These notes refer to the Pensions Act (Northern Ireland) 2015 (c.5) which received Royal Assent on 23 June 2015

Pensions Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – State Pension

Section 1: State pension

Section 2: Entitlement to state pension at full or reduced rate

Section 3: Full and reduced rates of state pension

These sections create a benefit – referred to in the Act as "state pension".

Although the term "state pension" has been commonly used to refer to Category A to Category D contributory and non-contributory pensions paid since the 1970s (and now payable under the Contributions and Benefits Act) in current legislation these are referred to as "retirement pensions".

Those reaching pensionable age on or after the start date for the new state pension will not be eligible for the current retirement pension scheme. This start date is to be 6th April 2016. The current pension arrangements will continue for people who reach pensionable age before 6th April 2016.

The full rate of the new state pension which will be applicable for the first year will be set by regulations prior to the commencement of these sections. Thereafter, it will be up-rated each year. The basic conditions of entitlement for the new state pension at the full rate will be:

- that the person has attained pensionable age; and
- that the person has 35 or more 'qualifying years' of National Insurance contributions.

Where an individual has fewer than 35 qualifying years, his or her entitlement will be pro-rated and each qualifying year of National Insurance contributions will entitle him or her to one 35th of the full rate (section 3).

However, section 2 also sets out that entitlement will be subject to a minimum number of qualifying years, which will be specified in regulations but will be no more than ten years.

The Pensions Act 2014 contains provisions for the new state pension to be up-rated. The Secretary of State must increase the benefit by a percentage not less than the percentage annual increase in the general level of earnings. Whenever the Secretary of State makes such an order, the Department may make a corresponding order for Northern Ireland.

These sections apply to people who do not have any qualifying years for tax years before the new state pension start date.

Transitional arrangements apply to those who have qualifying years for tax years before 6th April 2016 and who attain pensionable age after that date– see commentary on sections 4 and 5.

Section 4: Entitlement to state pension at transitional rate

Section 5: Transitional rate of state pension

Section 6: Recalculation and backdating of transitional rate in special cases

Schedule 1: Transitional rate of state pension: calculating the amount

Schedule 2: Transitional rate of state pension: up-rating

These sections make transitional provision for pension entitlement for those who reach pensionable age on or after the date the new state pension is introduced and who have qualifying years attributable to tax years prior to introduction.

The provision is transitional because at some point in the future people will only have qualifying years attributable to the period after the new state pension is introduced and their entitlement will be calculated under the rules set out in sections 1 to 3. The persons unaffected by the transitional provision will be those who:

- are under the age of 16 when the new state pension is introduced, so they will not have yet entered the National Insurance scheme;
- arrive in the UK for the first time after the new scheme is introduced; or
- for some reason have not paid, or received credits, into the National Insurance scheme or have not made enough contributions to achieve a ‘qualifying year’ before the new scheme is introduced.

The calculation of the rate of state pension for people who have qualifying years attributable to tax years prior to introduction (called “transitional rate” here) is set out in Schedule 1. The calculation takes into account the National Insurance history of the person before the new state pension scheme starts when determining any future pension entitlement.

Under the current rules a person may become entitled to different components of retirement pension depending on when and at what level contributions have been made. Provided that sufficient contributions are made at the lower earnings limit for National Insurance in a tax year, that year will be a qualifying year for basic state pension purposes. Earnings-related contributions made between 1961 and 1975 provide entitlement to graduated retirement benefit. Since 1978 contributions that are made on earnings above the annual lower earnings limit in a tax year are relevant for entitlement to the additional pension.

The first step in the calculation of the transitional rate involves working out a person's entitlement under current scheme rules, as if he or she had reached pensionable age on the day the new state pension scheme is introduced. This provides a snapshot in time of any basic state pension, additional pension and graduated retirement benefit to which he or she would have been entitled.

The second step involves working out entitlement under the new state pension rules had they applied before the start date. This valuation is based on 'pre-commencement' qualifying years, i.e. any years that would have been qualifying years before the start date of the state pension. This includes pre-1978 reckonable years, as defined in the relevant transitional regulations *(section 4(4)(b))*. Where a person has 35 or more pre-commencement qualifying years at the start date the valuation would be based on the maximum state pension amount payable at that date. Otherwise it would be based on a reduced rate matching the number of pre-commencement qualifying years accrued at that date.

In both of these calculations an amount to reflect contracting-out under the current scheme is deducted. However, where after the start date a person leaves his or her contracted-out pension scheme and under the rules of the scheme is not entitled to a contracted-out pension, his or her transitional rate would be re-calculated as if he or she had never been contracted out (section 6).

The third step requires a comparison of the two calculations with the more beneficial used as the starting basis of a person's transitional rate (their foundation amount). This foundation amount may exceed the full rate of state pension. This will be the case where the person, but for the introduction of the new state pension, would have been entitled to a significant amount of additional pension.

If at the start date the person has a foundation amount lower than the full rate of state pension, he or she can continue to add qualifying years to his or her entitlement – even if he or she already had 35 or more qualifying years before the start date – up to a maximum number that would provide entitlement to the full rate of state pension.

A minimum number of qualifying years will also apply to the transitional rate. This number will be specified in regulations, and will not be more than ten years.

Schedule 1 also provides for the revaluation of the foundation amount prior to pensionable age. The value of the foundation amount up to the full rate of state pension is to be re-valued by earnings or higher (as with the state pension rate). Any excess over that rate will be re-valued in line with the annual increase in the general level of prices.

Schedule 2 provides for the up-rating of the transitional rate (annual increases to the pension in payment). The value of the transitional rate up to the full rate of state pension is to be up-rated by earnings or higher. Any excess will be up-rated in line with the annual increase in the general level of prices.

Section 7: Survivor's pension based on inheritance of additional old state pension

Schedule 3: Survivor's pension under section 7: inherited amount

Schedule 4: Survivor's pension under section 7: up-rating

In the current retirement pension scheme, a person who is, or who has been, married or in a civil partnership may be entitled to a state pension based on the National Insurance record of their spouse or civil partner. This will not be the case for those reaching pensionable age after the start date of the new state pension.

There are two exceptions: one set out in this section and one set out in sections 11 and 12.

Section 7 and Schedules 3 and 4 provide that a person will be entitled to an amount based on the additional pension that his or her late spouse or civil partner was or would have been entitled to in the current retirement pension scheme. Schedule 3 provides for the conditions of entitlement to this inherited state pension.

The amount that the survivor will be entitled to depends on whether his or her spouse or civil partner was in the current retirement pension scheme or in the new state pension scheme. That is, whether the spouse or civil partner either reached pensionable age, or died under pensionable age, before or after the new state pension start date.

