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27<sup>th</sup> November 2023

Baroness Sherlock  
Baroness Drake  
House of Lords  
SW1A 0PW

Dear Maeve, Jeannie,

I am writing following the Grand Committee debate of Tuesday 14th November, on the draft Pensions Act 2004 and the Equality Act 2010 (Amendment) (Equal Treatment by Occupational Pension Schemes) Regulations 2023; the Occupational Pension Schemes (Amendment) (Equal Treatment) (Northern Ireland) Regulations 2023; the Pensions Act 2004 (Amendment) (Pension Protection Fund Compensation) Regulations 2023; and the Pensions (Pension Protection Fund Compensation) (Northern Ireland) Regulations 2023.

I welcome the support that you gave to these regulations, which restate in domestic law some basic principles of fairness in relation to people's lives and retirement incomes.

I undertook to write to you providing more detailed answers to some of the points you raised. As a few of the points you each raised were quite similar, I have provided all answers in this one letter for greater clarity.

Baroness Drake asked whether all protections of pension benefits for members and beneficiaries preserved by Section 4 of the European Union (Withdrawal) Act will be captured in changes to domestic legislation prior to 31 December, and whether any of these protections will not be preserved. Baroness Sherlock similarly asked whether there are any areas of private pensions legislation where DWP has been relying on retained EU law that will be allowed to sunset on 31 December.

I would like to reassure you that extensive work, consisting of a continuous trawl of legislation has been carried out within the Department to identify effective rights that needed to be restated. This was done to help ensure that the legislative framework around occupational pensions legislation has been restated in domestic law to avoid any legislative gaps.

I mentioned during the debate that the Government has made the decision to let the Bauer judgment of the European Court of Justice sunset on 31<sup>st</sup> December. Consequently, individuals who were previously employed by an employer that becomes insolvent on or after the sunset date will not have an entitlement under that judgment. Following the trawl, the Bauer judgment is the only piece of retained EU legislation preserved by Section 4 of the European Union (Withdrawal) Act as it applies to occupational pension schemes which the Government is allowing to sunset.

It is also important to make clear that, should directly effective rights inadvertently expire and be subsequently found to be required, their effects can be restated using powers in the Retained EU Law Act until June 2026.

Baroness Drake asked in more detail about rights to equal pay between men and women in the payment of pension benefits to members and beneficiaries, previously preserved by Section 4 of the European Union (Withdrawal) Act. She asked specifically whether these wider rights to equal pay between men and women in the payment of pension benefits will be retained in changes to domestic legislation prior to 31 December.

I would like to reassure Baroness Drake that wider rights to equal pay between men and women in the payment of pension benefits are already set out in domestic legislation. As mentioned above, an extensive trawl has been conducted to mitigate the risk that rights may inadvertently fall away. The requirement for occupational pension schemes to provide sex equality between men and women is set out in domestic legislation (currently via the Equality Act 2010 and equivalent legislation in Northern Ireland) and has been since as far back as 1995 through section 62 of the Pensions Act 1995.

Baroness Sherlock asked about our engagement with stakeholders on our proposed response to the Hampshire Judgment. We held a round table in October 2022 and invited views from a cross-section of participants representing trustees, insurers and professional advisers. Those that expressed an opinion were supportive of retaining the effects of the Hampshire Judgment in domestic legislation, arguing to do otherwise would likely invite criticism.

Baroness Sherlock went on to say that, as she understood the position, the Allonby, Walker and Hampshire judgments rested on retained EU law, and that the regulations were therefore necessary because without them the contents of those court judgments would not be retained after 31 December. She asked if I could clarify the position with regards to concerns around 'ambiguity'.

The regulations reflect the law dealt with in the three court cases, which have until now not been reflected in UK legislation. The Retained EU Law (Revocation and Reform) Act 2023 would otherwise mean that retained EU law addressed in the court cases in question would cease to have effect after 31 December this year.

It is unlikely that pension schemes would try to go back on the rights addressed in the Walker and Allonby judgments as they apply to occupational pension schemes on the grounds that the supremacy of the relevant effective rights under EU law upon which the judgments were based had sunset. However, it is important that the effects of the judgments as they apply to occupational pension schemes are clearly reflected in domestic law before 31 December. Occupational pension schemes are complex and it is important that we provide as much clarity as possible.

Finally, Baroness Sherlock asked why the changes made by the Pensions Act 2004 and the Equality Act 2010 (Amendment) (Equal Treatment by Occupational Pension Schemes) Regulations 2023 were not made in one of the recent pensions bills.

Until now it was not necessary to do so. Since 2012, successive Governments have been clear that the ECJ's Allonby judgment overrode the requirement for a real-life opposite sex comparator in order for schemes to equalise people's pensions for the impact of Guaranteed Minimum Pensions legislation. There was no pressing need to change the equality legislation because of the supremacy of EU law. Similarly, the Supreme Court's judgment in the Walker case found that the exception to the pension schemes non-discrimination rule in the 2010 Equality Act which permitted schemes to limit same-sex couples' survivor benefit rights was not compatible with the EU's Framework Directive on equal treatment in employment, and disapplied the provision in the Equality Act to the

extent necessary to resolve this. It is only because the relevant retained EU law will fall away after 31<sup>st</sup> December that the Equality Act itself now needs to be amended.

I am copying this letter to Lord Palmer and I will place a copy of this letter in the Library.

*My best wishes  
James Younger*

**VISCOUNT YOUNGER OF LECKIE  
PARLIAMENTARY UNDER SECRETARY OF STATE FOR WORK AND PENSIONS**