PENSION SCHEMES BILL

Supplementary Memorandum from the Department for Work and Pensions to the Delegated Powers and Regulatory Reform Committee

Introduction

This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pension Schemes Bill, which was introduced in the House of Lords on 7 January 2020. It supplements the memorandum dated 7 January 2020 which has already been sent to the Committee.

It relates to Government amendments tabled in the House of Lords on 11 February 2020 and identifies and explains provisions in those amendments that confer powers to make delegated legislation.

Amendments 1, 3 and 6: Climate change related disclosures

Introduction: New sections 41A to 41C of the Pensions Act 1995

The Taskforce on Climate-related Financial Disclosures was established by the Financial Stability Board in December 2015. The TCFD is an industry-led initiative, set up to develop a set of recommendations for consistent climate-related financial risk disclosures in mainstream reporting.

The Taskforce produced recommendations designed to be adoptable by all organisations, with pension schemes, as asset owners, sitting at the top of the investment chain, having a particularly important role to play. The recommendations have a strong focus on the risks and opportunities related to a transition to a lower carbon economy.

These amendments to the Bill are designed to confer powers capable of ensuring occupational pension schemes act and report in line with the recommendations of the Taskforce.

These powers are not intended to direct pension schemes as to how they should invest. This is not for the Government to do.

The policy intention is to require trustees and managers to govern effectively their pension scheme’s exposure to the effects of climate change. The powers will also require schemes to publish information in accordance with secondary legislation and guidance issued by the Secretary of State.

The powers will cover all occupational pension schemes, including both defined benefit and defined contribution schemes.

The amendments also confer powers on the Pensions Regulator to take enforcement action against trustees or managers who fail to put effective governance measures in place or fail to publish the prescribed information.

The wider scientific understanding of climate change, and the consensus as to its effects and mitigation, is developing continually. These amendments create a statutory framework which will enable the requirements introduced for the pensions industry to be proportionate and reflective of current understanding; and thereafter to be adaptable, as the understanding develops. Hence a number of the powers are subject to a higher level of scrutiny on first use, the intention being to implement a system which is then adjusted over time to reflect developments in both scientific and financial understanding of climate change and best practice in mitigation, adaptation and reporting. The Government will consult extensively on both content and timing of regulations before laying secondary legislation. The new sections introduced by this amendment are subject to the consultation requirements set out in section 120 of the Pensions Act 1995.

New section 41A to the Pensions Act 1995, subsections (1) and (5) – Climate change risk

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument (subsection (1)); guidance (subsection (5))

Parliamentary Procedure: Affirmative resolution procedure on first use, negative resolution procedure thereafter (subsection (1)); none (subsection (5)).

Context and Purpose

1. New section 41A enables certain requirements, set out in regulations, to be imposed on trustees or managers of occupational pension schemes with a view to securing that there is effective governance of the scheme with respect to the effects of climate change.

2. The occupational pension schemes covered by these requirements will also be set out in regulations.

Justification for delegation

3. Delegating powers under section 41A will provide the Government with the ability to improve risk management practices within occupational pension schemes relating to climate change in a way that is proportionate to the schemes in question. It will also enable Government to readily take account of developments in what is considered best practice in the context of a rapidly evolving policy landscape globally.

4. Subsection (1) of section 41A delegates powers to prescribe which schemes will be subject to the requirements introduced. This is necessary so that the requirements on a scheme and the actions which trustees or managers will need to take in order to comply with them can be tailored to ensure they are proportionate to the scheme in question. The urgent need to consider climate change risks in their governance process will need to be balanced against business requirements which may take time, such as updating systems and preparing data. The powers will allow the Government to adjust both requirements and timings of compliance dependent on its assessment of this trade-off – something to be determined by consultation.

5. We anticipate that the requirements will initially be limited to larger schemes, although the fiduciary duty of trustees means that all schemes should be taking account of climate risk in an appropriate and proportionate way.

