PENSION SCHEMES BILL

POLICY BRIEFS

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COLLECTIVE MONEY PURCHASE BENEFITS
(Clauses 1 – 51)

1. Protecting employers from reclassification risks

Good occupational pension provision is beneficial to both workers and their employers. We know that a number of employers are interested in setting up a high-quality CDC scheme as a part of their recruitment and retention of staff. However, employers want and need certainty about their pension commitments, and especially about the future cost of these commitments.

Our first priority has always been to ensure that there is legal clarity about what a UK CDC scheme is and what providing one means for trustees, employers and members and potential members. We recognise that pension provision is a long-term commitment for an employer, and that any decision about the kind of scheme offered will require certainty about the potential obligations involved. This is why we are legislating for CDCs to be a form of money purchase benefits, which are outside the scope of both the employer debt requirements of the Pensions Act 1995 and the employer funding requirements of the Pensions Act 2004. The legislative framework will ensure that benefits under CDC schemes are subject to adjustment each year so they are in balance with the value of the assets the scheme holds. This prevents them from developing a funding deficit which the employer could then be required to make good.

We said in our consultation response[1] that 'we feel strongly that classifying CDC benefits as money purchase is necessary if we are to give employers the assurance they need that CDC schemes will not give rise to future employer liabilities to the scheme. Classifying CDC benefits as money purchase benefits is a key provision to ensure employers have confidence in our proposals […] We will also seek to legislate so that the definition of CDC is tightly drawn to enable employers and members to have clarity around liabilities and responsibilities. We will provide for regulations to assist in ensuring and maintaining that clarity should that prove necessary' (paragraphs 43-49). We are still committed to these principles and have drafted the legislation accordingly. The Bill makes it clear throughout that CDC benefits are intended

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789051/response-delivering-collective-defined-contribution-pension-schemes.pdf

to be money purchase benefits and that CDC schemes will not give rise to future employer liabilities.

Bill clauses and effect

Clause 2 (Qualifying benefits) defines qualifying benefits as ‘provided out of the available assets of the scheme’ and requires the rate or amount of the benefit to vary to achieve ‘a balance between the value of the available assets of the scheme and the required amount’. This clause makes it clear that benefits under a CDC scheme cannot give rise to a funding deficit.

Clause 6 (Amendment of definitions of “money purchase benefits” etc) and **Schedule 1** amend the definitions in legislation of ‘money purchase benefits’ to include CDC benefits in this definition. In particular, Schedule 1 amends the definition of ‘money purchase benefits’ in section 181(1) of the Pension Schemes Act 1993 to include ‘collective money purchase benefits’. This makes it clear that CDC benefits are a form of money purchase benefit, and together with amendments in Schedule 3 ensures that the neither the employer debt requirements of the Pensions Act 1995 nor the employer funding requirements of the Pensions Act 2004 can apply.

2. Protecting members against the risk of retrospective conversion of DB rights

We are aware that some Defined Benefit rights were converted into CDC rights in the Netherlands. Concern that the same thing could happen in the UK is understandable, and some stakeholders have expressed concern that Defined Benefit (DB) schemes and/or public service schemes could be retrospectively converted to CDC schemes. However, we are very clear that our proposals do not provide a backdoor to converting DB rights into CDC rights, and are not intended to encourage public service and/or DB schemes to convert their accrued benefits. The Bill expressly provides that a qualifying scheme ‘must not be a relevant public service pension scheme’. The Bill amends the subsisting rights provisions of the Pensions Act 1995 to prohibit modifications of a pension scheme which would replace DB rights with CDC benefits.

As now, an employer is within their rights to close an existing DB pension scheme to new accruals and to offer their workforce pensions on a different basis going forwards. While many employers remain committed to their DB schemes, it has become increasingly common for employers to close their DB schemes to new accruals and open a DC scheme in its place. CDC schemes should be seen in this context, as a new option for employers looking to develop their pension offering going forward, and not as a threat to existing pension accruals.

Bill clauses and effect

Clause 24 (Rules about modifying schemes) prevents non money purchase benefits from being converted into CDCs.

Clause 3 (Qualifying schemes) precludes public service pension schemes from being qualifying schemes.

3. Future extension to cover multiple employers and commercial provision

We are delighted by the scale of support we have seen for a wide range of different CDC scheme structures, including master trust and multi-employer schemes, and can see that such structures could benefit both employers and employees. However, the legislation as drafted limits CDC schemes to single or connected employer models such as the proposed RM scheme. This is because CDC schemes will be a very new kind of pension scheme, and, as we said in our consultation response[2], we want to work slowly and carefully to get the regulatory framework for these different scheme structures right (paragraphs 67-68). The legislation is therefore limited to single or connected employer CDC schemes such as the proposed RM scheme, but is drafted so it can be extended to other types of pension scheme structures through secondary legislation.

We are not opposed in principle to the idea of commercially operated schemes. However, we would need to look very carefully at the way any for-profit model was structured. The assets of a scheme are intended to provide members with a variable income

[2]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789051/response-delivering-collective-defined-contribution-pension-schemes.pdf

in retirement: any scheme run to generate a profit for investors would be the subject of ongoing scrutiny from the Pensions Regulator, and would need to be able to demonstrate that it was run for and in the interests of members.

The Financial Times of 11th September 2019 contained a proposal for a commercially backed, buffered, decumulation-only CDC scheme. Decumulation-only structures would seem to offer some interesting potential; however, we are not persuaded by the idea of a buffered scheme structure as proposed in the Financial Times article. A buffered scheme will use its reserves to smooth over small variations in fund value, so that members do not see small changes in their pension income from year to year. However, the scheme needs to fund a sizeable cash surplus as a buffer, and this can erode scheme assets. In particular, a commercial buffered model could be open to concerns that members would need to fund both the buffer and investors' profits at the expense of their own benefits. We would therefore need to look very carefully at any concrete proposals.

Bill clauses and effect

Clause 3 (Qualifying schemes) limits the use of qualifying schemes to single employers or connected employers.

Clause 47 (Power to extend definition of qualifying schemes) allows the Secretary of State to make regulations using the affirmative procedure to remove these restrictions, opening CDC scheme use up to multiple employers and master trusts. Clause 47 (3) then allows regulations to amend the authorisation and ongoing supervisory regime in relation to such schemes to ensure that the regime works effectively for these other forms of CDC provision.

Regulatory approach

We will work closely with the Pensions Regulator and prospective providers to develop the authorisation and supervision regime for multi-employer CDC schemes, and will consult publically on the best ways to regulate for this regime. The regulations will then be subject to full Parliamentary debate.

Clause 51 (2) (Regulations) allows the regulations made under Part 1 of the Bill to make different provision for different purposes.

This will allow us to make different regulations to provide for different CDC scheme structures if necessary. For example, clause 51 (2) would allow us to introduce a different regulatory framework for the way multi-employer CDC schemes must calculate and adjust benefit values compared to single employer CDC schemes, should this prove necessary.

4. The Dutch experience

Following the financial crisis in 2008, some Dutch CDC pensions in payment had to be reduced in value because of the falling discount rate used to calculate liabilities and the reduction in value of scheme assets. On average, Dutch pensions in payment fell by around 2% following the financial crisis. Some funds cut by as much as 6% over a few years.

Annuity costs in the UK also increased following the financial crash for similar reasons, meaning that UK workers looking to secure an annuity received a significantly reduced pension income in comparison to those retiring in the years before 2008. UK Defined Benefit schemes also saw significant increases in costs, again due in a large part to falling discount rates, which in turn led to increased funding deficits and costs to employers.

The Dutch have made some changes to some large CDC pension plans – although these are mainly government-run schemes rather than private sector. Some schemes have been made more "individualised", allowing people to transfer their pensions more easily. But the Dutch are not abandoning CDC as a concept.

We looked carefully at the Dutch experience while developing the policy for UK CDC schemes, and have worked to mitigate some of the problems that arose under the Dutch system. For example, the Bill's provisions on valuation and adjustment mean that schemes will have to move to adjust for any shortfall in funding straight away, and not store up problems for the future. We also intend that regulations will impose very clear communication requirements on CDC schemes so that members are aware that benefits will be adjusted, including a possibility of benefit cuts, from the outset.

5. Addressing intergenerational unfairness

Concern around intergenerational unfairness was raised by many respondents to our consultation on collective money purchase schemes; we made clear in our consultation response[3] that 'any increase or decrease in benefits (both payable to pensioner members and credited to non-pensioner members) resulting from scheme performance or changed assumptions should be applied across the entire membership' (paragraph 129).

We have been very clear that all CDC schemes will need to take steps to ensure that there is no difference in treatment between different cohorts/age-groups of scheme members when applying benefit adjustments. A scheme's approach to adjusting benefits must be clear and unambiguous in the scheme rules, be communicated clearly to members, and must be based on a mechanism set out in scheme rules, rather than trustee discretion. We will ensure that both benefits in accrual and pensions in payment must be adjusted to preserve the collective nature of the scheme; all members - pensioners, active and deferred - who have saved collectively for a pension must share the current effects of both investment out-performance and under-performance. Schemes will not be able to use future contributions to offset current underperformance, or to award different amounts of increase/decrease to different cohorts of members.

The proposed RM scheme is designed on the basis of flat-rate contributions regardless of members' age. Some commentators have argued that flat-rate contributions will lead to unfair cross-subsidisation, transferring funds from younger members to retired members should the former transfer out of the scheme after a short spell of employment. We do recognise that younger members in CDC schemes may get less value from flat-rate contributions if they decide to leave the scheme and transform their credits within the scheme into a cash equivalent. It is important that members understand the implications of their decisions, so we envisage that the impact of transferring out of the scheme before retirement must be communicated to the membership. It is important to remember, however, that CDC schemes are intended to pay out a variable income stream in

[3]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789051/response-delivering-collective-defined-contribution-pension-schemes.pdf

retirement, not a cash sum in the short term, and are designed accordingly.

Bill clauses and effect

Clause 2 (Qualifying benefits) refers to ‘members of the scheme collectively’ and makes no distinction between different groups/classes/cohorts of members. The clause is intentionally drafted to reflect the intention that a scheme should not differentiate between different cohorts of members.

Clause 3 (Qualifying schemes) (8) and (9) ensure that, if a scheme provides different types of qualifying benefit with different characteristics, these different benefits must be in separate sections. This prevents cross-subsidisation between members who are accruing rights to different types of qualifying benefit.

Clause 18 (Calculation of benefits) allows the Secretary of State to make regulations about the content of scheme rules.

Clause 21 (Certification that actuarial valuation prepared in accordance with scheme rules) requires the scheme actuary to certify that the benefit calculations are in accordance with the scheme rules (and therefore meet the requirement of the regulations made under clause 18).

Regulatory approach

Our intention is that regulations made under **clause 18 (4)** will require any increase or decrease in benefits (both payable to pensioner members and credited to non-pensioner members) resulting from scheme performance or changed assumptions to be applied across the entire membership. Regulations made under this power will override any scheme rules where there is a conflict between the two. Our intention is that regulations made under this power will also be used to ensure that schemes cannot apply different adjustments to different benefit cohorts, for example to reduce benefits to pensioners by a lower amount than that applied to benefits in accrual.

6. Clause 18 override powers to prescribe the content of scheme rules for calculating benefits and to require or enable trustees to use certain methods or assumptions

Clause 18 requires all CDC scheme to have rules about how the rate or amount of benefits under a scheme are to be determined. The rules must set out:

- how the scheme's assets are valued;
- how the amount required to provide members' benefits is calculated;
- how members' benefit values must be adjusted to ensure that they balance with the scheme's assets.

These rules will be the basis of all UK CDC schemes. The way in which an individual scheme calculates and adjusts benefit values each year will be of crucial importance to the long-term stability of the scheme as a whole, and to individual member outcomes in the long and short term.

18(4) gives the Secretary of State a regulation-making power to prescribe the way in which the scheme rules for calculating benefits must operate. Clause 18 (6) allows these regulations to make provision for alternative methods and assumptions when calculating CDC benefits and to 'require or enable' trustees to decide what methods and assumptions are to be used in making the calculation. 18(7) gives an override power so that regulations made under this clause would override scheme rules. The regulations may make provision which applies to rights already accrued in a CDC scheme.