In all cases, entitlement to an inherited amount under Schedule 3 will be conditional on the marriage or civil partnership existing before the new pension scheme is introduced. A person who becomes entitled to an inherited amount on or after reaching pensionable age will not lose it if he or she subsequently remarries or forms a civil partnership. However, as that marriage or civil partnership will have taken place after the new state pension is introduced, if the new spouse or civil partner dies, the existing inherited amount will not be replaced with an inherited amount from the most recent spouse or civil partner, even if it would have been a higher amount.

Where the survivor is in the new state pension scheme and the late spouse or civil partner was in the current retirement pension scheme, the survivor could be entitled to an inherited amount based on the amount of additional pension that person would have been entitled to under the current Category B retirement pension rules.

Where the survivor is in the new state pension scheme and the late spouse or civil partner was also in the new state pension scheme, the survivor could be entitled to an inherited amount of half of the amount by which the late spouse's or civil partner's transitional rate of pension exceeds the full state pension rate.

This Act will replace the existing range of bereavement benefits with a bereavement support payment (see 'Part 5 – Bereavement Support Payment'). The Category B pension rules are therefore modified to enable a person who is bereaved while under pensionable age on or after the date the new payment is introduced and whose spouse or civil partner reached pensionable age in the current retirement pension scheme to inherit additional pension if he or she qualified for bereavement support payment and satisfied the other rules for entitlement.

Schedule 4 provides for the up-rating (annual increases) of inherited amounts. The basic principle is that, as with the transitional rate, the survivor's pension (including inherited amount) up to the full rate of the state pension should be up-rated by reference to earnings and any excess by prices.

Section 8: Choice of lump sum or survivor's pension under section 9 in certain cases

Section 9: Survivor's pension based on inheritance of deferred old state pension

Section 10: Inheritance of graduated retirement benefit

Schedule 5: Survivor's pension under section 9: inherited deferral amount

In the current retirement pension scheme, individuals can choose not to claim their state pension at pensionable age and, as a consequence, will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions). This is known as deferral.

These sections and Schedule 5 relate to the inheritance of deferred state pensions and deferral awards under the current retirement pension scheme (see sections 16 to 18 below for an explanation of how deferral will work under the new state pension scheme). Where a late spouse or civil partner reached pensionable age before the start date of the new state pension and deferred their state pension, the survivor can inherit the deceased's deferred pension (regardless of whether they reach pensionable age before or after the start date) as under the current rules. Regulations may also provide for the inheritance of deferred graduated retirement benefit. It is not, however, possible for a person who reaches pensionable age on or after the start date to pass on deferral increments to his or her spouse or civil partner.

However, unlike the current inheritance arrangements, the provisions in Schedule 5 mean that, for an individual who reaches pensionable age on or after the start date of the new state pension, it will no longer be possible to inherit increments that were accrued by his or her late spouse or civil partner's former spouse or civil partner, except for any increments that the individual's deceased spouse built up on any increments that he or she inherited. For example, B (who reached pensionable age before the start date) is deferring his pension (which includes increments accrued by his late wife, A) and is now married to his second wife, C (who reached pensionable age after the start date). B dies and C inherits increments from him that are paid with her pension. C cannot inherit increments from B that were originally accrued by A's period of deferral. C will, however, be able to inherit the increments that B may have built up on any increments that he inherited from A.

Section 11: Reduced rate elections: effect on section 4 pensions

Section 12: Reduced rate elections: pension for women with no section 4 pension

Schedule 6: Reduced rate elections: effect on rate of section 4 pension

Schedule 7: Reduced rate elections: basic amount of state pension under section 12

Until 1977, married women and widows in employment could opt out of any future entitlement to a state pension in their own right by paying National Insurance at a reduced rate. Women who were self-employed could choose not to pay the flat-rate self-employed stamp. This was referred to as a "reduced-rate election". Women who took a reduced-rate election gained entitlement to a state pension by relying on their spouse's National Insurance record.

For those reaching pensionable age on or after the start of the new scheme, the Act removes the option for an individual to rely on his or her spouse's or civil partner's National Insurance record (other than the provision for surviving spouses and civil partners to inherit pension, as described above) but does set out alternative arrangements for certain women who made reduced-rate elections.

These arrangements will apply if a reduced-rate election had still been in force at the start of the final 35 tax years before the tax year in which the woman reached pensionable age.

Where a woman meets the 35-year condition and has some qualifying years attributable to the period before the new state pension is introduced, section 11 and Schedule 6 provide for the state pension to be calculated in an alternative way if this is more beneficial than the transitional rate of pension to which she would otherwise be entitled. This alternative calculation provides a transitional rate of state pension at least equivalent to the combination of any additional pension based on her own National Insurance record and the equivalent of the current scheme's basic state pension. This will be either the rate applicable for a spouse or civil partner (currently approximately 60 per cent of the full rate basic state pension) payable when both she and her husband or civil partner have reached pensionable age, or the equivalent of the full basic state pension if she is widowed or divorced. As a simplification measure, the full standard rates will be used so the amounts will not be dependent on the spouse's or civil partner's National Insurance record.

Section 12 and Schedule 7 make comparable provision for a woman with no qualifying years for the period before the new state pension is introduced. In these circumstances, the state pension would comprise an amount equivalent to the appropriate standard rate of the current scheme's basic state pension for a married person, widow or divorcee, or civil partner, surviving civil partner, or person whose civil partnership has been dissolved.

Section 13: Shared state pension on divorce etc

Section 14: Pension sharing: reduction in the sharer's section 4 pension

Section 15: Pension sharing: amendments

Schedule 8: Pension sharing: appropriate weekly rate under section 13

Schedule 9: Pension sharing: up-rating state pension under section 13

Schedule 10: Pension sharing: appropriate weekly reduction under section 14

Schedule 11: Pension sharing: amendments

Since December 2000, financial settlements on divorce have been able to provide for one party to a divorce to split his or her current or prospective entitlement to additional pension with his or her former spouse. The rules on pension sharing have applied to civil partners since December 2005.

Where a pension sharing order is made, a court will order a percentage split or an amount to be transferred. The apportioned benefits are known as "pension debits" and "pension credits", created under the Welfare Reform and Pensions (Northern Ireland) Order 1999. The former spouse or civil partner ("the transferor") will have his or her prospective additional pension entitlement reduced by the value of a pension debit and the beneficiary ("the transferee") will gain entitlement to a pension credit that is equal to the amount of the debit. Pension sharing can be applied to current or prospective entitlement to additional pension or to shared additional pension from a previous divorce.

The Act does not affect the validity of a pension sharing order made against a person in the new state pension scheme before the Act comes into operation.

Although the new state pension will not comprise any additional pension, the Act does allow for pension sharing of the new state pension in certain limited cases.

It will still be possible in the future to make a pension sharing order against a person who has a transitional rate pension under section 4 that exceeds the full rate of the state pension. But the pension sharing order can only relate to the amount of that excess.