6. Subsection (2) allows the Government to prescribe the effects relating to climate change that trustees or managers of schemes should consider. The landscape of climate related financial risk is constantly changing and is a nascent area. This delegation will allow the Government to take advantage of the most up-to-date understanding of the most pressing risks and opportunities and to reflect these in the requirements introduced.

7. Subsection (3) allows the Government to set out a standardised framework within which to consider climate change risks and opportunities. Common industry practice for conducting this kind of risk management, and reporting against it in the form of metrics and targets, is developing. Delegation here will allow for the framework which the Government eventually prescribes to continue to develop and therefore remain relevant.

8. Subsection (5) will require pension schemes to have regard to guidance prepared by the Secretary of State. The Government understands that, although many schemes will already be managing this risk effectively and, in some cases, disclosing information appropriately, for many schemes this will be a new task. It is appropriate that the Government guides managers and trustees towards the kind of tasks they should engage in, and how, in order to, for example, prepare detailed technical metrics. For those pension schemes which are perhaps more advanced, the guidance will enable schemes to diverge in the way they make disclosures where their circumstances support good reason for doing so. It is expected that guidance issued by the Secretary of State will amplify and elaborate the guidance for all sectors and for asset owners, which underpins the recommended disclosures in the TCFD's proposals.

Justification for procedure

9. It is appropriate to follow the affirmative resolution procedure on first use of the powers in section 41A(1) as this section will place new requirements on trustees or managers of certain schemes such that it is appropriate for the requirements to be subject to a higher level of scrutiny.

10. However, subsequent regulations are likely to focus on adjusting the requirements in light of developments in understanding about how schemes may best approach managing climate-related risks. This coupled with the speed at which climate change risk action is required, means the Government considers negative resolution procedure beyond the first use to be appropriate.

11. It is appropriate for guidance to be prepared by the Secretary of State. As the guidance relates to legislative requirements, it is not considered necessary for it to be subject to a Parliamentary procedure.

New section 41B to the Pensions Act 1995, subsections (1) and (3) – Climate change risk: publication of information

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument (subsection (1)); guidance (subsection (3))

Parliamentary Procedure: Negative resolution procedure (subsection (1)); none (subsection (3))

Context and Purpose

12. Regulations made under powers delegated by new section 41B(1) will allow the Government to require pension schemes to publish climate change related risk information which they prepare in line with section 41A.

13. Currently, there is no agreed or common approach to these disclosures. Regulations to be laid under this power will prescribe a framework for disclosures, listing the pieces of information, metrics and format in which schemes, of a specified description, will be required to disclose this information.

14. The creation of a common framework will allow for consistency, and therefore comparison, across the market. This will improve the information members receive and allow them to make fully-informed decisions in relation to their schemes.

15. Public scrutiny of a scheme's approach to climate change risk management will allow for sharing of best practice and challenges to poor practice.

Justification for delegation

16. Delegating powers under section 41B will provide the Government with the ability to specify the type of disclosures that will be required, in line with regulations made under powers delegated by section 41A.

17. Subsection (1) allows for disclosures to apply to occupational pension schemes of a prescribed description. As with section 41A, this is due to the fact that for many pension schemes this type of disclosure will be a new exercise, one which may require new processes and information. Therefore, it is appropriate that the Government is able to set proportionate disclosure requirements and is able to readily adapt them as needed.

18. Subsection (2) lays out the possible content of the requirements. These have been delegated to secondary legislation in order that the Government can set disclosure requirements in line with the most up-to-date industry practice.

19. Subsection (2)(b) states that requirements may include the requirement to publish information free of charge. Consultation will, however, inform Government's decisions about the best process by which schemes can make information available.

20. Subsection (3) makes clear that in disclosing or publishing any information or documents, as determined by regulations, trustees and managers must have regard to guidance published by the Department. This is important, to ensure that the policy objective, of a consistent and comparable set of disclosures, is met.