Concern has been expressed that Government could therefore use regulations to make changes to the basic principles underpinning a CDC scheme's financial model, potentially leaving it financially unviable. Concern has also been expressed that changes to the regulations under this clause could have the effect of re-designing an existing collective money purchase scheme – potentially years down the line – by overriding what the scheme rules say about the methods and assumptions to be used in calculating benefits. If this happened, it could undermine the actuarial modelling on which the initial design was based and change the deal offered to members when joining the scheme. It could also affect the intergenerational balance of the scheme.

It has also been suggested that 18 (6) could enable a scheme's trustees to unilaterally change the way the benefit calculation is made over the head of the employer and the scheme actuaries.

We are very clear that this is not the purpose of the power to make regulations under clause 18. The long-term financial stability of the UK's pension system is of crucial significance to the UK's economy, as well as to the lives of the UK's workforce as individuals, and any future use of this regulatory power will need to be approached with care. We would not want to use the powers under clause 18 in a way which would destabilize existing schemes that are operating well, and we would expect Parliament to reject any attempt by a future Government to use them in such a way. The regulation making power is subject to the affirmative resolution procedure and therefore subject to Parliamentary debate. We will also consult prior to the use of this power.

It is intended that a key purpose of the regulations under this clause will be to require scheme rules to take account of the need to ensure intergenerational fairness by calculating benefit adjustments in the same way for all members, with no difference in the way different cohorts of members are treated, and prevent schemes from making different adjustments to active and/or deferred members' benefits compared to retired members' benefits (see 'Addressing intergenerational fairness' above).

Subsequent use of the power to supplement or amend these regulations is intended only if Government considers it to be essential - for example, if it is necessary to ensure that a scheme's trustees act in particular ways when making decisions on the method and assumptions used for calculating benefits, where the methods used by the scheme rules would otherwise be likely to produce perverse outcomes or create unfairness between classes of members, or where a scheme is attempting to exploit a regulatory loophole for example in order to make different adjustments to different cohorts' benefits.

Without this power there is a risk that the Government would be unable to stop schemes operating on principles that run contrary to the basic principles underlying the provisions in this part of the Bill.

Regulatory approach

We will consult with a variety of stakeholders, including actuaries and pensions lawyers, before we draw up the draft regulations governing scheme rules around calculating benefit values and adjusting benefits.

We intend that regulations will require schemes to take account of intergenerational fairness when developing and applying scheme rules; will require CDC schemes to calculate benefit adjustments in the same way for all members, with no difference in the way different cohorts of members are treated; and will prevent schemes from making different adjustments to active and/or deferred members' benefits compared to retired members' benefits.

Clause 51 (Regulations) subsection (2) allows the regulations made under Part 1 of the Bill to make different provision for different purposes. This will allow us to make different regulations to provide for different CDC scheme structures if necessary. For example, clause 51 (2) would allow us to introduce a different regulatory framework for the way multi-employer CDC must calculate and adjust benefit values compared to single employer CDC schemes, should this prove necessary. We can therefore ensure that regulations intended to safeguard members of a particular scheme or type of scheme only apply to this scheme/type of scheme and not to other schemes.

Mitigating risks to members arising from a failure to carry out the benefit adjustments according to scheme rules

It is understandable that scheme trustees might be tempted to consider not making required benefit cuts, especially to pensions in payment. However, this would create inequalities, and could potentially destabilise the scheme's finances.

A scheme will not be able to simply fail to make necessary adjustments. As part of the authorisation process, the Pensions Regulator will need to be satisfied that the scheme rules for benefit adjustments operate in a way that is consistent with the Bill. The benefit calculation and adjustment mechanism must be clearly set out in a scheme's rules, and trustees will not be able to choose whether or how to apply these adjustments. Trustees will be required to notify the Pensions Regulator as soon as is reasonably practicable if they have not made the adjustment required by the

scheme rules. The Pensions Regulator can then intervene by ordering the trustees to take all steps necessary to correct their actions.

Bill clauses and effect

Clause 18 (Calculation of benefits) requires all CDC schemes to have clear rules specifying how benefit adjustments must be made. Regulations under clause 18(4) can make provision about the content of the rules. If necessary, regulations made under 18 (4) can override the scheme rules to ensure that the adjustments accord with the regulations.

Clause 22 (Benefit adjustments) requires the trustees to notify the Pensions Regulator as soon as reasonably practicable if they have not made the correct adjustment. The Pensions Regulator can apply a civil fine to the trustees if they fail to give this notification. The Pensions Regulator should therefore be made aware of the situation at the earliest opportunity, and be able to take action.

Clause 23 (Powers of the Pensions Regulator) allows the Pensions Regulator to intervene if a scheme has not made the correct benefit adjustment. This includes power to require the trustees to make the correct adjustment and take all necessary steps to remedy any adverse effects arising from their initial actions. The Pensions Regulator can fine the trustees if they do not follow its directions.

Clause 13 (Viability report) requires trustees to prepare a document explaining the design of the scheme and the reasons that they consider the design to be sound (a “viability report”), They must also obtain a certificate from the scheme actuary certifying that, in the actuary’s opinion, the design of the scheme is sound (a “viability certificate”). The scheme actuary may not give a viability certificate unless satisfied that the scheme has rules that meet the requirements of clause 18 and any regulations under it.

7. Environmental, social and governance (ESG) factors when making investment decisions

Trustees should consider all financially material risks when considering a CDC scheme's investment objectives for their members, including ESG factors. The Pension Schemes Act 1995 requires all occupational pension schemes to have a statement of investment principles, which includes their policy on ESG issues, including climate change. This is in line with the conclusions of the Law Commission's review of fiduciary duty. The Pensions Regulator has also published guidance for trustees on the consideration of ESG factors.

Ultimately, however, a scheme's investment decisions are a matter for the trustees having obtained and considered proper advice. Trustees are required to act in the best interests of scheme members, and investment decisions need to be made on this basis as well as taken in accordance with the legislation and the statement of investment principles.

Outline of regulatory framework

Occupational pension schemes are required to have a policy on financially material considerations, including those relating to ESG; the stewardship of the investments; and their policy on taking account of members' views.

Defined contribution schemes offering money purchase benefits are required to publish these policies, and to report annually on how they implemented these policies. This will ensure that the Statement of Investment Principles is a real guide to schemes' investment strategies, and that it is acted on.

These regulatory requirements will also apply to CDC schemes as they are occupational pension schemes offering money purchase benefits.

8. The charge cap

A charge cap for money purchase pension schemes has been in force since April 2015 to protect individual scheme members from high charges. This cap has been a success – average charges in pension schemes used for automatic enrolment are now between 0.38% and 0.54%, depending on scheme type.

Our intention is that savers in CDC schemes will receive the same level of protection from the CDC charge cap as members of individual defined contribution schemes under the existing cap. We intend to introduce an annual charge cap set at 0.75% of the value of the whole CDC fund, or an equivalent combination charge. The CDC charge cap will need to reflect the collective nature of these schemes.

The CDC charge cap will cover pensioner members in receipt of payments from the scheme. It would be unreasonable to provide the protection of the CDC charge cap to members while they are saving only to remove it when a member reaches retirement age. Extending the protection of the CDC charge cap to pensioner members reflects the unique nature of collective money purchase schemes and the fact that these schemes provide members with a variable pension income in retirement. This is not the case with individual defined contribution schemes, where members effectively cash in their individual pot and choose one of the many different retirement products currently available in the pensions market.

We will ensure that members of CDC schemes also benefit from the existing charge control measures such as the member-borne commission ban and early exit charge cap.

Protecting members from higher charges during triggering events

If a CDC scheme experiences operational difficulties that result in a triggering event (an event which may result in the scheme needing to wind up or convert to a closed scheme) it is possible that the scheme's administrative costs may increase. These costs are likely to be higher than those in a traditional DC scheme given CDC schemes' complexity and need for actuarial input. It is reasonable that CDC members are safeguarded against such

charges so we intend to prohibit an increase in member-borne administration charges during the triggering event period, and on new charges being applied.

These protections will resemble those in place for members of master trust schemes, as set out in the Pensions Schemes Act 2017.

Bill clauses and effect

Schedule 18 of the Pensions Act 2014 provides for restrictions on the charges which can be levied on members of money purchase schemes.

Clause 45 (prohibition on increasing charges etc during triggering event period) applies to CDC schemes during a triggering event period and prevents them from increasing member charges beyond those specified in the implementation strategy as a part of the trustees' plan to protect members following a triggering event.

Clause 14 (Financial sustainability authorisation requirement) ensures that, in order to be satisfied that a CDC scheme is financially sustainable, the Pensions Regulator must be satisfied, amongst other things, that the scheme has sufficient financial resources to meet the costs of resolving a triggering event without imposing additional costs on members.

Regulatory approach

The Occupational Pension Schemes (Charges and Governance) Regulations 2015 sets the charge cap at 0.75% of funds under management within the default arrangement, or an equivalent combination charge, and applies to all scheme and investment administration charges excluding transaction costs and a small number of other specified costs and charges.

9. Requirement to seek the Pension Regulator's permission before converting to a closed scheme

Schemes may be designed so as they can run on as 'closed schemes' (closed to new contributions, new members or both) where particular circumstances and requirements are met, for example in the event of employer insolvency. The initial decision to include a closed scheme option in scheme rules must be a matter for the establishing employer, as will scheme-specific rules about the circumstances in which it would be triggered. However, the decision to convert a CDC scheme to closed scheme status could have consequences for the scheme membership. We are therefore prohibiting trustees from closing a scheme to new accruals or new members without formal approval from the Pensions Regulator.

Concern has been expressed that clause 38(6) could prevent an employer from terminating its obligation to pay contributions to an existing collective money purchase scheme, even if its scheme rules permit and the employer is contractually entitled to do so.

Employers are, and should be, free to decide the pension arrangements they provide for employees from time to time, subject to legislation, consultation and employee contracts. Where an existing collective money purchase scheme seeks to run on as a closed scheme in accordance with its most recent continuity strategy, we anticipate that approval should be generally given.

The Pensions Regulator will issue guidance which makes clear that its approval will be generally given in those circumstances, and that it will put in place processes to ensure that such approval is given without delay.

However, the requirement to seek the Pension Regulator's permission before converting a CDC scheme to closed status is an important safeguard to ensure scheme closure is carried out properly and with due regard to the member outcomes. It is important that the Pensions Regulator is able to consider whether the scheme is sustainable on a closed basis, and whether the conversion resolves any event in the triggering events table that has occurred, before the scheme is closed. The Pensions Regulator will also need to be satisfied that the scheme continues to meet the authorisation criteria, including those in respect of

sustainability and viability, as a closed scheme, and may need additional evidence to satisfy itself of this.

If the Pensions Regulator is not satisfied, it can take steps to direct the scheme to discharge all members' accrued rights to benefits and wind up in accordance with the provisions set out in clause 36.

If a scheme is permitted to operate on a closed basis, it will remain under the oversight of the Pensions Regulator in order to ensure that it continues to meet the required standards and that members are protected.

Employers and the trustees could speed up the Pension Regulator's decision-process by engaging with the Pensions Regulator before making a decision to close the scheme.

Bill clauses and effect

Clause 38 (Continuity option 3: conversion to closed scheme) sets out the framework which all schemes must follow when looking to close to new members and/or contributions. The clause provides a structure for obtaining the Pensions Regulator's agreement to operate on a closed scheme basis, and prohibits trustees from operating a CMP scheme on a closed basis until the trustees have received a notification from the Pensions Regulator.

10. Employer obligations during scheme wind up

Winding up a CDC scheme is likely to be a complex process, with potentially significant implications for members and the establishing employers.

It is important that there is adequate planning and control of the wind up process so that the overall process is orderly and managed. A disorderly wind up could lead to negative outcomes for all parties, especially the membership. We therefore need to ensure that there is a structured and monitored approach to dealing with such an event, and for moving the situation forward for the benefit of the members. Clause 36(6) provides a power to make regulations which will facilitate the discharge of liabilities as a part of a scheme wind up. This includes provisions "conferring rights" on beneficiaries or employers, and provision "imposing

duties" on employers or trustees. We are aware that concern has been raised that this power could be used to impose financial obligations on employers, requiring them to contribute to collective money purchase schemes over and above those set out in the scheme rules - for example, that it could subject employers to financial obligations on winding up such as apply (under section 75 of the Pensions Act 1995) to defined benefit schemes.