If a pension sharing order has been made against someone in the new state pension scheme, the rate of his or her state pension under section 4 may be reduced (see section 14).

A person in the new state pension scheme may also benefit from a pension sharing order made before the start date of the new state pension scheme, or made against a person in the current retirement pension scheme. In this case the person will be entitled to a state pension under section 13 based on the pension sharing credit. This will be paid in addition to any state pension the person is entitled to, based on his or her own National Insurance record. Calculating entitlement in this way means that a person is able to benefit from qualifying years obtained under the new state pension scheme notwithstanding the award of a state pension credit.

Schedule 8 sets out the rules for calculating the appropriate weekly rate where a pension sharing order has been made.

Schedule 9 provides for increases of shared state pension (state pension credit) once payment has started, as follows:

- if a person's total state pension including the state pension credit is equal to or less than the full rate of state pension the amount of the state pension credit will be up-rated in line with earnings in the same way as the full rate of state pension is up-rated;
- if a person's state pension is less than the full rate of the state pension but exceeds the full rate when the state pension credit is taken into consideration, the amount of the state pension credit up to the full rate of state pension will be increased in line with earnings (in the same way as the full rate of state pension is up-rated), and the excess of the state pension credit above the full rate will be increased in line with prices (in the same way as the excess of any transitional rate of pension under section 4 is up-rated); or
- if a person's state pension alone is equal to or higher than the full state pension, then any state pension credit will be increased in line with prices (in the same way as the excess of any transitional rate of pension under section 4 is up-rated).

Schedule 10 explains how a person's appropriate weekly deduction is calculated if a sharing order has been issued.

Schedule 11 amends existing legislation to take into account the introduction of the sharing of the new state pension. Among other things, it makes provision for those reaching pensionable age under the current scheme to receive shared additional pension in relation to an order made against someone in the new state pension scheme.

Section 16: Pensioner's option to suspend state pension

Section 17: Effect of pensioner postponing or suspending state pension

Section 18: Section 17 supplementary: calculating weeks, overseas residents, etc

Sections 16 to 18 provide for arrangements to defer the payment of a state pension under the new state pension scheme.

In the current retirement pension scheme, individuals can choose not to claim their state pension at pensionable age or to give up their state pension for a period of time after they have started to receive it. As a consequence, they will qualify for either an increase to their weekly pension (known as increments) or for a lump-sum payment from the point they claim (subject to some conditions). This is known as deferral.

The basic principle of deferral is being retained for the new state pension, but only the ability to accrue a weekly increase. Those who reach pensionable age on or after the new state pension start date will not be able to accrue a lump-sum. The accrual rate of the weekly increase will be set out in regulations (see section 17(4)). There will be no inheritance of a weekly increase accrued by the deferral of a new state pension.

Section 19: Prisoners

Section 20: Overseas residents

These sections provide regulation-making powers to set out the arrangements for prisoners and overseas residents.

For prisoners, regulations may provide that a person is not to be paid a state pension whilst they are imprisoned, detained in legal custody or unlawfully at large. This is the same as under the current scheme.

For overseas residents, regulations may provide that such a person is not entitled to up-rating. This will enable similar provision to be made as under the current retirement pension scheme. Regulations under this section will be made taking into account provision under relevant treaties, such as those in respect of the European Union, and bi-lateral treaties providing for reciprocity in social security matters and which cover up-rating.

Section 23: Amendments

Schedule 12: State pension: amendments

Schedule 12 provides for a number of amendments to other legislation relating to the introduction of the new state pension.

Schedule 12, Part 1 contains amendments that are related to the new state pension scheme. For example, Schedule 12, paragraphs 16 to 18 amend the general revaluation and up-rating provisions in the Social Security Administration (Northern Ireland) Act 1992.

Part 2 contains amendments to do with the current retirement pension scheme.

The amendments limit the current retirement pension scheme to those reaching pensionable age before 6th April 2016.

The amendments also provide that, where such a person is entitled to an old state pension based on the contributions of a spouse or civil partner who is in the new state pension scheme, that retirement pension will be based only on contributions the spouse or civil partner made for the period before the new state pension scheme was introduced.

Part 2 also removes several aspects of the current scheme for those reaching pensionable age after the new state pension start date:

- Category C pension. This category of pension was introduced to provide non-means tested pensions to those who had reached pensionable age before the National Insurance scheme started in 1948 and had not been insured under the pre-1948 provisions. Provision is removed for anyone reaching pensionable age on or after the new state pension start date. The only people who could now be entitled to a Category C pension are widows of individuals who reached pensionable age before 5th July 1948;

- Category D pension. Category D non-contributory pensions for those aged 80 and over were introduced to help a number of elderly people without access to a pension. Changes made to the retirement pension since then (largely the reduction of the number of qualifying years needed for a state pension and changes to National Insurance credits) mean that the number of recipients is declining and expected to decline further. Provision remains for those reaching pensionable age before the new state pension start date but is not replicated for those reaching pensionable age thereafter;

- The age addition. The age addition to contributory and non-contributory retirement pensions is paid to people aged eighty or over. It was introduced in 1971 but has never been increased from 25 pence. Provision remains for those reaching pensionable age before the new state pension start date but is not replicated for those reaching pensionable age thereafter.

Part 3 of Schedule 12 provides that the savings credit element of state pension credit is only payable (from the savings credit qualifying age) to those who have reached pensionable age before the start date of the new state pension scheme.

An individual who does not meet these criteria could still qualify if he or she is a member of a mixed age couple where the other member reached pensionable age before the start date of the new state pension scheme. However, a power is given to the Department to specify the circumstances in which entitlement is restricted for these mixed age couples. For clarity, an example is given of how the power might be used in regulations.

Part 4 contains miscellaneous amendments regarding the introduction of the new state pension. These include repealing provisions in the Pensions (No. 2) Act for consolidating the additional pension which are not required as a result of the introduction of the new state pension.

Section 24: Abolition of contracting-out for salary related schemes etc

Schedule 13: Abolition of contracting-out for salary related schemes

Schedule 14: Power to amend schemes to reflect abolition of contracting-out

Since 1961 sponsoring employers of salary-related occupational pension schemes have been allowed to contract their employees out of the additional pension on the condition that they would provide an occupational pension meeting certain statutory requirements (these have changed over the years).

In return for the employer providing a pension meeting the statutory minimum, both the employer and employee pay reduced rates of National Insurance (employer contributions are currently reduced by 3.4 per cent and employee contributions by 1.4 per cent).

In 1988 it became possible for employers to contract out their employees into a defined contribution occupational pension scheme, and for individuals to contract out into a personal pension scheme. However, the 2008 Act abolished these options from 6th April 2012.