Justification for procedure

21. Regulations under new section 41B(1) will be subject to the negative resolution procedure.

22. The Government considers this procedure to be appropriate in order that the publication requirements are as current as possible. Whilst it will introduce new publication requirements, these are likely to be technical, operational matters. All but the smallest schemes also now have publication duties for other types of information, meaning that schemes which are likely to be in scope already have well developed publication capabilities, including websites.

23. It is also likely that due to the developing nature of this area, specifically in relation to the kind of information that is disclosed, the Government will periodically amend the publication requirements to ensure they reflect those developments.

24. It is therefore appropriate that the details of the form, cost and platform for disclosures, as conferred by section 41B(2) be subject to the negative resolution procedure, as this is largely an operational matter, focussing not on the substance of disclosures but the mechanism.

25. It is appropriate for guidance under subsection (3) to be prepared by the Secretary of State. As the guidance relates to legislative requirements, it is not considered necessary for it to be subject to a Parliamentary procedure.

New section 41C to the Pensions Act 1995, subsection (1) – Climate change risks: compliance

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: – Affirmative resolution procedure on first use, negative resolution procedure thereafter.

Context and Purpose

26. New section 41C provides the enforcement mechanisms, in that regulations made under powers delegated by section 41C will ensure compliance with regulations made under sections 41A and 41B.

27. Compliance powers conferred on "the Authority" (new section 41C(2)), which is defined in the Pensions Act 1995 as the Pensions Regulator, will cover enforcement powers in relation to both sections 41A and 41B, effective governance and relevant disclosure.

Justification for delegation

28. Delegating powers under section 41C is appropriate; it would not be possible to lay out an effective compliance regime in primary legislation without having laid regulations setting out what trustees and managers of occupational pension schemes will be required to do.

29. Subsections (2)(a) and (b) enable power to be given to the Pensions Regulator to issue compliance notices to ensure those with responsibility for complying with requirements laid out in sections 41A and 41B, are reminded of their obligations and of the potential consequences of non-compliance.

30. Subsection 2(c) enables power to be given to the Pensions Regulator to issue a penalty notice to those to whom it has already issued a compliance notice and, more broadly, to those who have contravened a provision within regulations laid under the powers delegated by sections 41A or 41B.

31. Subsection 2(d) enables power to be given to the Pensions Regulator to refer those to which it issues penalty notices under subsection 2(c) to the First-tier or Upper Tribunal in relation to the issue of a penalty notice or the amount of penalty.

32. This compliance regime is considered appropriate for delegation as the requirements which schemes would be obliged to comply with would not be clear until regulations under sections 41A and 41B have been determined.

33. Subsection (3) delegates power to the Secretary of State to determine the appropriate amount of a penalty in respect of failure to comply with regulations about climate change risk. The maximum level of penalty is, however, prescribed in subsection (4) and is set at £5000 for an individual or £50,000 in any other case.

34. The penalty regime is determined appropriate to delegate to secondary legislation as it will need to be proportionate to the requirements placed on managers and trustees, due to be determined after consultation.

Justification for procedure

35. The Government considers it appropriate to follow affirmative resolution procedure on first use of the powers in section 41C, as first use of this section will coincide with first use of the powers in section 41A, meaning that a higher level of scrutiny is appropriate for the compliance regime.

36. However, subsequent regulations are likely to focus on changes to the detail of the compliance regime, reflecting changes in the future information which trustees or managers will have to disclose. The Government therefore considers negative resolution procedure beyond the first use to be appropriate.

Schedule 11, paragraph 11A – new Article 41A to 41C to the Pensions (Northern Ireland) Order 1995 – Climate change risk

Power conferred on: Department for Communities

Power exercised by: Regulations made by Statutory Rule (Articles 41A(1), 41B(1) and 41C(1)); guidance (Articles 41A(5) and 41B(3))

Assembly Procedure: Confirmatory procedure on first use, negative resolution procedure thereafter (Articles 41A(1) and 41C(1)); Negative resolution procedure (Article 41B(1)); none (Articles 41A(5) and 41B(3))