We are clear that this is not the purpose of the power to make regulations under clause 36(6), and that the power will not be used in such a manner.

A fundamental characteristic of collective money purchase schemes is that the rate of employer contributions can be fixed at the outset and that benefits are payable only from the available assets of the scheme. As we made clear in our consultation response[4], it is a basic principle of our work on CDC schemes that employers will not be required to make any additional contributions to the scheme: 'we feel strongly that classifying CDC benefits as money purchase is necessary if we are to give employers the assurance they need that CDC schemes will not give rise to future employer liabilities to the scheme. Classifying CDC benefits as money purchase benefits is a key provision to ensure employers have confidence in our proposals […] We are therefore absolutely clear that we can only proceed with legislation on the basis that CDC benefits are classified as a type of money purchase benefits' (paragraphs 44-45). Clause 6 and schedule 1 insert 'collective money purchase benefits' into the legislative definitions of 'money purchase benefits'. We would not use regulations to undo this basic principle, and do not believe that regulations made under this clause could unravel the 'money purchase' classification of CDC schemes.

Regulations made under 36(6) are intended to be used to place duties on an employer in relation to other matters, for example to indicate the scheme it wishes to transfer its current workforce to in compliance with its Automatic Enrolment obligations or to make certain notifications. We might also need to require the employer to make good any monies it owes to the scheme to cover administrative costs.

[4]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/789051/response-delivering-collective-defined-contribution-pension-schemes.pdf

These sorts of technical requirements are also in place for individual defined contribution schemes. It is important that employers involved in any kind of pension scheme can be required to meet such obligations to the scheme in the event of wind-up.

11. Ensuring members of CDC schemes can access pension freedoms

Under the pensions freedoms, members with money purchase benefits may access them flexibly, including accessing money as lump sums subject to their scheme rules. For some people, being able to access a cash lump sum is beneficial, and we are clear that members of CDC schemes should be able to take advantage of such flexibilities, if their scheme’s rules accommodate this. If their scheme rules do not offer such access as an option, members will have the choice to transfer out of their CDC scheme into a DC scheme in order to take advantage of the pensions freedoms.

While many people value the flexibility that individual DC schemes give them, we also know that others value the simplicity of a default income in retirement such as that provided by CDC schemes, and this is why it will be at the election of the individual member whether to take advantage of the pension freedoms

Bill clauses and effect

Clause 25 (Transfer rights) introduces transfer requirements for CDC schemes. Once a member submits a transfer application to another pension schemes, the trustees will be required to give the member a written estimate of the cash equivalent value of their accrued benefits. Members will then have the right to transfer their cash equivalent to a defined contribution scheme where they will be able to access their savings flexibly. Further information on transfer rights is contained below in the ‘Advice and guidance on transfers out of a CDC scheme’ section of this document.

12. Advice and guidance on transfers out of a CDC scheme

Members of both defined contribution and defined benefit schemes have a right to transfer their money purchase and/or non-money purchase benefits to another pension scheme up to the point of retirement. This right will be extended to members of CDC schemes. As CDC benefits are a sub-set of money purchase benefits, the transfer process for CDC scheme members will largely follow the transfer process in place for members of defined contribution schemes with money purchase benefits.

As with the existing money purchase process, scheme rules and regulations will set out how a CDC member's share of the collective assets (the cash equivalent) will be calculated. Reflecting the pooled nature of these schemes, the calculation will take into account any valuation of scheme assets or adjustments that have been made. This should help ensure that the calculation is fair and takes into account the interests of both the individual member and the remaining members in the CDC scheme. The calculation will require actuarial input.

Currently, the six-month deadline for trustees to facilitate a money purchase transfer is thought to be appropriate for CDC transfers. This time limit commences from the date of the member's application to transfer.

Guidance

Members of CDC schemes will be able to access guidance from the Money and Pensions Service (MAPS) in the same way as members of other occupational pension schemes. This includes seeking guidance from Pensions Wise if they are considering transferring their pension rights to a defined contribution scheme in order to access their savings flexibly under the pension freedoms. It is also envisaged that the communication the trustees will send to the member, containing the estimated value of their cash equivalent, will point to the guidance available from MAPS. It should also outline to the member the potential implications of transferring out of the CDC scheme before normal retirement age.

Advice

Members with guaranteed benefits, which includes defined benefit pensions, worth more than £30,000 are required to take independent financial advice before they can transfer their pension rights. This ‘advice requirement’ was introduced to help ensure members understood the implications of giving up such potentially valuable guarantees. Because CDC benefits offer a retirement income stream for life (all be it a variable one), it has been suggested that members looking to transfer out of a CDC scheme should also be required to take independent financial advice.

CDC provision is new and very different to the defined benefit provisions which the existing advice requirement covers. It will take time for specialist advisers to develop expertise, and for members’ funds to grow to a certain level, for example, more than £30,000, where an advice requirement might be appropriate. We will monitor how CDC provisions beds-in with a view to bringing forward an advice requirement proposal for consultation if needed.

In the meantime, it is planned that CDC schemes will provide their members with appropriate information to help them understand how their scheme works, including information on the implications of transferring out of the scheme before normal retirement age. Clause 15, for example, requires all CDC schemes to have adequate system and processes for communicating with members.

Bill clauses and effect

Clause 25 (Transfer rights) amends the Pension Schemes Act 1993 to extend the right that members of existing occupational pension schemes have to transfer their pension savings to another pension scheme to members of CDC schemes.

Clause 25 also amends the Pensions Schemes Act 1993 to introduce a three-weeks ‘cooling off’ period from the initial request by the member to transfer out of the CDC scheme. This will help ensure that members have the time to think carefully about the implications of transferring out of a CDC scheme. While converting their accrued benefits into a cash lump sum may be the best retirement outcome for some people, it is important to ensure that this decision has been made with due consideration of all circumstances and is genuinely in the member’s best long-term

interests. During this period, trustees will not be able to facilitate the transfer request without the written consent of the member.

Outline of regulatory framework

Clause 25 provides a power for regulations to be made to amend the six-month deadline for facilitating transfer requests to a longer period. This ensures flexibility if it becomes apparent following the establishment and experience of running these schemes that the trustees need more time to carry out the transfer requests, for example, because more time is needed to accommodate the actuarial input required for the calculation of the member's share of the pooled assets.

THE PENSIONS REGULATOR: Contribution Notice *(Clauses 103 - 106)*

The Pensions Regulator (TPR) has a suite of powers, including the power to issue Contribution Notices under section 38 of the Pensions Act 2004 (CNs) which enable it to take action where an act or failure to act has occurred which is detrimental to a Defined Benefit (DB) pension scheme.

A CN is a fault-based mechanism by which TPR can issue a demand to person to pay a set amount of money where a person was party to an act, or failure to act, which had a particular main purpose to avoid a liability to the scheme or which was materially detrimental to scheme members. The sum specified in a CN can be up to the total amount of the actual or hypothetical debt (as set out in section 75 of the Pensions Act 1995) due to the scheme at the time the act or failure to act occurred (the “shortfall sum”).

Targets of CNs, including the sponsoring employer, or person(s) connected or associated with the employer, are required to pay a prescribed sum to the scheme, or in some circumstances, to the Pension Protection Fund (PPF). To issue a CN, TPR must consider, amongst other things, that it is reasonable for the target to pay the sum specified in the CN. TPR can start the procedure seeking a CN up to six years after an act, or failure, took place.

Rationale behind changes

TPR’s CN regime is generally fit for purpose. However, following some CN cases, it has become apparent that changes to the current regime are necessary to ensure that the regime continues to protect DB scheme members’ savings. Following consultation with TPR and the pensions industry, it is clear that the existing CN regime is at times unclear and leads to situations in which parts of the existing regime does not sufficiently deter wrongdoing, which is putting scheme members’ savings at risk.

What changes are being made

Changes to the CN regime as introduced in Clauses 103, 104, 105 and 106 of the Pension Schemes Bill will enhance the security of DB scheme members’ pensions by tightening the rules against abuse of DB schemes, providing greater clarity around the meaning of the legislation

and supporting TPR with their ambition to be “clearer, quicker, tougher”. The changes include:

(i) Clause 103: Adding two additional tests under which TPR will be able to issue a CN where the employer covenant is weakened. These are the “Employer Insolvency Test” and the “Employer Resources Test”.
(ii) Clause 104: Adding two additional factors which TPR must consider (where relevant) when assessing whether to issue a CN. These factors require TPR to consider, if the act or failure to act was a notifiable event, any failure of the person to comply with their duty to notify TPR and the actual or potential impact of the act or failure to act on the value on the scheme’s assets or liabilities.
(iii) Clause 105: Changing the point in time at which the shortfall sum of a CN is calculated, so that it is closer to the point of determination.
(iv) Clause 106: Introducing a time-frame for compliance with a CN so that the new sanctions for non-compliance with a CN can take effect. For further information about the new sanctions for non-compliance with a CN, please see the Sanctions Policy Brief.

Policy considerations

The main policy considerations during the development of the changes to the CN regime have been to ensure that the new legislation: (i) makes the CN regime clearer and easier to understand, (ii) supports TPR with its ambition to be a “clearer, quicker, tougher” regulator, and (iii) maintains an appropriate balance between improving the protection of scheme members’ benefits and ensuring that the measures are proportionate to business.

The Government is clear that businesses must be allowed to make the right decisions to allow them to develop and grow, and it is evident that the majority of employers want to do right by their scheme. However, we must ensure that regimes like the CN sufficiently protect members’ pensions from the minority who are willing to put them at risk.

Whilst the measures included in the Bill do strengthen the CN regime, there are a number of existing safeguards for potential targets included in the regime. These include: (i) a voluntary clearance procedure, (ii) the

issuing of a CN is subject to the standard procedure (which gives targets the right to make representations in front of an independent panel and to refer to the Upper Tribunal), (iii) requirements for TPR to issue a code of practice in relation to the existing “Material Detriment Test”, (iv) a statutory defence for the existing “Material Detriment Test”, and (v) a requirement for the issuing of a CN to be reasonable.

These safeguards will continue to apply to the CN regime, and where appropriate new safeguards have been included, for example, with the accompanying statutory defences for the new “Employer Insolvency Test” and “Employer Resources Test.”

Regulation making powers

The changes to the CN regime include two regulation making powers. These are included in Clause 103, and are part of the new “Employer Resources Test”. These regulation making powers allow the Secretary of State to prescribe what constitutes the resources of the sponsoring employer, and how those resources are to be determined, calculated and verified.

The information to be included in regulations under these powers is technical in nature. It is the intention to conduct further consultation with the industry around the detail of these regulations, which is anticipated to take place later this year. Furthermore, schedule 7 to the Bill, which contains minor and consequential amendments as a result of the clauses in Part 3 of the Bill, includes a consequential amendment to require TPR to produce Codes of Practice for the two new CN tests. This will ensure that the industry is clear as to how TPR intends to use the new tests.

THE PENSIONS REGULATOR: Sanctions *(Clause 107)*

Rationale behind changes

The Pensions Regulator's (TPR's) existing sanctioning powers do not sufficiently deter people from engaging in conduct which puts pension schemes at risk. The existing criminal offences target only a limited list of breaches and existing financial penalty amounts are set so low as to only be an effective deterrent for low-level breaches rather than more serious ones.

The intended effect of the measures as introduced in the Pension Schemes Bill is to improve the security of members' pensions by (i) introducing additional deterrents in order to encourage compliance with legislative and regulatory requirements, (ii) enabling TPR to react in a more efficient and proactive way when wrongdoing occurs, and (iii) appropriately punishing those who engage in conduct which puts pension schemes at risk.

What changes are being made

The Pension Schemes Bill includes a number of clauses which strengthen TPR's sanctioning powers. This includes the creation of new criminal offences and financial penalties, as well as the widening of existing sanctions. A full list of the changes is included in Annex A.

The new sanctions as introduced in Clauses 106, 107 and 115 are designed to reduce the potential for abuse and wrongdoing within the occupational pensions industry. The new sanctions are:

- (i) Clause 106: A new criminal offence for non-compliance with a Contribution Notice (CN).
- (ii) Clause 107: Two new criminal offences for avoidance of employer debt and conduct risking accrued scheme benefits.
- (iii) Clause 115: A new financial penalty of up to £1 million. This clause applies to a number of provisions included throughout Part 3. For further details, please see Annex A.

