

The Secretary of State for Work and Pensions and Baroness Stedman-Scott's response to the House of Lords' Delegated Powers and Regulatory Reform Committee's Report of 30 March 2022, and published on 31 March 2022, on the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill

Introduction

The Delegated Powers and Regulatory Reform Committee of the House of Lords ("the Committee") published its report on the Pension Schemes (Conversion of Guaranteed Minimum Pensions) Bill on 31 March (26th report).

This response to the Committee's report addresses the two linked provisions in the Bill that have been brought to the attention of the House in their report: the Committee's concerns about the breadth of the powers to be conferred by those provisions; and the Committee's view as to the appropriate level of Parliamentary scrutiny over the exercise of those powers. The Government thanks the Committee for its report.

Clause 1 (5) and 2 (5) – consent of a relevant person

The Committee considers that the powers in clauses 1(5) and 2(5) are inappropriate in allowing provision to be made which falls outside the intended policy.

The Committee's view is that the requirement for the employer's consent should be retained on the face of the primary legislation and the regulation-making powers should be limited to specifying the exceptional cases where the employer's consent is not required, or the consent of some other person is required instead because it isn't practicable to obtain the employer's consent.

Having considered the Committee's opinion, the Government remains of the view that the proposed powers are appropriate. Regulations will provide an opportunity to make detailed provision for complex circumstances (for example, arising in multi-employer schemes), given the uncertainty identified by the pensions industry arising in such circumstances in identifying who is the "employer" in relation to a scheme as currently defined in the primary legislation.

As the Committee has suggested, the intention is indeed not to completely remove the requirement to obtain the employer's consent. Rather, it is to make more detailed provision for how the consent requirement applies in a variety of different situations. The pensions industry has expressed concern that there is currently a lack of clarity in identifying who must consent to a GMP conversion - for example, where members' employers have changed over time, or where an employer no longer employs scheme members. Retaining the requirement in primary legislation for the "employer" to consent would therefore continue to give rise to difficulties for some schemes. Removing the term "employer" from the primary legislation and replacing it with a different term and a power to make provisions in regulations will help a scheme's trustees to be able to identify whose consent must be sought prior to conversion in a variety of situations.

Level of parliamentary scrutiny

The Committee considers that there is insufficient justification provided by the Department for the negative resolution procedure to apply to the powers conferred by clauses 1 (5) and 2 (5).

The Committee notes in its report its view that the scope of the powers is such that the affirmative resolution procedure offers a more appropriate level of parliamentary scrutiny.

The Government maintains that the negative resolution procedure is appropriate for what will be detailed and technical provisions. Furthermore, this is not a controversial power: we are amending the existing legislation to make the consent requirement work better for schemes in a variety of circumstances which are seeking to carry out a GMP conversion exercise. The Government's view is that the negative resolution procedure is appropriate for such a power.

While we consider that the negative resolution procedure is appropriate, it may reassure the Committee that the Government intends that the first use of the power in Clause 1(5) will be in a set of regulations which includes provisions to be made under the other power conferred by clause 1 of the Bill which is subject to the affirmative resolution procedure. This set of regulations as a whole will therefore be subject to the affirmative resolution procedure and so, following a consultation, will be laid in draft before both Houses. As such, Parliament will have the opportunity to debate the first provisions made under clause 1(5) of the Bill.

The Government thanks the Committee for its analysis of the Bill and its detailed report.

26 April 2022

The Department for Work and Pensions