Introduction of the new state pension will abolish the additional pension for those reaching pensionable age after the start date. Section 24 and Schedules 13 and 14 make provision for the ending of the option for sponsoring employers of salary-related occupational pension schemes to contract their employees out of the additional pension. This option will end on the start date of the new state pension.

As well as removing redundant provisions, the amendments to the Pension Schemes Act and other pensions legislation in Section 24 and Schedules 13 and 14 are intended to serve two main purposes.

Firstly, to ensure that all contracted-out rights accrued by employees through salary related contracted-out schemes before the abolition of contracting-out are fully protected. To protect accrued rights, paragraph 13 of Schedule 13 inserts new section 8E into the Pension Schemes Act. Section 8E requires former salary-related contracted-out schemes to meet the requirements in the Pension Schemes Act in relation to Guaranteed Minimum Pensions (“GMPs”). Section 8E deems scheme rules to comply with all the requirements, overriding the rules if necessary. Paragraphs 16 and 38 of Schedule 13 amend sections 12 and 83 of the Pension Schemes Act (the revaluation requirements for GMPs for early leavers and the anti-franking rules) so that abolition of contracting-out does not trigger either of these requirements. This will ensure that someone who stays in a scheme at abolition will not be treated as having left simply because contracting-out has ended. Paragraph 17 of Schedule 13 amends section 13 of the Pension

Schemes Act to reflect the end of the current retirement pension scheme so that inherited GMPs will be payable in the same circumstances as now.

Secondly, to enable sponsoring employers of contracted-out schemes to change the rules of their pension schemes (where they are prevented from doing so) to adjust members' future pension accruals or pension contributions to take into account the loss of the employer's rebated National Insurance contributions. Section 24(2) and Schedule 14 provide a power for sponsoring employers to amend their scheme rules to decrease scheme costs in order to offset the increase in National Insurance contributions - for example, by reducing scheme benefits for future accruals or increasing member contributions. Following the end of contracting-out, employers and members of contracted-out salary-related schemes will have an increase in National Insurance contributions. They will pay the same rate of National Insurance as other employers and employees. This power will be available for five years (Section 24(8)). The power cannot be used to change the rules of public service pension schemes or other types of scheme (which may be prescribed in regulations under Section 24(4)(b)) or in relation to protected persons.

Part 2 – Option to Boost Old Retirement Pensions

Section 25: Option to boost old retirement pensions

Schedule 15: Option to boost old retirement pensions

As National Insurance contributions are an excepted matter, the provisions contained in Schedule 15 to the Pensions Act 2014, will extend to Northern Ireland. The Pensions Act 2014 provides for a new Class of voluntary National Insurance contributions, Class 3A. To be eligible to pay Class 3A contributions the individual must have reached pensionable age before 6 April 2016 (the start date for the new state pension in Part 1 of the Act) and they must be entitled to some form of state pension under current rules.

Schedule 15 to the Act provides for amendments to the Contributions and Benefits Act in consequence of Schedule 15 to the Pensions Act 2014 and allows for the payment of extra units of additional state pension to those individuals who have paid Class 3A contributions.

In line with current rules, the additional state pension obtained through the payment of Class 3A contributions could be deferred, inherited by a surviving spouse or civil partner, shared with a former spouse or civil partner and up-rated annually by prices. There are rules that restrict entitlement in cases where a person is entitled to more than one category of State Pension, e.g. Category A and B. Under current rules a person with simultaneous pension entitlements, for example, as a result of bereavement, is prevented from receiving multiple payments. Paragraph 6 of Schedule 15 inserts new sections 61ZA to 61ZC into the Contributions and Benefits Act to disapply the bar on simultaneous entitlements where this would arise solely as a result of entitlement gained from the payment of Class 3A contributions or inheritance of additional state pension derived from Class 3A contributions. Similarly, paragraph 5 of Schedule 15 exempts inherited amounts of additional state pension obtained through the payment of Class 3A contributions from the rule that caps additional state pension when contribution records are combined following bereavement. In this way the surviving spouse will still inherit that part of the late spouse's or civil partner's additional pension attributable to payment of Class 3A contributions.

Part 3 – Pensionable Age

Section 26: Increase in pensionable age to 67

Part 1 of Schedule 2 to the 1995 Order stipulates pensionable age for men and women. As amended by the 2008 Act this provides for the increase in pensionable age to 67 to take place between 6th April 2034 and 5th April 2036. This section amends these rules to bring forward the increase in pensionable age to 67 to take place between 6th April 2026 and 5th March 2028.

Under the timetable set by the 2012 Act, those born on or after 6th October 1954 but before 6th April 1968 will reach pensionable age on their 66th birthday. Under the proposed timetable, those born between 6th April 1960 and 5th March 1961 will have a pensionable age of between 66 years and 1 month and 66 years and 11 months (section 26(3)). Those born on or after 6th March 1961 but before 6th April 1977 will reach pensionable age on their 67th birthday (section 26(4)).

The table in section 26(3*)* sets out how pensionable age will increase from 66 to 67. Individuals in each one month birth cohort affected by the transitional arrangements will reach pensionable age when they reach age 66 and the specified number of months. For example:

- an individual born on 15th April 1960 reaches pensionable age when they reach age 66 and one month on 15th May 2026;
- an individual born on 10th September 1960 reaches pensionable age when they reach age 66 and 6 months on 10th March 2027; and
- an individual born on 22nd January 1961 reaches pensionable age when they reach age 66 and 10 months on 22nd November 2027.

There are three instances during the transition period where an individual may be born in a calendar month which has more days than the relevant month in which he or she would reach pensionable age. Section 26(3) provides when those individuals will reach pensionable age. For example, an individual born on 31st July 1960 cannot reach pensionable age of 66 and 4 months on 31st November 2026 because November only has 30 days. He or she will therefore be treated as reaching pensionable age on 30th November 2026.

Part 4 – State Pension Credit

Section 27: State pension credit: phasing out assessed income periods

Section 27 provides for the assessed income period ("AIP") in state pension credit claims to be phased out from 2016. The AIP is a feature of state pension credit that removes the requirement for certain individuals to notify the Department of changes to retirement provision (broadly defined as capital, annuities and retirement pension) for a defined period, for the purposes of assessing their entitlement to state pension credit. From 2016, any change in retirement provision must be reported when it occurs, triggering an immediate review and change of the benefit award where appropriate. The removal of the AIP will apply to new customers and there is a power to apply it to those existing customers with a 5-year AIP already in place at April 2016 (the latter will be gradually phased out in the first few years). Customers with an indefinite AIP already in place on 6th April 2016 will be unaffected as their AIP will remain in place until it ends under existing rules.

Subsection (1) limits the application of the legislation on AIPs to decisions that take effect before 6th April 2016. This effectively means that, from 6th April 2016, no new AIPs will be set. It also means, however, that AIPs set before 6th April 2016 will remain valid beyond that date (or until such time as the 5-year AIPs are phased out).