Policy considerations

The main policy consideration during the development of the new sanctions has been the balance between improving the protection of scheme members' benefits and ensuring that the measures are proportionate to business.

The Government is clear that businesses must be allowed to make the right decisions to allow them to develop and grow, and it is evident that the majority of employers want to do right by their scheme. However, we must ensure that there are sufficient safeguards to protect members' pensions from the minority who are willing to put them at risk.

Consideration has been given to the formation of the new sanctions. Whilst doing so, the balance between increased deterrents and protection for members, minimising any negative impacts on industry, and ensuring that the new sanctions are in line with the wider statute book has been the main priority.

When establishing the three new criminal offences, consideration was given to the level of punishment that should be able to be imposed. It was deemed that an unlimited fine would be proportionate as this would ensure that there would be sufficient deterrents against non-compliance with a CN and conduct which puts pension schemes at risk.

Furthermore, by not specifying a minimum or maximum amount, this would enable the fine issued to be a reasonable amount based on all the circumstances of the case in question.

Consideration was also given to whether the offences should allow for imprisonment. When considering the new offence for non-compliance with a CN, it was deemed that it would not be proportionate for imprisonment to apply for non-compliance with a debt. However, when considering the two new criminal offences for conduct which puts pension schemes at risk, it was deemed that imprisonment would be proportionate as the conduct in question would have been wilful or reckless. When considering the potential sentence lengths, it was deemed that a maximum length of 7 years, which is in line with the offence for insider dealing, would provide sufficient deterrent whilst also enabling for the sentence

length imposed to be a reasonable length based on all the circumstances of the case in question.

When establishing the new up to £1 million financial penalty, consideration was given to the level of the penalty. The level at which the new penalty is set needs to be proportionate for both individuals and businesses of different wealth levels. It should also be set at an appropriate level for a wide range of behaviours, such as non-compliance and the provision of false information. This approach also supports TPR's aim to be a 'clearer, quicker, tougher' regulator.

Additionally, the new penalty needs to provide a stronger deterrent than the existing penalty in section 10 of the Pensions Act 1995, which allows for a maximum penalty of £5,000 to be issued against individuals and £50,000 to be issued against businesses. The new penalty also needs to work alongside the new criminal offences for non-compliance with a CN and conduct which puts pensions schemes at risk, under which an unlimited fine can be issued.

Adopting a similar approach to the Financial Conduct Authority's (FCA) approach based on turnover, was considered and discounted. It was deemed that providing a fixed maximum level for the new penalty provided a better balance of the considerations previously outlined. When considering what the maximum penalty amount should be, there were no clear comparators. However, it was deemed that it would be proportionate for this to be in line with the average penalty amounts issued by the FCA against individuals. Removing one extreme case since 2016/2017, this average amount has been less than £1 million.

Setting the maximum of the new financial penalty at a maximum of £1 million provides for a balance of the key considerations and also enables for the penalty amount imposed to be a reasonable amount based on all the circumstances of the case in question.

Regulation making powers

Regulation making powers for the new sanctions have been included in clauses 107 and 115.

In clause 107, affirmative regulation making powers have been taken to prescribe schemes or types of pension schemes to which the offences and new financial penalty provisions will not apply. This is needed to enable the Secretary of State to fine tune how the offences and financial penalty provisions apply and ensure that they only target the types of schemes most at risk. This would also allow the Government to respond to any changing and emerging risks to pension schemes.

In clause 115, an affirmative regulation making power has been taken to enable the Secretary of State to increase the maximum amount of the penalty above the current maximum of £1 million. The power will provide the Secretary of State with the necessary flexibility to ensure the penalty remains at an appropriate level taking into account inflation, other wider economic factors, and the fining practices by other regulatory bodies. This power reflects existing provision in relation to TPR’s existing power to issue civil penalties under section 10 of the Pensions Act 1995.

THE PENSIONS REGULATOR: Collecting Information *(Clauses 108-109)*

Introduction

Clause 108 amends section 69 of the Pensions Act 2004. Section 69 of the Pensions Act 2004 requires events that are set out in secondary legislation in relation to an occupational pension scheme and in respect of the sponsoring employer to be notified to the Pensions Regulator, unless the Regulator directs otherwise. This requirement falls to trustees and employers respectively.

Clause 108 replaces the existing low level financial penalty (section 10 of Pensions Act 1995) for non-compliance with the obligation to notify with a new mid-level financial penalty of up to £1 million as introduced by clause 115(new section 88A of the Pensions Act 2004).

The new financial penalty will enable the Pensions Regulator to be tougher on non-compliance with the duty to notify events, and will provide a more effective deterrent to those tempted to ignore the requirement to notify the Regulator about certain events.

Clause 109 inserts a new section 69A into the Pensions Act 2004 to place a duty on employers and other appropriate persons to notify the Pensions Regulator and trustees about certain events relating to the sponsoring employer of an occupational pension scheme unless the Regulator directs otherwise. The notice is required to be accompanied by a statement that sets out how any detriment to the pension scheme as a result of the proposed event is to be mitigated. The events triggered by new section 69A will be described in regulations.

Clause 109 also requires the appropriate person to inform the Pensions Regulator and trustees of any material change to the proposed event or if the event is no longer taking place.

The new financial penalty at clause 115 (new section 88A of the Pensions Act 2004) applies for failures to comply with the obligations imposed by new section 69A into the Pensions Act 2004.

Clauses 108 and 109 also amend section 80 of the Pensions Act 2004 to provide that it is an offence to knowingly or recklessly give the Pensions Regulator false or misleading information about a notifiable event under section 69 of the Pensions Act 2004, or in respect of a notice or the accompanying statement under new section 69A of the Pensions Act 2004.

Rationale

The rationale for intervention is to reduce the risk to occupational pension schemes by ensuring that whoever is responsible for planning a corporate transaction or event (the appropriate person)[5] gives due consideration to the impact on the pension scheme and works closely with the trustees of the pension scheme to mitigate adverse outcomes for the scheme and its members. This information will ensure trustees and the Pensions Regulator are kept up-to-date about key corporate events that pose the greatest risk to pension schemes.

The Pensions Regulator will consider the information provided in the statement and make a risk-based judgement of whether to engage with the appropriate person to obtain more information or raise concerns. If the Regulator is not satisfied that sufficient enough mitigation is being put in place they may consider using their anti-avoidance powers.

Policy and operational considerations

The idea of a statement was one of the measures outlined in the Department's White Paper 'Protecting Defined Benefit Pensions'[6] (March 18) to safeguard members' pensions and the Pension Protection Fund from certain corporate transactions or events undertaken by a small minority of employers that may put their defined benefit pension scheme at risk. The statement was referred to in this and subsequent publications as a 'declaration of intent'.

[5] Those with responsibility for corporate transactions - including the employer in relation to the scheme, a person connected with the employer and an associate of the employer, for example the parent of the employer.

[6] Protecting Defined Benefit Pension Schemes- Link

Notifiable Events

A subsequent DWP consultation 'Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator'[7] (June 2018) set out proposals for introducing a declaration of intent to work in tandem with strengthening the existing Notifiable Events Framework[8].

There was general support from trustees of the introduction of a declaration of intent whereas sponsoring employers had some concerns that the requirement for a declaration may hinder corporate transactions. Clause 109 introduces the requirement for a notice and accompanying statement to deliver the proposed declaration of intent.

The Government Response (February 2019) indicated that a declaration of intent would be required in respect of an existing notifiable event concerning the sale of controlling interest in a sponsoring employer (Regulation 2(2)(f) The Pensions Regulator (Notifiable Events) Regulations 2005). For example, where a parent company decides to sell a subsidiary which sponsors a pension scheme, the parent could be required to submit the statement when agreement has been reached on the terms of the sale. Clause 109 makes provision for the accompanying statement to include information about how the terms of the sale will affect the pension scheme and any mitigation being put in place.

The response also proposed introducing the two new events in respect of which a notice and accompanying statement would be required.

The first concerns the sale of a material proportion of the business or assets of a sponsoring employer. For example, where an employer's parent company decides to transfer the employer's trade and assets to other companies in the group in an attempt to simplify the group structure. The statement to the Pensions Regulator, and copied to trustees, might set out the terms of the

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[7] https://www.gov.uk/government/consultations/protecting-defined-benefit-pension-schemes-a-stronger-pensions-regulator

[8] Notifiable Events Framework consists of: Regulations detailing notifiable events; Directions that TPR may issue to limit the circumstances in which notification is required and a Code of Practice

deal and the mitigations that have been put in place regarding the employer's pension scheme.

The second event concerns granting security on a debt to give it priority over a debt to the scheme. Such action has the potential to reduce the chance of recovering money owed to the scheme should the sponsoring employer become insolvent, but may also indirectly benefit the scheme by helping the employer grow and invest. A statement setting out the terms of the arrangement, for example where an employer has sought funding from external sources such as a Private Equity firm, will enable the Pensions Regulator to assess the impact of any security granted on the scheme and to raise concerns if appropriate.

Clause 109 will enable regulations to be made that specify the nature of events for which a notice and accompanying statement will be required.

Directions

Clause 109 will also allow the Pensions Regulator to issue directions to limit the circumstances in which a notice accompanied by a statement is required for a prescribed event. The use of directions in this way is consistent with directions[9] issued by the Pensions Regulator under section 69 Pensions Act 2004 for notifiable events.

Code of practice

Practical guidance about notifiable events is provided in a Code of Practice[10] issued by the Pensions Regulator. Clause 109 amends section 90 of the Pensions Act 2004 to require the Pensions Regulator to issue a Code of Practice providing guidance about how to comply with pensions legislation in respect of notices accompanied by a statement. The intention is for the Pensions Regulator to update the existing guidance on notifiable events and to include information on the new requirement to provide a notice accompanied by a statement.

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[9] Code 2 Notifiable events | The Pensions Regulator
[10] https://www.thepensionsregulator.gov.uk/-/media/thepensionsregulator/files/import/pdf/directions.ashx?la=en&hash=8329F92628BDCF157916B0A4864D66055ABDBCE8

Clause 109 requires whoever is responsible for providing a notice accompanied by a statement to report any material change or decision not to go ahead with the event to the Pensions Regulator and the trustees of the scheme as appropriate. This will enable the Pensions Regulator and trustees to act promptly in order to protect the pension scheme where such a change could adversely impact the scheme and avoid unnecessary engagement from the Pensions Regulator when an event is no longer going ahead.

Consultation on secondary legislation and codes of practice

The Government proposes to consult on regulations made under the existing powers in section 69 of the Pensions Act 2004 in respect of proposed changes to notifiable events and the powers in clause 109 concerning the new requirement for a notice accompanied by a statement. The Government will seek input from a wide range of stakeholders connected with occupational pensions schemes and the pensions industry. The regulations will be subject to Parliamentary scrutiny through the negative resolution procedure.

The Pensions Regulator has indicated that it intends to consult publicly on a draft Code of Practice and the Secretary of State for Work and Pensions will lay the Code before both Houses of Parliament before it can become effective in law.

Timing

The Government proposes consulting on the draft regulations later this year subject to Parliamentary approval of the Bill. The Government consultation will coincide with the consultation on a Code of Practice by the Pensions Regulator. The Regulator will also update the directions they issue to reflect the introduction of the new requirement for a notice accompanied by a statement.

THE PENSIONS REGULATOR: GATHERING INFORMATION *(Clauses 110 – 115)*

Proposals in Part 3 of the Bill strengthen the Pensions Regulator's powers but in order to exercise their anti-avoidance powers and impose penalties for non-compliance, it needs to have the relevant information. Changes are being made to the information gathering powers in three areas so the Regulator can obtain the right information about a scheme and its sponsoring employer in a timely manner. These are a new stand-alone interview power, extended inspection powers, and the ability to issue fixed and escalating civil penalties for non-compliance with information requests. In addition, the Regulator will be able to impose the new £1m financial penalty where it or Trustees of a defined benefit scheme have been given false information.

<u>Interview powers (Clause 110)</u>

The issue and what changes are being made

The current interview provisions are very restricted and only apply to questions about information provided in response to a notice issued under section 72 of the Pensions Act 2004 ("section 72 notice") in connection to automatic enrolment or master trusts.

The current main method that the Regulator uses to gather information is to issue a section 72 notice. This can be requests for data, information, documents or answers to questions.

