliamentary procedure because through the passage of this Bill, Parliament has agreed that OFCOM should be the independent regulator for postal services and as such should be entrusted with the task of deciding, subject to the minimum requirements, what the universal service should be in the UK, following a market review.

Clause 33: Review of minimum requirements*Powers conferred on: Secretary of State**Power exercised by: Order**Parliamentary procedure: Affirmative resolution procedure*

68. Clause 33 provides for OFCOM to carry out a review from time to time of the minimum requirements in a universal postal service set out in clause 30 in view of the reasonable needs of users of the service.

69. The Secretary of State may also direct OFCOM to carry out a review of the minimum requirements for a universal postal service. This is included to give the Secretary of State the ability to initiate a review should he feel it would be appropriate.

70. Clause 33(5) confers a power on the Secretary of State to make an order amending the minimum requirements in clause 30 but only after a review has been carried out by OFCOM in accordance with clause 33(1). The order may include any necessary or expedient amendments to Part 3 as a consequence of provisions made by the order. This may be necessary to ensure that the needs of the users of the universal service are properly being met. However the order may not provide for amendments which could result in a service that is non-uniform throughout the country.

71. The Department considers it appropriate that the order is subject to the affirmative resolution procedure because the power enables the amendment of primary legislation. It is considered necessary that Parliament should be able to debate the provisions given the importance of the universal postal service and the impact of any changes to the provision of such a service as may be effected by this power.”

Paragraphs 96 to 99 of the memorandum**“Clause 58: Section 57: supplementary***Power conferred on: Secretary of State**Power exercised by: Order**Parliamentary procedure: Negative resolution procedure*

96. This clause provides supplementary provisions in relation to appeals under section 57.

97. Clause 58(1) enables the Competition Commission to make rules about appeals under clause 57 (appeals against price control decisions). The rules must be consulted on prior to being made and published so as to be brought to the attention of those likely to be affected by them. There is no Parliamentary procedure in relation to these rules. The purpose of the rules is to ensure that those interested in appeals know clearly in advance the procedure in relation to appeals.

98. Clause 58(6) confers a power on the Secretary of State to make an order applying sections 109 to 117 Enterprise Act 2002 in relation to appeals made under clause 57 and making provision in relation to the extension of the time within which appeals may be determined in cases of non compliance with requirements imposed under section 109.

99. This power is delegated to avoid prescribing detailed technical requirements on the face of the Bill. The Department considers it appropriate that the regulations should be subject to the negative resolution procedure because Parliament can see what types of provision will be able to be made in exercise of these powers by consulting the relevant provisions of the Enterprise Act 2002.”

Paragraphs 107 to 113 of the memorandum

“Clause 80: Regulatory powers exercisable during postal administration

Power conferred on: Secretary of State

Power exercised by: Order

Parliamentary procedure: None

107. Clause 80(2) confers a power on the Secretary of State by order to modify the universal postal service order made by OFCOM under clause 29 where a postal administration order has been made. The power can only exercised after consultation with OFCOM and anyone else the Secretary of State considers appropriate.

108. This is a regulatory power which is exercisable by OFCOM in normal circumstances but which is given instead to the Secretary of State in the event of a postal administration. The power is only exercisable by the Secretary of State whilst the postal administration order is in force. Once the postal administration has ended, regulatory responsibility in these areas returns to OFCOM and, under provisions in Part 3, any provision made under Clause 80(2) can be modified or revoked if OFCOM deemed necessary.

109. This power is needed in order to allow the Secretary of State, if it is felt appropriate, to modify the universal postal service order. That would enable the regulatory requirements placed on the universal service provider to be adjusted in a way that reflects the fact that the business is in administration. This could, for example, relate to price control or products that fall within the scope of the universal service.

110. The power when exercised by OFCOM is not subject to any Parliamentary procedure and the Department considers there to be no reason for the position to be different when it is exercised by the Secretary of State. It should also be borne in mind that the use of the power by the Secretary of State is restricted to a special administration scenario; and that, in such a scenario, an ability to make swift changes might be critical.

Clause 80: Regulatory powers exercisable during postal administration

Power conferred on: Secretary of State

Power exercised by: Order

Parliamentary procedure: Approval after being made affirmative resolution procedure

111. Clause 80(5) confers a power on the Secretary of State, in the event that a postal administration order is made, to amend the minimum requirements to be included in the universal service. The power may only be exercised whilst the postal administration order is in force. The order may include any necessary or expedient amendments to Part 3 as a consequence of provisions made by the order. This may be necessary to ensure that the needs of the users of the universal service are properly met.

112. The power is not subject to the same restrictions and conditions as attach to any modification of the minimum requirements by the Secretary of State under clause 33. This is because in the circumstances of a postal administration urgent action may be needed to amend the minimum requirements and, subject to the requirements of the Postal Services Directive, the Secretary of State needs to be able to make whatever changes are appropriate to preserve the universal service in the face of the insolvency of a universal service provider.

113. It is considered that the appropriate procedure for the order should be that after being made it should be laid before Parliament and cease to have effect if within 28 days it is not approved by a resolution of each House of Parliament. This takes account of the possible need to take urgent action but ensures that the order is debated in Parliament. This is felt to be important given that the power enables the amendment of primary legislation as well as the importance of the universal postal service and the impact of any changes to the provisions of such a service.”