Subsection (3) is intended to make it clear that regulations under section 9(5) of the State Pension Credit Act may be made for the purpose of phasing out, on or after 6th April 2016, any remaining AIP that is 5 years or shorter in length. This could be used to provide for those AIPs to be ended either when they mature, when a change of circumstances is reported, or via reviews carried out on a phased schedule.

Section 28: Preserving indefinite status of certain existing assessed income periods

Section 9(6) of the State Pension Credit Act was inserted by section 84(4) of the Pensions (No. 2) Act to ensure that certain old AIPs were extended indefinitely. This was a transitional provision and was thought to be necessary only until 6th April 2014. It is therefore repealed from that date by section 84(6) of the Pensions (No. 2) Act. The repeal leaves some doubt about whether existing AIPs under section 9(6) of the State Pension Credit Act will remain in place after 6th April 2014. Section 28 of the Act is intended to remove the doubt by ensuring that existing indefinite AIPs governed by section 9(6) of the State Pension Credit Act remain in place indefinitely.

Section 28 has been drafted so that it works whether or not the section comes into operation before, on or after 6th April 2014.

Part 5 – Bereavement Support Payment

Section 29: Bereavement support payment

Section 30: Bereavement support payment: contribution condition and amendments

Section 31: Bereavement support payment: prisoners

Schedule 16: Bereavement support payment: amendments

These sections describe the entitlement criteria and supporting contribution condition for the bereavement support payment, which will replace the existing range of bereavement benefits for persons whose spouse or civil partner dies on or after the date it is introduced.

A person will be entitled to bereavement support payment if he or she is: under pensionable age at the time of his or her spouse's or civil partner's death; is ordinarily resident in Northern Ireland or other territory specified in regulations; and the contribution condition is met.

In order to meet the contribution condition the deceased spouse or civil partner must have paid Class 1 or 2 National Insurance contributions at or greater than 25 times the lower earnings limit (as defined in the Contributions and Benefits Act) for any one tax year prior to his or her death.

The contribution condition will be considered to have been met if the deceased spouse or civil partner died as a result of an industrial injury or accident, as provided for by the industrial injuries benefit legislation in the Contributions and Benefits Act.

The amount of the benefit and period the payments will cover will be prescribed in regulations. Regulations may also allow different rates of payments over different periods. If a person is pregnant or entitled to child benefit, then regulations may provide for a higher rate of payment or a longer payment period.

Bereavement support payment will not be payable to anyone over pensionable age; if a person is entitled to bereavement support payment when he or she reaches pensionable age his or her entitlement will cease and he or she will not receive any further payments.

Regulations may disqualify prisoners from receiving bereavement support payment. This reflects the position under the current bereavement benefit scheme.

Schedule 16 details the relevant consequential amendments to existing legislation to reflect the introduction of bereavement support payment.

Part 6 – Private Pensions

Section 32: Automatic transfer of pension benefits etc

Schedule 17: Automatic transfer of pension benefits etc

Section 32 introduces Schedule 17 which contains a duty for the Department to make regulations to establish a system of automatic transfers of pension benefits.

Paragraph 1 of Schedule 17 outlines this system, setting out that the regulations must provide that where an active member of an ‘automatic transfer scheme’ has ‘transferable benefits’ in another pension scheme (the ‘transferable benefits scheme’), then the automatic transfer process set out in the Schedule must be followed.

The transfer will be from a money purchase scheme or a pension scheme of a prescribed description (sub-paragraph (5)) that the member is no longer contributing to (sub-paragraph (4)(c)), into another money purchase scheme or a pension scheme of a prescribed description (sub-paragraph 2) of which the individual is an active member. This will only apply if certain criteria are met including that the benefits to be transferred have been accruing since a certain date (sub-paragraph (4)(e)) and are worth less than a prescribed amount (sub-paragraph (4)(f)). It is expected that the amount will be initially set at £10,000.

In addition, Schedule 17 sets out that regulations will provide that trustees or managers of ‘automatic transfer schemes’ must find out whether members have transferable benefits in other schemes (paragraph 2). The regulations must make provision about disclosure of information and they may, in particular, permit or require a person to disclose information to another person to help that other person comply with their duties, which will include providing information on an individual’s transferable benefits to any central database (paragraph 9(1) and (2)).

The regulations must also provide that a prescribed person must give information to the member (paragraph 5) and must provide that the member has a right to opt out of the automatic transfer (paragraph 4) unless there is a requirement for consent by the member before the transfer is made. The information provided to members will include details about the automatic transfer, their right to opt out, or need for consent (as applicable), and may contain other information, for example, about the pension scheme.

Where ‘transferable benefits’ are identified and the individual has not opted out, or has provided consent (whichever is applicable), the trustees or managers must notify the ‘transferable benefits scheme’ (paragraph 3), the ‘transferable benefits scheme’ must then transfer those benefits (paragraph 6) and the ‘automatic transfer scheme’ must give the member rights equivalent to those benefits (paragraph 7). Other functions may be required of the trustees or managers of either scheme (paragraph 12), for example, to acknowledge the transfer.

Further to these core features, Schedule 17 sets out a number of areas that regulations may cover. For example, regulations may be made to:

- provide for the manner in which cash equivalents are to be calculated and verified by the 'transferable benefits scheme' (paragraph 8);
- allow for the enforcement of the automatic transfer duties by the Pensions Regulator, including the imposition of compliance notices and penalties for non-compliance (paragraph 10) and record keeping requirements (paragraph 11);
- require the Department or the Pensions Regulator to establish and operate a database containing information relating to people who have or have had 'transferable benefits' (paragraph 9(3)); or
- allow certain provisions within the regulations to override scheme rules (paragraph 16). For example, if scheme rules prevented an automatic transfer scheme from accepting a transfer.

Part 2 provides that regulations may be made to consolidate multiple pots belonging to one member in the same scheme, providing for an asset transfer if necessary, for example, where an individual has two employments over their working life and the employers both use the same multi-employer scheme (paragraph 13).

Section 33: Power to prohibit offer of incentives to transfer pension rights

Section 34: Expiry of power in section 33

Section 33 allows the Department to make regulations to prohibit a person from offering a financial or similar incentive to another person with the intention of inducing a member of a salary-related occupational pension scheme to transfer their rights out of that pension scheme into another pension scheme or arrangement. Regulations may provide that the prohibition applies to the offer of an incentive by the person who will provide the incentive, or by another person, for example, an agent. It also provides for penalties to be introduced if the prohibition is contravened.

Section 34 provides that Section 33 will be repealed seven years after the section has come into operation if the powers granted have not been exercised.