But if it has queries about information provided or further questions, it has to issue another section 72 notice. And in one particular investigation, the Regulator had to issue 123 section 72 notices to get the information it needed.

Clause 110 introduces a new section 72A into the Pensions Act 2004 which will enable the Pensions Regulator to issue a notice requiring a person to attend an interview and to answer questions across any of its functions.

Section 310 of the same Act on admissibility of evidence is being amended to ensure there is appropriate protection for the person obliged to provide statements or information during an interview. The admissibility of evidence provisions at section 310 of the Pensions Act 2004 would apply to statements obtained using the Regulator's

interview powers under the new section 72A. This is to prevent such statements from being admitted by the Regulator in any criminal prosecutions or proceedings where a financial penalty may be issued. The exceptions to this are in certain circumstances where the person uses the statements themselves, or when the prosecution or penalty concerns giving false information to the Regulator.

Rationale

Conducting an investigation through a series of written requests can be inefficient and gives uncooperative targets scope to drag out the investigation by months. The new power aims to avoid delays caused by this process.

The power will also enable the Regulator to engage with relevant people at an earlier stage of an investigation. This may mean that issues can be resolved quickly and allow the Regulator to deliver more targeted and effective interventions and reduce regulatory burden for the regulated community.

Policy considerations

The interview power will be a stand-alone power. An alternative option would be to link it to the issue of a section 72 notice (as with the current automatic enrolment/Master Trust provisions) but this would be restrictive and would not produce efficiencies.

Regulation making powers

The information to be included in the notice calling a person for an interview will be set out in regulations. We will consult on draft regulations about the information to be set out in the notice.

However, it is anticipated that the information will include the purpose of the interview and set out the recipient’s legal rights and responsibilities.

Extended Powers of Inspection (clause 111)

Issue and what the clause does

The two main gaps in the Pensions Regulator's inspection powers are that it can only enter premises if it is checking for compliance with pensions legislation listed in section 73 of the Pensions Act 2004 or compliance with employer duties (mainly automatic enrolment) under section 74 of the same Act. This means that the information that the Regulator needs to gather and the enquiries it needs to undertake when investigating avoidance activity or whether to issue a contribution notice may not be covered.

Additionally, inspectors can generally only enter premises under existing section 73 powers where scheme records are held; if members are not employed on the premises, inspectors may only seek employer/company records if they are investigating compliance with employer duties under section 74.

The clause aims to close the gaps by inserting the Pension Schemes Act 2017 and the current Bill to the list of pensions legislation by reference to which the Regulator can carry out an inspection for investigating compliance. It also adds provisions to let the Regulator seek the information it needs when investigating whether it has grounds to issue a contribution notice under section 38 of the Pensions Act 2004 and expanding the range of premises where an inspection can take place. These are premises where documents relating to the administration of the business are kept, where the administration of the business takes place or, in the case of a defined benefit scheme, where documents relating to the change in ownership of the employer or a significant asset are kept.

Rationale

The changes will mean that inspectors may enter premises where employer records are kept for the full range of investigations, including avoidance activity.

Policy Considerations

An alternative would have been to give the Regulator a wider power to enter premises to look for records if any of its functions were engaged, similar to the interview power. However, the Government is mindful that powers of entry need to be proportionate and considers that

restricting the power to specified reasons and types of record provides suitable safeguards.

Regulations

Additionally, it inserts a power enabling other legislation or reasons for inspection to be added via regulations.

The power to enter premises for investigating corporate actions only applies to defined benefit schemes as corporate actions undertaken by the employer will not affect the security of members' benefits in defined contribution schemes. There is a power to exclude other types of schemes. There are no plans to use this power at the moment but, as pension schemes evolve, it will ensure that the Regulator's powers remain proportionate.

Fixed and Escalating Penalties (clause 112)

Issue and what the clause does

Currently, not complying with the Regulator's information requests whether via a written section 72 notice, inspection or limited interview powers is a criminal offence. The Regulator has undertaken successful prosecutions where a person has failed to comply.

However, a criminal prosecution may be disproportionate for less serious breaches. Under the current regime, the Regulator can impose fixed and escalating civil penalties for non-compliance, or continuing non-compliance, with information requests made in relation to automatic enrolment or Master Trust provisions.

It also enables the Regulator to impose escalating penalties for ongoing non-compliance with the interview provisions and written section 72 notices which relates to automatic enrolment or Master Trust provisions.

The new sections replicate the existing financial penalty provisions in the Pensions Act 2008 and Pensions Schemes Act 2017 relating to automatic enrolment and master trusts respectively.

There are regulation-making powers to set the level of the penalty in regulations for both the new fixed and escalating penalties. This mirrors the existing powers that the Regulator already has to impose fixed and

escalating penalties for automatic enrolment and master trusts specific investigations.

Rationale

Fixed and escalating penalties are a more proportionate response in many cases and gives the Regulator a wider range of enforcement powers.

Policy considerations

The outline of the provisions replicates those already available for breaches of automatic enrolment and master trust legislations. However, penalties in each of these areas are at different levels and are set in different ways. Informal consultation indicated little consensus on the actual level of the penalties for information gathering breaches or whether certain categories of targets, such as large companies or professional trustees, should be subject to a higher penalty. Further formal consultation will be undertaken.

Regulations

Maximum penalty levels are stated on the face of the Bill but the actual levels will be set in regulations. A consultation will take place on draft regulations after Royal Assent and take account of the issues already mentioned.

Financial Penalty for deliberately providing the Pensions Regulator with false or misleading information. (Clause 113)

Issue and what the clause does

Currently, deliberately giving false or misleading information to the Pensions Regulator is a criminal offence under section 80 of the Pensions Act 2004. This clause allows the Regulator to impose the new financial penalty of up to £1 million, as an alternative, where it determines that a person has knowingly or recklessly given it false information either in response to certain statutory requirements or in other specified circumstances.

Rationale

Deliberately giving the Regulator false or misleading information is a serious matter and should not go unpunished. However, criminal

proceedings may be a disproportionate response to less serious transgressions. Additionally, preparing a criminal prosecution can be time consuming and expensive for the Regulator and a higher standard of proof is required.

Permitting the Regulator to impose a financial penalty of up to £1 million as an alternative to criminal proceedings means more cases can be dealt with quickly. Penalties can also be issued in cases where criminal proceedings are unlikely to be taken forward but where evidence exists. This should be a better deterrent.

Policy considerations

A civil penalty imposed by the Pensions Regulator is now an alternative to criminal proceedings in many provisions in pensions legislation. Fixed and escalating penalties are being introduced as an alternative to criminal proceedings for some of the information gathering powers where the transgressions were not considered sufficient for something as serious as deliberately providing false information.

Regulations

There are no regulation making powers in this clause.

Financial Penalty for deliberately providing trustees with false or misleading information. (Clause 114)

Issue and what the clause does

Trustees are responsible for the proper running of a defined benefit pension scheme but they cannot do their job effectively if they are given false or misleading information. This clause allows the Regulator to impose the new financial penalty of up to £1 million where it determines that a person has knowingly or recklessly given the trustees of a defined benefit pension scheme false information either in response to certain statutory requirements or in other circumstances.

Rationale

At the moment, the Pensions Regulator can impose a financial penalty under section 10 of the Pensions Act 1995 where a person failed to provide trustees with certain specified information as required by legislation. This clause will give the Pensions Regulator greater powers to intervene where trustees of defined benefit schemes are given false or misleading information where it was provided in response to a legislative requirement or where the person could reasonably be expected to know that it would be used by the trustees of a defined benefit scheme.

Policy Considerations

This provision will only apply to information given to trustees of defined benefit schemes. Consideration was given to including the trustees of defined contribution schemes. However, a defined contribution scheme is not dependent on the sponsoring employer to fund a particular level of benefits as happens with a defined benefit scheme. The scope for significant risk to member benefits if trustees are given false information is much greater for defined benefit schemes.

Extending the Regulator's powers only in respect of defined benefit schemes is therefore a proportionate response.

Regulations

The clause contains a power to remove other types of scheme from the scope of this penalty through regulations. This is to take account

of possible future changes in pension provisions and there are no plans to use this power in the near future.

PENSIONS DASHBOARDS *(Clauses 118 – 122)*

Policy proposal

A pensions dashboard is a digital service that will allow people to access their pension information in a single place online, in a clear and simple form. Putting individuals in control of their data, dashboards should support engagement in pensions and planning for retirement.

The introduction of pensions dashboards requires the creation of a supporting digital infrastructure to enable the consumer to access their pensions information held by or on behalf of pension schemes. The infrastructure is being developed and delivered by an Industry Delivery Group (IDG) with representation from within the industry and consumer representatives. The IDG is overseen by the Money and Pensions Service (MaPS). The system being developed will facilitate multiple dashboards to exist alongside a dashboard developed and hosted by MaPS.

Part 4 of the Bill enables the creation of requirements with which pensions dashboard providers must comply. It also creates the ability to impose requirements on occupational, personal and stakeholder pension schemes to make their information available to individuals through qualifying pensions dashboards.

The Department has been working with HM Treasury (HMT) and the Financial Conduct Authority (FCA) to ensure that there is an appropriate and robust regulatory regime delivering oversight of dashboards. HM Treasury intend to introduce a new regulated activity to allow the FCA to regulate pension dashboard providers. Existing powers in the Financial Services and Markets Act (2000) provide for new regulated activities to be introduced and Government will amend the Regulated Activities Order in due course.

Much of the detail relating to the design, development and delivery of dashboards will be subject to user testing, collaboration and planning taken forward by the IDG. Their recommendations will help to inform the detail contained in secondary legislation and guidance.

Policy rationale

Generally, people's awareness of their pensions information is low. There is evidence of a lack of engagement in pensions, particularly among low to moderate earners[11]. An increasing proportion of savers are in defined contribution (DC) schemes, which carries increased responsibility for the individual and more decisions to make. Around one in three of 35-44 year olds with a DC pension do not know how much is in their pension pot.

The trend towards people working in numerous jobs across their lifetime, combined with the introduction of Automatic Enrolment, is expected to lead people accumulating more, smaller pension pots. It is estimated that just under two thirds of UK adults have multiple pensions, and 1 in 5 of those have lost track of savings[12]. There may also be an increased risk of more pots being lost, adding to the estimated £400 million that is currently unclaimed[13]. People often find it difficult to access their data from financial institutions and often pensions information will be held with a number of different providers[14]. This can make it difficult for individuals to obtain a complete picture of their likely position in retirement and make informed decisions in preparation[15].

Policy considerations

To explore the case for dashboards, the Department published a feasibility report and consultation in December 2018[16]. As part of the feasibility study, the Department built on existing user research and international evidence.

Key findings from user research concluded that there is limited understanding among individuals of how pensions work, but users are overwhelmingly positive about the concept of pensions dashboards being introduced.

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[11] Small pots and Automatic Transfers Impact Assessment, DWP 2012 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184965/small-pots-automatic-transfers-impact-assessment.pdf
[12] Aegon (2017) [sample size 1,004]
[13] Experian estimates there is £400m unclaimed assets in pensions and other life insurance products.
[14] FCA, *Financial Advice Market Review* (2016) https://www.fca.org.uk/publication/corporate/famr-final-report.pdf
[15] Populus, on behalf of Which? interviewed 1178 UK adults online between 27th January and 3rd February 2016: 504 UK adults had retired in the last 5 years and had a personal pension, 674 were over 50 years of age.
[16] DWP, *Pensions dashboards: Working together for the consumer.* (2019). https://www.gov.uk/government/consultations/pensions-dashboards-feasibility-report-and-consultation

A number of other countries have introduced pensions dashboards and, while the UK pensions landscape is very different in terms of scale and complexity, the Department was keen to learn from their experiences. Our findings included that comprehensive dashboards are delivered more quickly when legislation is used to compel scheme participation, and a phased approach to implementation helped build confidence and trust in the service.

The consultation received 125 responses and involved a series of stakeholder roundtables; the government response was published in April 2019[17]. There was broad support for the approach outlined in the consultation

A clear governance structure, including a strong central delivery group with broad representation across all stakeholder groups, was considered essential to the successful delivery of dashboards. This structure prevents any single company or group of companies from dictating the future of dashboards and ensures a wide range of perspectives, including consumer interests, are considered. The Department outlined plans for the IDG to bring together representatives from across the pensions industry, consumer groups and regulators to develop potential solutions and make recommendations. The MaPS and IDG governance model provides oversight to the project, ensuring adequate levels of privacy and security.