37. Paragraph 11A of Schedule 11 inserts new Articles 41A, 41B and 41C into the Pensions (Northern Ireland) Order 1995. This provides for equivalent powers to those described for Great Britain (in new sections 41A, 41B and 41C of the Pensions Act 1995) to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Amendments 2 and 7: Transfers

Amendment to Clause 124: Exercise of right to cash equivalent

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure

Context and purpose

38. This amendment would extend the scope of the regulation making powers in clause 124 of the Pension Schemes 2020 Bill to unfunded public service defined benefits schemes. The amendment will remove the right of a member to transfer the cash equivalent of their accrued pension benefits out of an unfunded public service defined benefits scheme if there is a failure to satisfy the prescribed conditions in section 95(6ZA). The purpose of the amendment is to afford the same protection to members of unfunded schemes as members of other occupational pension schemes. The power to prescribe conditions by regulations made under section 95(6ZA) is not changed by this amendment.

Justification for delegation

39. The Government needs to be able to respond quickly to respond to the risks posed by fraudsters and scammers, to counter the threat they pose to pension savers. The Government intends to carry out a formal public consultation on the draft regulations made under section 95(6ZA) to make sure that they meet the policy intent, including to protect members who wish to transfer their accrued benefits from unfunded public service schemes.

Justification for the procedure

40. Regulations made under the Pensions Schemes Act 1993 are subject to the negative resolution procedure. This clause and the Government amendment to it will amend that Act. The Government therefore considers that the negative resolution procedure is appropriate for the clause as amended.

Amendment to Schedule 11 paragraph 12(2): Exercise of right to cash equivalent

Power conferred on: Department for Communities

Power exercised by: Regulations made by statutory rule

Assembly procedure: Negative resolution

41. This amendment extends the scope of the regulation making powers in Schedule 11 paragraph 12(2) which provides for an equivalent power to that described for clause 124 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Amendments 4 and 5: Charging controls

Schedule 3 – paragraph 24(1) Charging controls

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure on first use then negative resolution procedure

Context and Purpose

42. Schedule 3 (paragraphs 22 - 24) amends section 54(2) of and Schedule 18 (paragraphs 1 and 4) to the Pensions Act 2014. Schedule 18 paragraph 1 is being amended to clarify that regulations can be made under the powers in the Act to provide for controls on charges borne by members in collective money purchase schemes. Section 54(2) is being amended to provide that the first use of regulations under paragraph 1(1) or (3) of Schedule 18 in relation to collective money purchase schemes will be made by the affirmative resolution procedure.

Justification for Delegation

43. The Secretary of State has delegated powers to introduce controls on the charges which can be imposed on members of relevant pension schemes. These powers have already been exercised in relation to members of money purchase schemes. This amendment clarifies that the scope of the regulation making power encompasses collective money purchase benefit schemes introduced in this Bill.

Justification for Procedure

44. Inserted section 54(2)(g) of the Pensions Act 2014 provides that the first exercise of the powers in paragraph 1(1) or (3) of Schedule 18 in relation to collective money purchase benefit schemes should be by affirmative resolution procedure, and negative resolution procedure thereafter.

45. On first use the regulations will contain information about permitted charge structure requirements and the Government therefore considers that it is appropriate for such requirements to be subject to a higher level of scrutiny. This mirrors the current statutory approach for regulations under Schedule 18 paragraph 1, which power was exercised in the Occupational Pension Schemes (Charges and Governance) Regulations 2015. Subsequent revisions are likely to be less significant and therefore the negative resolution procedure is appropriate.

Schedule 6 paragraph 24(1) Charging controls – Northern Ireland

Power conferred on: Department for Communities

Power exercised by: Regulations made by statutory rule

Assembly procedure: Confirmatory procedure on first use then negative resolution

46. Schedule 6 paragraph 24(1) (which inserts section 51(4)(g) into the Pensions Act (Northern Ireland) 2015) provides for an equivalent power to that described for paragraph 24(1) of Schedule 3 to be exercisable in relation to Northern Ireland by the Department for Communities in Northern Ireland.

Department for Work and Pensions

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