Section 35: Short service benefit for scheme member with money purchase benefits

This section provides that where all of the benefits to be provided by a scheme are money purchase benefits, there will be an entitlement to a 'short service benefit' immediately after a member has completed thirty days' qualifying membership of the scheme (section 35(1), (2) *and (3)*).

The effect of the section is that, in such cases, the ability to make a refund of contributions ("short service refund") to members who give up their membership within two years will no longer be available under section 97AB of the Pension

Schemes Act, because the member will have accrued rights to benefit under the scheme. Such a person will, however, still have the right to ask the occupational pension scheme to transfer the value of his pension to another pension provider under Chapter 4 of Part 4 of that Act.

This will only apply to those who first become active members of a scheme after this section comes into force, and those members who re-joined the scheme after that date having had a previous period of pensionable service under the scheme and who received a contribution refund or a cash transfer sum (section 35(3)).

Section 36: Automatic re-enrolment: exceptions where automatic enrolment deferred

Employers must automatically enrol workers who satisfy age and earnings criteria into a qualifying workplace pension scheme. However, they are allowed to postpone automatic enrolment by up to three months.

Where an employer has an open defined benefit or hybrid scheme which they intend to use for automatic enrolment, they may instead, and subject to certain conditions, defer automatic enrolment for jobholders who satisfy those conditions until the end of a transitional period in September 2017. At the end of that transitional period the individual must be automatically enrolled, provided that he or she satisfies the age and earnings conditions. However, an employer deferring automatic enrolment until the end of the transitional period may use the waiting period afterwards if they choose, which would postpone auto-enrolment by up to a further three months.

Automatic enrolment by the employer is compulsory: pension saving by the worker is not. An individual who decides not to continue saving into the scheme they have been automatically enrolled into may opt out within a specified window. This window is one month from the later of the date that the individual becomes an active member of the scheme and the date he or she is given the enrolment information by the employer. If, however, he or she continues to save into the scheme but subsequently decides to withdraw, he or she may cancel his or her active membership at any time.

The employer must carry out an automatic re-enrolment exercise approximately every three years to re-enrol those who opted out or cancelled their membership. The cyclical automatic re-enrolment dates are employer specific. Deferral dates and immediate re-enrolment dates are specific to the worker.

Under the Pensions (No. 2) Act, the employer's re-enrolment duty could result in the permitted deferral or postponement period being curtailed as an employer's cyclical re-enrolment date could fall within a period where an individual's automatic enrolment date has legitimately been deferred or postponed. Section 36 removes the duty of the employer to automatically re-enrol an eligible individual if automatic enrolment has been postponed for a period of up to three months (section *36(2)*) or deferred to the end of the transitional period in the case of a defined benefit or hybrid scheme (section *36(3)*).

Section 37: Automatic enrolment: powers to create general exceptions

Under sections 3, 5, 7 and 9 of the Pensions (No. 2) Act, employers are obliged to automatically enrol (and re-enrol) workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.

Automatic enrolment and pension saving is not always appropriate. It may impose nugatory work on the employer and in some circumstances could cause an individual to incur a financial penalty.

There are some limited exceptions to the enrolment duty but there is no general power to exclude prescribed types of workers, or workers in prescribed circumstances from the scope of automatic enrolment. However, a prescribed exclusion may carry an increased employer monitoring burden. This section inserts a new section in to the Pensions (No. 2) Act to provide a general power to create exceptions to the employer duties which includes the power to prescribe that a duty is turned into a power. Where such a power was conferred on an employer, it would mean that in prescribed circumstances an employer need not automatically enrol a worker but may choose to do so. The section subsumes the existing power to exclude in section 5(4) of the Pensions (No. 2) Act and Article 268A of the 2005 Order (both of which are repealed) and amends section 10 of the Pensions (No. 2) Act to allow automatic enrolment information to be more appropriately targeted.

Regulations under the new section cannot provide for an employer to be excluded from the automatic enrolment duty on the basis of their size.

The inserted section also includes a power to re-instate the automatic enrolment duty if the circumstances that triggered the exclusion change.

Section 38: Alternative quality requirements for UK defined benefits schemes

To be a qualifying defined benefits scheme capable of being used under automatic enrolment, a pension scheme must currently either be contracted-out of the state second pension or meet the 'test scheme standard' in relation to all jobholders concerned. The test scheme is a hypothetical scheme used as a benchmark against which a scheme can be tested. To qualify, the scheme must provide benefits to members which are broadly equivalent to, or better than, those which would be provided under a test scheme.

This section amends the Pensions (No. 2) Act to enable the Department, by regulations, to prescribe that a defined benefits scheme satisfies the quality requirements in one of three ways, as set out in new section 23A(1):

- Subsection (1)(a) provides for an alternative defined benefits quality requirement to be satisfied in relation to a jobholder if the scheme in question is of a prescribed description and satisfies the money purchase quality requirement in relation to that jobholder, i.e. the scheme provides a total contribution of 8 per cent of qualifying earnings with at least 3 per cent contributed by the employer;

- Subsections (1)(b) and (1)(c) provide for alternative defined benefits quality requirements to be satisfied if the cost to the scheme of funding the future accrual of active members' benefits was at least a prescribed rate. The rate is to be expressed as a prescribed percentage of members' relevant earnings over a relevant period either on an aggregate (scheme) level or at an individual level for at least 90 per cent of the relevant members.

Subsection (3) of new section 23A provides that the prescribed percentage in both of the cost of future accruals tests in (1)(b) and 1(c) must be at least 8 per cent, in line with the minimum level for total contributions into a qualifying money purchase scheme.

Section 39: Automatic enrolment: transitional period for hybrid schemes

On 19th December 2012 the Government announced its intention to introduce retrospective legislation to clarify the law which sets out transitional arrangements for implementing automatic enrolment into workplace pension arrangements.

The transitional provisions differ depending on whether the jobholder is enrolled into a money purchase pension arrangement or is offered membership of a defined benefit pension arrangement. If the former is the case, then both employer and employee minimum contributions are phased in over a transitional period. If the latter, the employer can defer automatic enrolment until the end of a transitional period.

Under the current legislation, where a pension scheme offers both money purchase and defined benefit pensions under a single scheme (known as a hybrid scheme) an employer can postpone automatic enrolment for a jobholder who is eligible only to accrue money purchase benefits under a hybrid scheme.

The amendments in section 39(1) to (5) state that postponement under section 30 of the Pensions (No. 2) Act only applies where a defined benefit pension is offered to a jobholder (whether offered under a hybrid scheme or a defined benefit scheme). Employers offering money purchase benefits under a hybrid scheme will still be able to use the transitional arrangements under section 29 of the Pensions (No. 2) Act, which permit a gradual phasing in of the contribution requirements over a transitional period.