The IDG reports to a sub-committee of the MaPS Board, which is ultimately accountable to the DWP as MaPs is one of its arms-length bodies.

Policy objectives

The policy objectives of pension dashboards were outlined in the Government Consultation, and subsequently have been moved into three categories:

[17] DWP, *Pensions Dashboards Government response to the consultation.* (2019). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792303/government-response-pensions-dashboards.pdf

i) Implementation objectives (3-4 year period of schemes coming onboard)

- Increase individual awareness and understanding of their pension information.
- Reconnect individuals with lost pension pots.
- Build a greater sense of individual control and ownership of pensions.

ii) Steady state objectives (when all eligible schemes are on board)

- Support the advice and guidance process by giving people access to their pensions information at a time of their choosing.
- Enable engagement, with more people taking advantage of the available advice and impartial guidance.

iii) Long term objectives

- Enable more informed user choices in decumulation phase.
- Enable people to find out their estimated retirement outcome.

Impact and costs

Many respondents in industry recognised that dashboards could improve their relationship with consumers.

The costs involved for schemes to participate in dashboards will vary depending on their size, their IT systems, the accuracy of their data and their ability to build the capability to connect to the supporting architecture. Schemes may use a third party supplier to facilitate this connection.

Funding for the digital architecture and governance for dashboards will raised through the Financial Services Levy and the General Levy on pension schemes. The provision of State Pensions information will be delivered and funded by the DWP.

We want to understand the impact that dashboards may have on a range of users and we are developing an evaluation strategy. Dashboards will also fit with other initiatives, including Open

Finance (led by the FCA)[18], the Smart Data Review led by the Department for Business, Energy and Industrial Strategy[19], and DWP's Simpler Annual Benefit Statements[20].

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[18] FCA Call for Input, Open Finance Advisory Group (2019) https://www.fca.org.uk/publications/calls-input/call-input-open-finance

[19] BEIS, Consultation, *Smart Data: putting customers in control of their data and enabling innovation* (2019) https://www.gov.uk/government/consultations/smart-data-putting-consumers-in-control-of-their-data-and-enabling-innovation

[20] DWP, *Simpler annual benefits statements,* (November 2019). https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843756/simpler-annual-benefit-statements-consultation-2019.pdf

Multiple dashboards

Policy proposal

In clause 118, the Government is including legislation that will facilitate the creation and regulation of multiple dashboards.

The Government is committed to the provision of a dashboard hosted by MaPS.

Policy rationale

Allowing for multiple dashboards, potentially hosted by a company a consumer already trusts or whose digital services they already use, should increase uptake. For example, services could be hosted by a person's current pension provider, their employer, bank or a charity.

Permitting multiple dashboards enables industry to design and develop dashboards to meet the broad range of needs and expectations of users. Different organisations can offer tailored services to the different needs of the 24.5 million individuals with private pensions wealth. It provides increased scope for user choice and innovation in ways to engage an individual, maximising dashboards' potential to achieve its aims.

There has been consistent support for the provision of a dashboard provided by MaPS. MaPS committed to begin the development of a dashboard in its 2019/20 Business Plan, providing a government-sponsored service for those who prefer it[21].

Policy considerations

The majority of respondents to our consultation were supportive of allowing for multiple dashboards, provided sufficient consumer protections are in place.

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[21] MaPS, *Business Plan,* (2019) https://moneyandpensionsservice.org.uk/wp-content/uploads/2019/04/19-20-Business-Plan.pdf

The Work and Pensions Committee, in its Pensions Costs and Transparency Report[22], sought assurances that there will always be an impartial and free service available to consumers. Their preference was to start with a single dashboard run by MaPS.

Managing the implementation of dashboards will be subject to recommendations made by the IDG. Government remains open to the possibility of other organisations developing and testing their dashboards alongside a dashboard hosted by MaPS.

Since the publication of our consultation response, Government has decided to commit to introducing a new regulated activity to allow the FCA to regulate pension dashboard providers. Existing powers in the Financial Services and Markets Act (2000) provide for new regulated activities to be introduced and HMT will amend the Regulated Activities Order in due course. This will set clear parameters in which dashboard-hosting organisations can operate. Alongside this, Clause 118 ensures that only pensions dashboard services that meet specific requirements will be able to connect to the digital infrastructure used to present information provided by pensions schemes to the consumer.

Some respondents to our consultation were concerned that different dashboards may lead to inconsistencies in the quality of information or level of coverage. However, all dashboards will display the same basic information from the same scheme sources.

Impacts and costs

Government is clear that accessing basic information via pensions dashboards must be free at the point of use for consumers. The development of the MaPS dashboard will be funded through levies. Organisations that provide a pensions dashboard service will be required to meet the costs themselves.

[22] Work and Pensions Committee, *Pensions costs and transparency.* (August 2019) https://publications.parliament.uk/pa/cm201719/cmselect/cmworpen/1476/1476.pdf

Developing a staged approach to connecting schemes to the dashboard system

Policy proposal

The Government is legislating to compel all pensions schemes to participate in pensions dashboard services. Clauses 119 and 121 of the Bill set out the legislative framework for information provision and supporting the development and operation of dashboards.

To provide an orderly process of connecting pension schemes to the pension dashboard system there will need to be a staged approach. The Bill contains powers to create regulations to enable this to happen in a managed and transparent way, so that both consumers and the pensions industry know what to expect and when.

Alongside this, and to ensure dashboards provide a comprehensive picture of retirement savings, the Government has committed to provide State Pensions information via dashboards.

Policy rationale

The Government sought views on compelling pension schemes to provide data via dashboards in the consultation. There was consensus that compulsion is crucial for the successful delivery of pension dashboards.

Compelling all schemes to participate in dashboards at the same time is not a practical option due to the sheer number of schemes that may need to be connected. There are approximately 40,000 pensions schemes in the UK (including micro schemes).

The Automatic Enrolment programme used a staged approach to good effect and demonstrated the benefit of controlling the ramp-up of such services.

The timetable and criteria for staging will be proposed by the IDG in consultation with the industry, consumer groups and the regulators. There are a number of ways staging could be done. Criteria could be based, for example, on scheme type, scheme membership size, scheme readiness or any mix of these, alongside other considerations.

Timing

The Government expects that a large number of schemes will be providing data via pension dashboards within a three to four-year period. This estimated timeframe is subject to further review as we understand more about any technical constraints on the number of connections that may be made in any year.

In the consultation we sought views on our proposed timescales. The responses indicated that some schemes would require longer lead-in times than others to prepare and cleanse their data, and to format the data for dashboards. We recognise that there are challenges in regards to data quality, however, under existing legislation, including the Data Protection Act 2018 and the General Data Protection Regulation, pension schemes are required to hold accurate and up-to-date information.

Exemptions

Almost half of respondents to the consultation thought that micro-schemes, such as Relevant Small Schemes (RSS) and Executive Pension Plans (EPP), should be exempt from compulsion.

There are approximately 30,000 RSS and EPP schemes. These schemes have between 2 to 12 members and account for a total 86,000 memberships, equivalent to 0.2% of overall memberships in the UK. Disagreement with a possible exemption was mainly based on the principle that all schemes should participate, to ensure the user is presented with a complete picture of their savings.

Exemptions could be permanent or for a defined period, taking into account the staging process for larger schemes. This would give small schemes longer to prepare to connect to dashboards.

Our starting point is to assume that all schemes should be compelled to participate in dashboards. We recognise there is a case for exempting some small schemes from compulsory participation in dashboards. Our approach to exemptions will be informed by analysis carried out by the regulators and IDG, taking into account the needs of users, delivery practicalities and our policy objectives.

Risks

There are risks related to a staged approach, in particular that users may not see all their pensions information from launch of dashboards. The user research for the feasibility study and consultation suggested that partial coverage is acceptable to users so long as potential gaps are communicated clearly. Further user testing will help to inform how to ensure these messages are easy for the consumer to understand.

Impacts and costs

The Government has been clear that users should not have to pay to access their information via dashboards. Indicative cost estimates for pension schemes are set out in the Pensions Dashboards Impact Assessment.

Consumer Protection

Policy proposal

Dashboards will work within the framework established by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 and dashboard providers and schemes will be expected to process information in accordance with data protection laws.

To ensure the dashboard system is secure, the Government set out in its response to the dashboard consultation the key design principles that the Industry Delivery Group must adhere to when designing the system. In that response, the Government made clear that the storing of pension data will not be allowed in the initial phases of dashboards. The consumer will request their pensions information, via their chosen dashboard. Any pensions information found will be presented back to them via the same dashboard.

The Government's consultation response recognised that a new regulated activity could be necessary to ensure a robust consumer protection framework. We are aware that there are organisations, such as Master Trusts, charities and financial technology companies, that envisage providing a dashboard. Introducing a new regulated activity would allow them to do this.

Following discussion with FCA and HMT, the Government agrees that introducing a new regulated activity is the clearest and simplest way to reassure pension scheme members that dashboards are a secure way of obtaining their information.

Setting out a new regulated activity will require an amendment to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544). This will be done in due course.

Policy rationale

A robust supervisory regime is necessary to build confidence in multiple dashboards. A new regulated activity will allow the FCA to take enforcement action against dashboard providers who do not meet expectations.

Parliament will have the opportunity to scrutinise any change to the Regulated Activity Order as this will be subject to the affirmative resolution procedure. The nature of the activity (and the regulatory framework for it) will be proposed in a consultation, by the FCA, on the corresponding handbook rules and guidance.

As well as being at risk of sanctions from the FCA, dashboard service providers would be subject to the penalties in GDPR and the Data Protection Act if they fail to meet required standards of consumer and data protection.

Risks

Accuracy of data

Pension schemes remain responsible for maintaining the data of members. Any queries around incorrect information should be directed to the scheme in the first instance. Pension schemes are already required to have dispute resolution processes.

Individuals not satisfied with the outcome of the internal dispute resolution procedure, can take their case to the relevant ombudsman.

Vulnerable customers

In a recent consultation, 'Guidance for firms on the fair treatment of vulnerable customers' the FCA suggested that half of the UK population (26.5 million people) display one characteristic of potential vulnerability.[23] This highlights the need to ensure there are proper safeguards in place for the launch of pensions dashboards.

Dashboards will present simple information, without the ability to carry out transactions. We have outlined our intention that MaPS guiders and authorised independent financial advisors will be allowed delegated access to dashboards - contingent upon time-limited user consent.

Dashboards also fit within the current landscape of member protection. Occupational pension schemes have a fiduciary duty to

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[23] FCA, *Guidance for firms on the fair treatment of vulnerable consumers.* (July 2019). https://www.fca.org.uk/publication/guidance-consultation/gc19-03.pdf

act in the best interest of members, and the FCA has an existing framework to ensure that authorised firms take the interests of individuals into account.