The legislation has retrospective effect. Section 39(6) and (7) set out that any employer who has deferred automatic enrolment under section 30 of the Pensions (No. 2) Act for a jobholder who is entitled only to membership of a money purchase arrangement under a hybrid scheme will need to automatically enrol that jobholder. They will also need to backdate employer contributions to 19th December 2012 (or their staging date if that is later). The jobholder will be able to choose whether they wish to pay their own contributions for the same period.

Section 40: Penalty notices under sections 40 and 41 of the Pensions (No. 2) Act etc.

Under the Pensions (No. 2) Act, the Pensions Regulator has the power to issue a penalty notice for failure to comply with information notices (which are issued when the Pensions Regulator requires specific information). Currently, the Regulator could issue a penalty notice under that power for non-compliance with a notice that sought information in connection with the Regulator's general compliance functions, as set out in the 2005 Order.

Under this section, penalty notices can only be used for non-compliance with information notices issued in relation to the Regulator's compliance function concerning employer duties, as set out in Part 1 of the Pensions (No. 2) Act.

In exercising its power to issue information notices under Article 67 of the 2005 Order, the Regulator can ask for an explanation of the relevant information or require the recipient to explain in person at the Regulator's offices. This power was previously available for information notices issued relating only to some of the Regulator's new employer compliance functions. Section 40 extends this to include all of the Regulator's employer compliance functions as set out in Part 1 of the Pensions (No. 2) Act.

Section 41: Unpaid scheme contributions

In the event that an employer becomes insolvent, the Pension Schemes Act enables scheme trustees or managers to claim an amount of any unpaid pension contributions from the Department, payable out of the National Insurance Fund. The contributions comprise those due from the employer either on his or her own account to fund benefits for, or in respect of, one or more employees, or on behalf of an employee, if a contribution has been deducted from wages.

Workers and agency workers are currently excluded from this protection, so if their employer became insolvent certain jobholders entering pension scheme membership as a result of the workplace pension reforms would not receive the protection detailed above.

This section amends the definitions in the Pension Schemes Act, and the references to employees in the Pension Schemes Act, to include workers and agency workers and so extend this protection for relevant scheme contributions to be paid from the National Insurance Fund in the event of an employer becoming insolvent.

Section 42: Power to restrict charges or impose requirements in relation to schemes

Schedule 18: Power to restrict charges or impose requirements in relation to schemes

Section 42 and Schedule 18 allow the Department to make regulations to restrict charges or impose requirements on certain pension schemes. Schedule 18 allows for the making of regulations which set limits on or prohibit particular types of administration charges, or set requirements relating to the administration or governance of the scheme.

The regulations will apply to pension schemes of a type specified in the regulations. Different provision could be made for different types of scheme. For example, different charges may be allowed depending on the type or use of scheme. They will also allow for the inclusion of schemes that are closed to new members or to new accruals. The duty to meet these standards would fall on the manager or trustee of each applicable scheme.

The provision allows the regulations to say that a scheme which does not comply cannot be a qualifying scheme for automatic enrolment purposes. Provisions about standards that must be complied with in order for a scheme to be used as a qualifying scheme will continue to be enforced via the employer compliance regime under the Pensions (No. 2) Act.

Schedule 18 also allows regulations to cover the enforcement of the quality standards by the Pensions Regulator (paragraph 3), including the imposition of compliance notices and penalties for non-compliance. As with other civil penalties, it will be a criminal offence to pay these penalties from scheme funds (paragraph 10). The compliance regime may also include the Financial Conduct Authority regulating compliance in contract-based schemes under the powers in the Financial Services and Markets Act 2000. The Schedule also provides that the regulations may allow certain provisions of the regulations to override scheme rules (paragraph 6). For example, if scheme rules currently prescribe a type or level of charge which is prohibited.

Section 43: Disclosure of information about transaction costs to members etc

Section 43 places duties on the Department (in relation to occupational pension schemes) to make regulations that require the disclosure of certain information about the transaction costs incurred by money purchase pension schemes. In addition, duties would be imposed in a similar way to require information on transaction costs and administrative charges to be published. The duties are set out in amendments to section 109 of the Pension Schemes (NI) Act.

Section 44: Power to require pension levies to be paid in respect of past periods

The Pension Protection Fund (PPF) pays compensation to members of pension schemes where the employer becomes insolvent leaving the scheme underfunded. There are two levies which eligible schemes must pay: the risk-based pension protection levy, which goes towards PPF compensation, and the administration levy, which goes towards the PPF’s running costs. A limited number of schemes have the benefit of a Crown guarantee, meaning that if a scheme has an insolvent employer and becomes under-funded government will meet the liabilities of the scheme or the employer in respect of the whole or part of the scheme.

On 11th February 2009 the European Commission ruled that the BT Pension Scheme's exemption from payment of the levies to the PPF, arising from the Crown guarantee, constituted unlawful State aid and must stop. Following this, in 2010 Regulations were made to ensure future compliance in payment of these two levies.

This section provides for regulations to be made allowing the Articles of the 2005 Order relevant to payment of pension levies and associated regulations to have effect as if the Regulations made in 2010 had always had effect. Regulations made under the section will allow the recovery of levies due in respect of the tax years 2005/06 to 2009/10. This will apply to those schemes covered by a Crown guarantee where an exemption from payment of the levies would give rise to incompatible State aid.

Section 45: Prohibition and suspension orders: directors of corporate trustees

Schedule 19: Prohibition orders: consequential amendments

The Pensions Regulator has the power to suspend and prohibit trustees from acting as trustees in the future if they are not deemed to be a fit and proper person to be a trustee of a scheme. Under the current rules, if a prohibited trustee becomes the director of a company which acts as a trustee of a scheme (a corporate trustee) there is no restriction on the ability of that company to operate as a corporate trustee.

This section inserts a new Article into the 1995 Order to forbid a company from being a trustee if one or more of its directors have been prohibited by the Regulator. If the director(s) who has/have been prohibited subsequently leave(s) the board of the company, the prohibition will be immediately lifted. In addition, the company is allowed to apply to the Regulator for the prohibition to be waived.

The Regulator has the power to suspend a trustee "pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception" (Article 4(1)(aa) of the 1995 Order).

Section 45(3) to (5) allows the Pensions Regulator to suspend a corporate trustee where it or one of its directors could be suspended under Article 4(1)(aa) of the 1995 Order.

Section 46: Pensions Regulator's objectives

This section sets out an additional objective for the Pensions Regulator, which states that when carrying out its functions in relation to scheme funding the Pensions Regulator should minimise any adverse impact on the sustainable growth of sponsoring employers. This objective is in addition to the Regulator's existing five objectives, set out in Article 4(1) of the 2005 Order.

Section 47: Maximum period between scheme returns to be 5 years for micro schemes

All occupational pension schemes are required to complete a scheme return at least once every three years. This is sent to the Pensions Regulator and provides up to date information about the scheme.