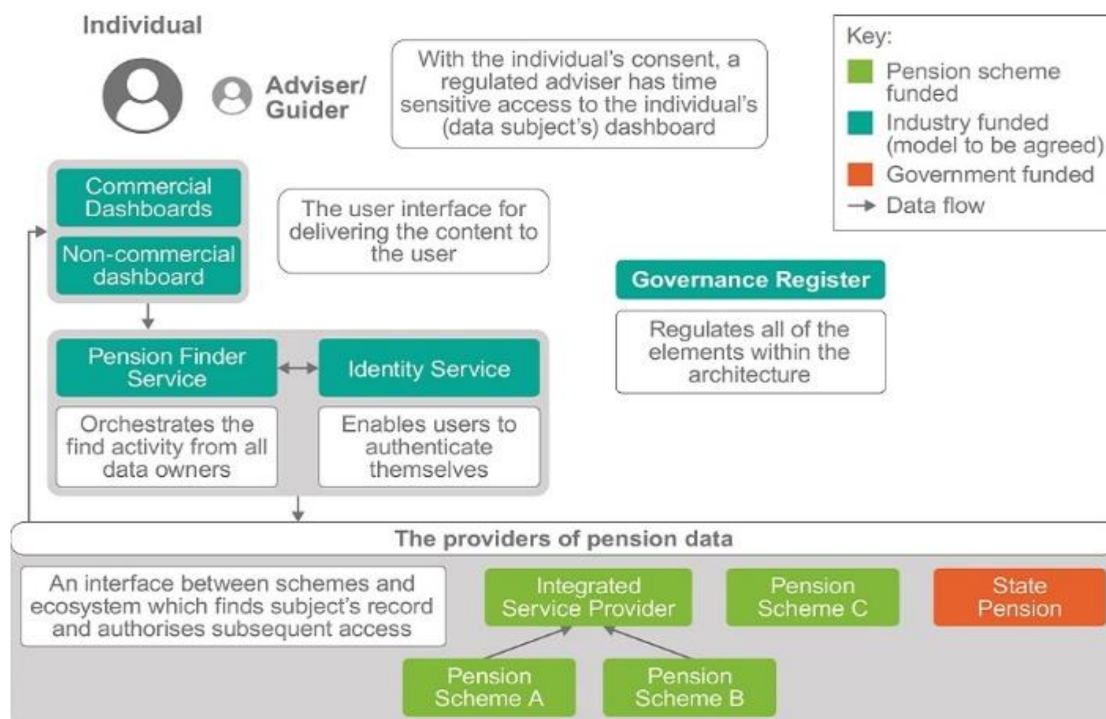
Impacts

The new regulated activity may bring a number of organisations, who have never previously interacted with the FCA, into their regulatory remit. Depending on the scope of the new regulated activity this will cause additional supervisory activity.

Dashboard infrastructure and data security

Policy proposal

For dashboards to work, multiple organisations and technical services need to be connected. The dashboard system is made up of the technical infrastructure which will allow dashboards to work, consumer-facing dashboards which will present information, and a governance system that monitors and safeguards the process. The system is set out in the diagram below.



In the Government's consultation response, we were clear that the system must be secure, work in the best interest of consumers and

ensure that the individual always has control over who has access to their information. To achieve this, we set out key design principles that the IDG must adhere to when designing the final digital infrastructure. These key design principles ensure security and privacy of user's information, while making it easier for the individual to access it.

Considerations

Identity verification and matching

All dashboard users will need to be authenticated and verified to an accepted standard before any search for pensions information can start. Identity verification provides assurance that a person is who they say they are, and provides confidence to pension providers that the information is going to the right person.

At present, the industry uses different standards to authenticate user's identity. The Government has been clear that the IDG must agree on a standardised level of identity which complies with the Good Practice Guide 45[24]. This is a key design principle.

Data security and privacy

Providers of dashboards will not be able to see consumers' pensions information or data**.** Delegated access to an authorised financial adviser or MaPS guider will be time sensitive and can be revoked by the consumer at any time.

The dashboard infrastructure will not include a central database or any aggregate data, as this is not necessary in the proposed design. This supports the security and privacy of dashboards and helps to ensure compliance with GDPR and the Data Protection Act 2018.

Impacts and costs

As outlined previously, the costs for building the infrastructure will be met by levies.

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[24] Cabinet Office & Government Digital Service, *Identity proofing and verification of an individual Good Practice Guide 45.* https://www.gov.uk/government/publicatio ns/identity-proofing-and-verification-of-an-individual

Incrementally increasing the information on dashboards

Policy proposal

The Government Response stated that the information available on dashboards should start at a basic level. Dashboards should only include more complex information as a better understanding of how consumers interact with dashboards is developed. Our expectations are that dashboards will start with no more information than is already included on Annual Benefit Statements or statements issued on demand.

Increasing the functionality of dashboards

We have stated that dashboards should start with a simple ‘find and view’ level of functionality. This will enable consumers to locate their pensions and be able to view basic information about them. Find and view provides a stable foundation on which to build the dashboard service. This will be a significant improvement on the current experience for consumers.

The level of functionality provided by dashboards will be defined by FCA rules as part of the work to introduce the new regulated activity. Dashboard providers will not be able to go beyond those limits. The scope of the activity is subject to consultation.

In future, we expect that dashboards should be able to provide a greater level of functionality and information. Reviewing functionality in the future will be based on understanding consumer needs and how these are best met.

Policy rationale

We have adopted the following lessons from international research on the level of information and functionality of dashboards:

- There is value in maximising scheme participation in a reasonable timeframe. However, maximising coverage is complex and should not be rushed.
- A phased approach to implementation will help to build confidence and trust in dashboards among both consumers and industry.

- To keep the presentation of information on dashboards as clear and simple as possible – jargon free and based on consumer needs.

Enabling dashboards to be brought to the public as soon as possible requires a pragmatic approach. We have said that a large number of schemes will be ready to provide data via dashboards within a three to four-year window. Starting with a simple level of information and functionality should help to maximise the number of schemes that can participate within the expected timeframe.

Considerations

User testing

The Government has asked the IDG to make recommendations on the information that should be included on dashboards. The recommendations must be based on robust user testing and with a clear understanding of the potential risks, as showing inappropriate information or a lack of clear signposting could lead to poor outcomes for consumers.

Displaying scheme’s costs and charges

Existing regulations ensure members have sight of information about charges and transaction costs in relation to occupational schemes. The FCA will soon be publishing final rules in relation to schemes that they regulate.

Government are committed to improving the transparency of costs and charges. However, user testing will determine whether or how this information should be displayed on dashboards.

Review the functionality of dashboards

While we envisage that the initial functionality of dashboards will be simple, we expect to see future innovation that focuses on improving the consumer experience. The Government will work with MaPS, the IDG, TPR and the FCA to decide the timings of future review points of dashboards.

SCHEME FUNDING *(Clause 123 & Schedule 10)*

Introduction to the policy

Part 1 of Schedule 10 amends Part 3 of the Pensions Act 2004, and generally applies to the funding of defined benefit pension schemes. It introduces a new duty on trustees to have a scheme funding and investment strategy for ensuring that pensions and benefits can be paid over the long term (also referred to as a long term objective). Regulations will set out matters and principles that the strategy must comply with. The strategy should be agreed with the sponsoring employer.

Trustees will have to explain to the Pensions Regulator their approach in a statement of strategy which must be signed by the Chair. Amendments made by the schedule will also require that the calculation of the scheme's specific liabilities (technical provisions), underpinning the Statutory Funding Objective, is consistent with the strategy.

As part of the triennial scheme valuation process trustees will be required to submit the actuarial valuation to the Regulator even if there is a scheme funding surplus and may be required to send other information, as prescribed.

A new regulation making power provides for a more detailed definition of what needs to be taken into account to determine whether a scheme's recovery plan, which sets out what will be done and how long it will take to remove a funding deficit, is appropriate. Another power is included to permit the Regulator to direct trustees to revise their funding and investment strategy if they have not complied with the legislation.

Part 2 covers minor and consequential amendments. Further detail on the use of regulation making powers, subject to consultation, is at Annex A.

Rationale for the policy

The Green Paper "Defined benefit pension schemes: security and sustainability" sought views on a number of suggested measures to help ensure a secure and sustainable defined benefit (DB) pension schemes sector. It concluded that most DB schemes were

well managed and they were generally affordable with pension deficits being addressed. However, the Green Paper also exposed a changing DB landscape, with most schemes closed to new members and some closed to future accrual. This means fewer contributing members and more receiving pension benefits.

DB landscape key facts	2006	2019 (unless stated otherwise)
Number of schemes	7,800	5,400
Number of members	14.0m	10.4m
Number of active contributing members	3.6m	1.3m
% of schemes that are closed to accruals	12%	41%
% of schemes open	43%	12%
% of schemes with scheme funding deficit	80% (2007/08)	80% (2016/17)
Average length of recovery plan	9 years (2007/08)	7 years (2016/17)

The total amount of DB pensions paid out is expected to peak sometime between 2020-2030. As schemes mature they become more vulnerable to investment volatility and will have fewer years to recover deficits. It is important that trustees manage their funding and investment in a way that is appropriate to the specific to characteristics of their scheme.

In the White Paper “Protecting defined benefit pension schemes”, we explained we wanted to achieve more clarity in three key areas - to ensure trustees and sponsoring employers take a long term view for the scheme, make prudent calculations of the scheme’s liabilities, and put in place appropriate recovery plans that are fair for the pension scheme and for sponsoring employers. Annex B explains some scheme funding terms.

The Bill’s scheme funding provisions together with new and existing regulation making powers and a revised DB Funding Code

will seek to ensure trustees and their sponsoring employers are clear about what they are required to do and what this means for the particular circumstances of their scheme. The improved scheme funding system will maintain the scheme specific nature inherent to Part 3 of the Pensions Act 2004. The Bill aims to retain this flexibility in the system, but to make clear where the limits are. This will strengthen the Pensions Regulator's ability to take effective action to protect members' pensions – taking account of whether the sponsoring employer can afford to pay more into the scheme - and to mitigate risks to the Pensions Protection Fund (PPF).

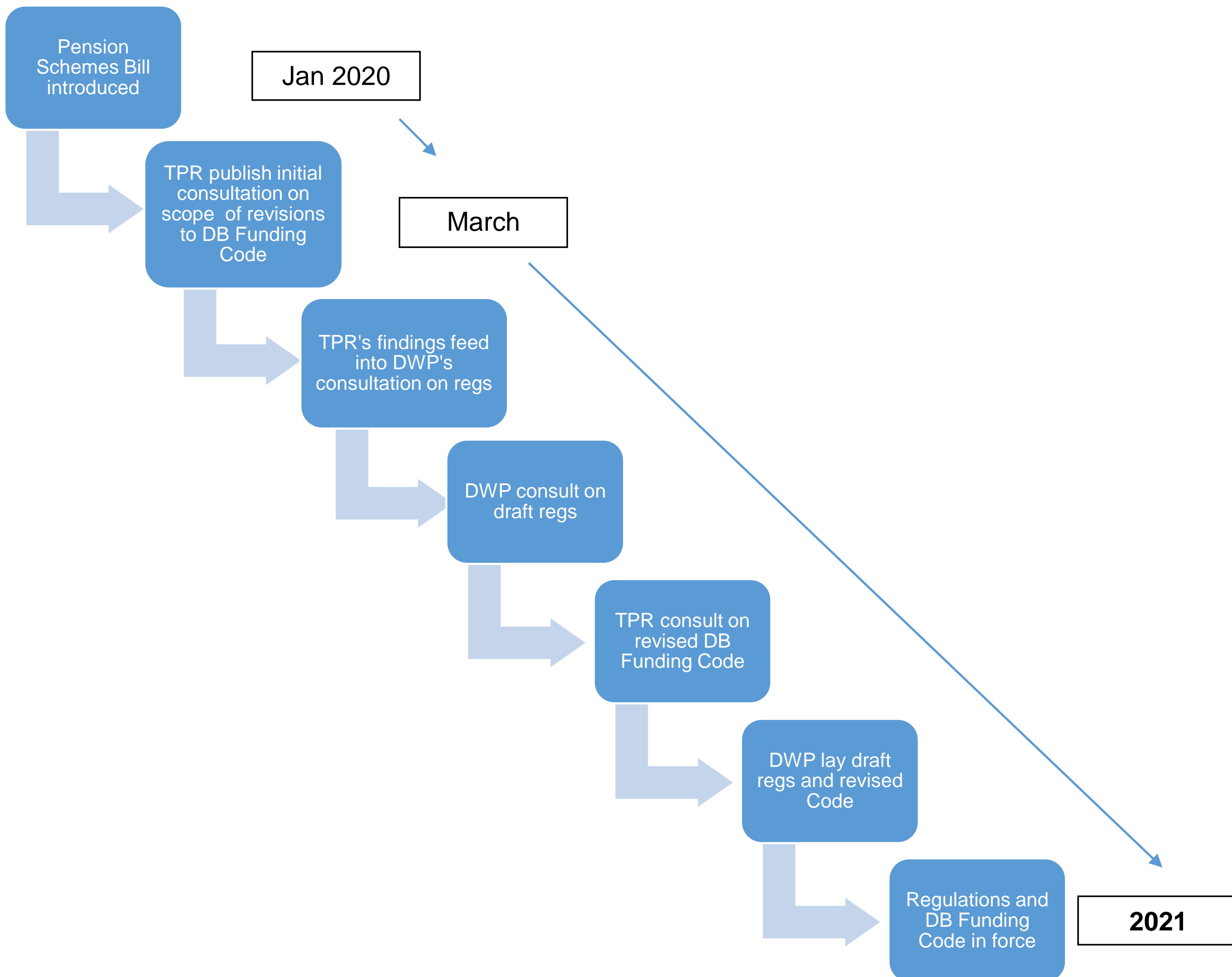
Impacts

Costs to sponsors are expected to vary on a scheme by scheme basis – ranging from negligible to potentially material. Further work to assess impacts will be completed as we take forward secondary legislation.

DB scheme funding…key impacts	
Funding and Investment Strategy (long term objective)	Estimated familiarisation cost of £1.5m in the first year. Estimated ongoing costs to be assessed at the secondary legislation stage. Sponsors and trustees already following good practice should not be significantly affected. However, some may have to pay more if they have not planned for the long term.
Statement of Strategy (DB chair's statement)	Estimated one-off familiarisation costs of £1m and ongoing costs to be quantified at secondary legislation stage.
Appointment of the Chair	Estimated annual cost to business of the Chair around £17.3m – largely arising from the salary of the Chair.
Actuarial valuation	Estimated extra ongoing costs of less than £10k a year for around one thousand schemes with a scheme funding surplus.

Policy considerations and plan going forwards

The Pensions Regulator plans to revise their Defined Benefit Funding Code of Practice to give more detail and guidance to trustees on what good practice looks like and how to comply with legislation, following further consultation with the private pensions industry. We are working with the Pensions Regulator, and plan further work with stakeholders, to ensure the planned secondary legislation and revised DB Funding Code provide trustees and employers the information and guidance they need.



Annex A – delegated powers in Schedule 10

- Number of regulation making powers – **8. None are Henry VIII powers**
- Number of regulation power subject to affirmative procedure – **3** (on first use)

Power			Procedure	Example of possible use, subject to consultation
1	Relevant date	Para 2 New section 221A(3)(b)	Negative	Intention is to use regulations to ensure trustees refer to funding levels and assets held on set key relevant date which will include when the funding and investment strategy is to be achieved and other dates (stepping stones) towards achieving strategy.
2	Funding and investment strategy – what is necessary	Para 2 New section 221A(4)(a) and (b)	Affirmative resolution procedure on first use, negative thereafter.	Matters and principles trustees or managers will be required to take into account may include information about the maturity of the pension scheme, whether it is open or closed to new members or accruals, or the strength of the sponsoring employer. The power may also be used to ensure sufficient detail is given to TPR.
		Para 2 New section 221A(4)(c) and (d)	Negative	To ensure the strategy remains suitable for the scheme in light of experience i.e. actual investment returns, changes contributions from employers, this regulation making power may be used to set timescale for review and revision of the strategy.
3	Statement of Strategy – other information	Para 2 New section 221B(2)(d)	Affirmative resolution procedure on first use, negative thereafter.	This regulation making power can be used to ensure TPR gets the information its needs, and for example could be used to include the views of the sponsoring employer.
4	Statement of Strategy – review and revise	Para 2 New section 221B(4)	Negative	Enables regulations to set the frequency and circumstances in which trustees must review and revise the supplementary matters.
5	Chair of trustee board – who can be the Chair	Para 2 New section 221B(6)(b)	Negative	To prescribe requirements regarding who is able to hold the role of chair – for example, in the future this power could be used to ensure the Chair has certain qualifications.

Power			Procedure	Example of possible use, subject to consultation
6	Statement of Strategy – what is necessary	Para 2 New section 221B (8)(a) and (b)	Affirmative resolution procedure on first use, negative thereafter.	Matters and principles to be taken into account by trustees or managers may include the key risks to the scheme. The power may also be used to ensure sufficient detail is included in the statement given to TPR.
		Para 2 New section 221B (8)(c) and (d).	Negative	To allow for regulations setting out what form the statement of strategy should take, including allowing for a template to be completed by trustees. To be clear in regulation when the statement must be submitted to TPR, for example to ensure the statement is submitted every three years with the actuarial valuation or when the funding and investment strategy is revised.
7	Actuarial valuation – submission to TPR	Paragraph 4 - new subsection (7A)	Negative	To ensure timely submission of the actuarial valuation (full report) along with other key documents, such as the statement of funding principles may also be required to be sent to the Regulator at the same time.
8	Recovery plan	Paragraph 5 - new subsection (3A)	Negative	This power will enable regulations to clarify what is meant by “appropriate” in respect of the recovery plan, for example its length or when deficit recovery contributions fall due, taking account of the employer’s ability to pay.
TPR scheme funding power (direction)		Paragraph 7	Direction by TPR	TPR may direct trustees or managers of a pension scheme to revise the scheme’s funding and investment strategy.

Annex B – DB scheme funding … terminology and funding measures

Jargon	Meaning
Statutory Funding Objective (SFO)	This is the required funding level for DB schemes which underlies valuations under Part 3 of the Pensions Act 2004. Such valuations are often referred to as technical provision (TP) valuations, scheme specific funding (SSF) valuations, or Part 3 valuations.
Technical Provisions (TP)	A scheme's own measure of its liabilities; each scheme will have its own way of calculating its liabilities (subject to regulations) taking into account investment strategy, mortality and inflation expectations and the strength of the employer covenant.
Deficit Repair Contributions (DRC)	Contributions made by sponsors to make up the deficit in an underfunded scheme over a specific period of time. A recovery plan sets out the steps to be taken to make up deficit and period over which DRCs are paid.

Funding measure	There are four main approaches to the calculation of DB liabilities in the UK system, each of which is used for a different purpose.
Statutory Funding Objective (SFO)	The Statutory Funding Objective used by trustees as part of the scheme specific funding regime to value pension liabilities (often known as Technical Provisions).
FRS 17/102 (and IAS19)	Used to calculate and present the pension liabilities in company accounts
Solvency measure – known as full buy-out	An actuarial estimate based on the cost of securing full scheme benefits with an insurer
Pension Protection Fund's Section 179 basis	A subset of the solvency measure, this is the estimated cost of securing PPF compensation levels rather than the full scheme benefits with an insurer.

TRANSFER RIGHTS *(Clause 124)*

Introduction to the policy

Clause 124 places conditions on an individual's statutory right to transfer their accrued rights to a different scheme. This is to protect members falling victim to pension fraud and enable scheme trustees and managers to refuse a transfer request unless they are satisfied the transfer will be made to a 'safe destination'.

Rationale for the policy

Currently there are no limits to the members' statutory right to transfer other than it has to be to a registered pension arrangement. Scheme trustees and managers can refuse transfer requests that they view would result in the transfer of accrued rights to potentially fraudulent schemes, however, this can and has been challenged by members and referred to the Pension Ombudsman. Several decisions to refuse transfer requests have been overturned on the grounds the decisions breached the members' statutory rights to transfer; hence, repeated calls from industry and others for stronger measures to protect members.

Policy considerations

In 2016 the Government consulted on how to best protect savers. The response to the consultation included a commitment to limit the statutory right to transfer to pre-determined safe destinations. The intent is that the statutory right to transfer without conditions would apply to transfers to authorised Master Trusts and schemes provided by Financial Conduct Authority regulated providers, but conditions would be placed on transfers to other registered schemes and overseas arrangements. This clause provides greater clarity for trustees as to when they must accept a transfer request, whilst still giving members the ability to choose where they transfer their accrued rights.

The clause provides a power to make regulations so that a member will only have the statutory right to transfer their accrued rights if the conditions prescribed in regulations are met, in order to give government, the flexibility to respond to the continually evolving pension scams landscape. It also provides a non-exhaustive list of conditions that the regulations may prescribe. These regulations will be brought forward incorporating more

detailed conditions, as soon as possible, after the clause becomes law via Royal Assent.

THE PENSION PROTECTION FUND *(Clause 125)*

Introduction to the policy

Clause 125 addresses some of the unintended consequences of a High Court ruling in the case of Anthony Beaton v the Board of the Pension Protection Fund (PPF) [2017] EWHC 2623 (Ch). The provision restores the original policy intent, retrospectively, to enable the PPF to administer compensation payments as intended for those affected by the wider implications of the judgment.

The PPF pays compensation to members of eligible occupational pension schemes, where the sponsoring employer has become insolvent and the scheme's assets are insufficient to meet its pension commitments.

The PPF pays two levels of compensation:

- for members who have reached their scheme's normal pension age or, irrespective of age, are either already in receipt of a survivor's pension or a pension on the grounds of ill health, the Board will pay compensation initially at 100 per cent of the pension due at the assessment date. Assessment date is the start of the process by which the Board assesses whether the scheme transfers to the PPF; and

- for members below their scheme's normal pension age, the Board will pay compensation at 90 per cent of the pension accrued at the assessment date, subject to an overall cap.

Rationale for the policy

The policy intention is that an individual's relevant fixed pension and any other pensionable service within the scheme should be added together for the purposes of determining their PPF compensation payment, and applying the cap, where relevant. Pensionable service derived from a fixed pension transfer should be treated no differently from any other pensionable service when calculating PPF compensation.

The High Court ruling in the Beaton case determined that, where an individual has benefits derived from a fixed pension transfer payment, such benefits are not attributable to pensionable service and thus cannot

be aggregated with the individual's other pension benefits for the purposes of applying the compensation cap.

Although the ruling concerned the compensation cap, "pensionable service" is fundamental to the calculation of PPF compensation payments. It also governs the compensation payable to those under their scheme's normal pension age, the payment of survivors' benefits and inflationary increases.

To restore the original policy intent, Regulations (S.I. 2018/988) amended the Pension Protection Fund Compensation Regulations 2005 and the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 prospectively to enable a fixed pension to be treated as pensionable service for the purpose of calculating PPF compensation, except when aggregating benefits for the cap.

Clause 125 provides for those amendments to apply retrospectively, thereby covering compensation payments which have already been made. Therefore, the clause ensures that past payments of PPF compensation have been made on the correct legal basis and prevents overpayments from having occurred as the result of the ruling. This also ensures that there is no question of some of the most vulnerable PPF members having to repay past compensation.

Policy considerations

The provisions relating to the cap were not amended by the Regulations and are not amended in this clause. This is to avoid the risk that this could inadvertently reduce PPF compensation below the minimum required by European Union law as the result of the judgment of the Court of Justice of the European Union in the case of Grenville Hampshire v the Board of the Pensions Protection Fund (C17/17). Furthermore, the PPF compensation cap is a live issue in proceedings before the domestic courts relating to the implementation of judgment.

The practical effect of not amending the cap provisions is that a person's relevant fixed pension is treated separately from their pensionable service within the scheme in accordance with the High Court ruling, and therefore will be subject to two separate caps. [A small number of] individuals, therefore, receive more PPF compensation than someone whose pension benefits were made up entirely of actual pensionable service. The Government will carefully review its legislative options around this once the legal action has been concluded.

Regulation-making powers

There are no regulation-making powers.

ADMINISTRATION CHARGES *(Clause 126)*

Brief introduction to the policy. What is it that we're doing?

This clause amends the definition of "administration charge" in pensions legislation to provide clarity about what constitutes a member-borne charge.

This clause does not take any delegated powers.

Rationale behind the policy

In defined contribution pension schemes, where the costs of running the scheme are borne by the members, there are several measures in place to make sure that members are protected from high and unfair charges. These include bans on certain types of charge, a cap on the permitted level of charges in default funds of schemes used for automatic enrolment and disclosure requirements to make sure that members are aware of what they are paying. All of the measures rely on the definition of "administration charge" in legislation.

The existing definition of "administration charge" excludes any use of the member's pension savings which "result in" a pension benefit. This has led to some questions about how direct the link between the use and the benefit must be for a charge to be excluded.

The policy intent is that any use of the member's pension savings which is not the member taking their pension, or transferring their pension elsewhere, is an administration charge. This clause makes that clear.

Example 1: when the scheme invests the pension savings to generate returns the funds invested remain part of the pension pot so do not constitute an administration charge but any fees paid to investment managers for looking after the investments would.

Example 2: if a member had a pension pot of £100,000 and used it to purchase an annuity: some of the pot, say £2,000, might be used to cover the administrative expenses of purchasing the annuity and the remaining balance used to cover the cost of the retirement income. The £2,000 would constitute an administration charge but the remaining £98,000 would not.

Policy considerations when drafting the clauses

This change provides greater clarity for trustees, members and regulators. The government does not intend to change the scope of the charge cap or any other member protections.