This section increases the maximum period between scheme returns to five years for schemes that have no more than four members (the number of members is determined either by the information sent to register the scheme or the last scheme return).

Section 48: Pension Protection Fund: increased compensation cap for long service

Schedule 20: Pension Protection Fund: increased compensation cap for long service

The PPF pays compensation to members of non-money purchase, occupational pension schemes where the employer becomes insolvent, leaving the scheme underfunded. Anyone under the scheme's normal pensionable age when the employer becomes insolvent is paid compensation based on 90 per cent of their expected scheme pension subject to a maximum cap- 'the compensation cap'.

Section 48 and Schedule 20 provide for a revised compensation cap dependent on a person's age and length of pensionable service when the person first becomes entitled to compensation.

Paragraphs 1 to 3 of Schedule 20 amend Schedule 6 to the 2005 Order to insert new paragraph 26A. The new paragraph 26A sets out how the compensation cap will be calculated for future compensation calculations. There will be a standard amount (which is expected to be calculated in the same way as the current compensation cap amount) for anyone with pensionable service of 20 years or less. For anyone with 21 years or more pensionable service, the cap will be increased by 3 per cent for each full year, to a maximum of double the standard amount. The new paragraph also makes provision for determining pensionable service in certain situations.

Paragraphs 4 to 7 make consequential amendments to the 2005 Order.

Paragraphs 8 to 13 of Schedule 20 make transitional provision for members who are entitled to PPF compensation when the increased compensation cap for long service is introduced. Under paragraph 8(2) the PPF will be required to recalculate the protected pension rate as if the increased compensation cap for long service had been in force when the member first became entitled to compensation. The amount of compensation payable depends on the amount of the protected pension rate and the PPF must therefore re-determine the compensation and change the payment. This applies to both members of the original scheme and any of their survivors and dependants who are in receipt of compensation when the long service cap legislation comes into operation. Any increase will be effective from the date the legislation is commenced except that members who have postponed payment of their compensation will have the increase applied when they take their postponed compensation.

Any indexation that had been awarded before the legislation comes into operation will be maintained by adding the amount of indexation on to the revised compensation amount (see paragraph 8(5) of the Schedule).

There will be no backdating of compensation for any increase due to the long service compensation cap and all other elements in calculating compensation payable will be unaffected by this change:

a) where a person commuted part of their original compensation as a lump sum, the commuted amount will be deducted as part of the redetermination;

b) where a person had their compensation actuarially reduced because they took their compensation early, the same reduction will be applied in the redetermination;

c) where a person had been awarded a postponement addition, that addition will not be recalculated or increased.

Paragraph 12 deals with those who received a terminal illness lump sum in the year prior to the long service cap legislation being commenced. Where the recipient is still alive when the legislation is commenced, the lump sum will be re-calculated as if the long service cap legislation had been in operation at the date of entitlement and arrears paid.

Part 3 of Schedule 20 makes transitional provision for schemes undergoing assessment or winding up on the date the increased compensation cap for long service comes into force.

Part 3 provides that, for schemes undergoing assessment for entry to the PPF when the long service cap legislation comes into operation, the valuation of the scheme's liabilities should be completed on the basis that the long service cap has not been introduced.

During an assessment period the scheme trustees continue to pay scheme pensions as they fall due but the payments must be reduced as necessary so as not to exceed the level of compensation the PPF would pay should the scheme enter the PPF. Paragraph 14(3) would require scheme trustees to increase pension payments during the assessment period to reflect the introduction of the long service cap, where appropriate.

A scheme can ask for the decision on whether or not they enter the PPF to be reconsidered. Where a scheme entered the assessment period before the long service cap legislation is commenced and subsequently asks for such a reconsideration, paragraph 14 would require this consideration to be done on the basis that the long service cap had not been introduced.

Part 3 also provides for how the increased long service cap would apply where a scheme began wind up, or was treated as having begun wind up, before the long service cap legislation comes into operation. This could be where a scheme began to wind up without having been through a PPF assessment period, or where a scheme had been in the assessment period and left it without transferring to the PPF. Schemes winding up are required to allocate assets in accordance with the statutory priority order in Article 73 of the 1995 Order and during wind up restrict payments of pension to the amounts which the scheme will be able to satisfy on wind up under Article 73A.

In general the priority order requires the asset allocation to begin with covering the compensation that the PPF would have paid had the scheme entered the PPF. Part 3 provides that where a scheme had begun wind up before the long service cap is introduced it should continue to allocate assets and restrict pension payments on the basis that the long service cap had not been introduced. However, whilst a scheme is in a PPF assessment period, paragraph 15(4) clarifies that pension payments should be increased to reflect the introduction of the long service cap. This would mean that, in this specific situation, Article 73A would not restrict payments to pre-long service cap levels.

Paragraphs 20-22 clarify that transitional provision can be made under section 53(5), particularly, in relation to pension compensation sharing and cases where a member has multiple benefits.

Section 49: Pension Protection Fund: compensation cap to apply separately to certain benefits

This section amends paragraph 26 of Schedule 6 to the 2005 Order to bring existing legislation relating to the PPF into line with the policy intent and current practice.

The PPF pays compensation where the sponsoring employer of a defined benefit occupational pension scheme experiences an insolvency event and the scheme has insufficient funds to provide benefits at compensation levels. Where a person is under the scheme pension age at the date of the insolvency event, the compensation is based on 90 per cent of a person’s accrued benefits, subject to a maximum cap.

Where a person is entitled to compensation under the PPF due to entitlement to two or more scheme benefits, paragraph 26 of Schedule 6 to the 2005 Order provides for those benefits to be added together for the purposes of applying the compensation cap. However, the policy intention is that only where both benefits are attributable to the person’s pensionable service or both attributable to a pension credit arising from a divorce or dissolution settlement should they be added together for the purposes of applying the compensation cap. The PPF have been applying this policy meaning that an individual with benefits derived from different sources - for instance one benefit arising from a pension credit and another from their own service in the scheme – will have their compensation calculated separately for each and the compensation cap applied separately to each. Changing the current practice could lead to significantly lower payments to some individuals.

This section amends paragraph 26 of Schedule 6 to the 2005 Order so that both the primary and secondary legislation supports the policy and the current practice. The amendments would be retrospective by virtue of subsections (7) and (8) of the new section, to cover payments which may already have been made.

Part 7 – Final Provisions

Section 50: Power to make consequential amendments etc

Section 51: Regulations and orders

Section 52: Interpretation

Section 53: Commencement

Section 54: Short title

These sections relate to the power to make consequential amendments, general provision in respect of regulations and orders under the Act, the interpretation of terms used in the Act, the commencement of provisions in the Act and the short title of the Act.