

PENSIONS BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Pensions Bill, as brought from the House of Lords on 19th November 2008. They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 50, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister, except for Amendments 24 to 26 and 140, which were opposed by the Government, and Amendment 149. (In the following Commentary, an asterisk appears beside each non-Government amendment.)

COMMENTARY ON LORDS AMENDMENTS

Lords Amendments 1, 2, 121, 124, 137, 138, 154, 155, 156, 157, 158, 159, 166, 167

5. These amendments would remove from the Bill references to an employee combined with references to a worker and make consequential changes. The references to an employee are unnecessary because “worker” as defined in clause 77 also covers “employee” as defined there.

Lords Amendments 3, 22, 23, 27, 28, 37, 39, 51, 53

6. These amendments would make clear that regulations under clause 14 may provide for a person to have different pay reference periods for the purposes of different provisions of the Bill.

Lords Amendment 4

7. This amendment would add to the duties under clause 2 to ensure continuity of scheme membership, so that an employer has a duty not to take action by which the scheme fails to qualify in respect of the jobholder.

Lords Amendment 5, 7, 13, 16, 21, 30, 31, 55, 134

8. Amendments 5, 13 and 16 would replace the power to make regulations exempting employers using workplace personal pensions from the employer duties under clauses 3, 5 and 6 (automatic enrolment, re-enrolment and opt-in) with provision enabling such schemes to be used to comply with the duties under those clauses. They would also enable regulations to require the provision of information to jobholders and other persons. Amendments 30 and 31 would enable any qualifying scheme (whether an occupational pension scheme or a personal pension scheme) to be used as an automatic enrolment scheme. Amendments 7, 21 and 134 would remove provisions that become redundant as a result of the removal of the exemption.

Lords Amendments 64, 65, 66

9. These amendments would extend the power under clause 29 for an employer to make deductions of contributions from a jobholder so that it would apply in the case of a jobholder who is automatically enrolled into a personal pension scheme and in the case of a worker without qualifying earnings where an occupational pension scheme is used to comply with the duty under clause 8.

Lords Amendments 6, 7, 8

10. Regulations under clause 4 may allow an employer to postpone automatic enrolment providing the jobholder is subsequently enrolled into a pension scheme of a specified quality. Amendment R5 would simplify the enabling power. Amendments 8 and 9 would require the employer to maintain the jobholder's membership of the scheme for a minimum period.

Lords Amendments 9, 10, 11, 13, 14

11. Under clause 5 the duty to re-enrol a jobholder does not apply when that jobholder has ceased to be an active member of a qualifying scheme through his own volition, Amendments 9 and 10 would have the effect that the duty would also not apply when the jobholder has chosen to opt out under clause 7. Amendments 11 and 13 remove provision relating to the timing of re-enrolment from clause 5 as Amendment 14 introduces a new clause that sets out the timing for re-enrolment in greater detail, including setting out the circumstances in which regulations may provide that automatic re-enrolment may take place more frequently than every three years.

Lords Amendments 16, 17, 18

12. Amendment 17 would provide for regulations to prescribe the process by which a jobholder can opt out of workplace pension saving (that is, automatic enrolment or re-enrolment and enrolment by opting in under clause 6). Amendment 18 would

allow for this opt out process to include electronic authorisation by the jobholder rather than a signature. The effect of Amendment 16 would be that, where a jobholder opts out, the only scheme membership that is undone is that which arose from the last enrolment, so that previous accrued rights would not be affected.

Lords Amendments 19, 34, 58, 62

13. These amendments would remove references to “rules” so as to make the terminology used to refer to the provisions of pension schemes consistent.

Lords Amendments 23*, 24*, 25*

14. These amendments would remove the Secretary of State’s discretion as to whether to uprate the amounts defining the qualifying earnings band where he maintains that they have not maintained their value, and his discretion to use any measure other than a review of average earnings under section 148 of the Social Security Administration Act 1992 to make that determination.

Lords Amendments 28, 33, 47, 48, 51, 53, 55, 56, 163, 168

15. These amendments would make changes to the operation of the quality requirements in respect of schemes based outside the UK. Amendments 28 and 33 provide that, to meet the quality requirements, occupational and personal pension schemes administered outside the UK are not required to be registered under Chapter 2 Part 4 of the Finance Act 2004. Instead they would have to meet requirements prescribed in regulations under the new clause introduced by amendment 56. Amendments 47, 48, 51, 53 and 55 limit the application of the quality requirements for personal pension schemes to those schemes whose operation is carried on in the UK and regulated by the FSA. Amendments 168 and 163 define “provider” for the purposes of amendment 48.

Lords Amendments 31, 32

16. These amendments would introduce a power for the Secretary of State to prescribe in secondary legislation additional qualifying conditions for automatic enrolment schemes.

Lords Amendments 35, 37, 49, 54

17. These amendments would make it clear that where a provision of the Bill sets minimum contribution levels as part of a quality requirement, the provisions of a scheme governing the calculation of contributions do not have to be expressed in the same terms provided that the value of contributions is sufficient.

Lords Amendments 41, 42, 39, 40

18. Amendments 41 and 42 would set the pension age for the test scheme under clause 22 at 65 but enable it to be increased through regulations. This would ensure that the test scheme remains relevant by allowing for planned changes in state pension age, therefore continuing to act as a benchmark for relevant qualifying defined

benefits schemes. Amendments 39 and 40 would provide for consistency in references to scheme members.

Lords Amendments 43, 146, 170

19. These amendments would provide consistency in references to tax years in Part 1 of the Bill. Amendment 170 defines tax year for the purposes of that Part.

Lords Amendments 44, 45, 46, 167

20. These amendments would allow for the qualifying tests for money purchase schemes and defined benefit schemes to be modified by regulations in respect of hybrid schemes. Amendment 167 simplifies the definition of “hybrid scheme” for the purposes of Part 1 of the Bill.

Lords Amendments 57

21. This amendment would introduce a power to make regulations to enable employers to rely on a certificate that a scheme is able to satisfy the relevant quality requirement under clause 19, 23 or 25, subject to any provision made by the regulations as to cases where provision for payment of contributions did not in the event satisfy prescribed conditions. [Amendment 211 would provide for regulations made under this power to be subject to the affirmative procedure.]

Lords Amendment 59

22. This new clause deals with compliance with the employer duties in the case of a scheme which is subject to either a freezing order by the Pensions Regulator or an assessment period imposed by the Pension Protection Fund. When these events (referred to in the clause as “freezing events”) occur, benefit accruals are frozen. The amendment would provide that if these events occur to an employer’s scheme the jobholder does not cease to be an active member of the scheme, nor does the “frozen” scheme cease to be a qualifying one.

Lords Amendments 60, 61

23. These amendments would extend the modification powers in clause 28 to enable trustees, with the employer’s consent, to change their occupational pension scheme rules to increase the amount required to be paid in contributions, in order to comply with the quality requirements for UK money purchase schemes quality requirements in clause 19 or as modified under sub-section (1) of clause 23 for UK hybrid schemes. The provision could not be used to lower contributions that already are in place when the employer becomes subject to the duties. It also would enable changes to be made as to the frequency by which contributions are made.

Lords Amendment 66

24. This amendment would enable regulations to be made requiring that employers deduct contributions relating to any time starting from the date the jobholder is to become an active member of a scheme.

These notes relate to the Lords Amendments to the Pensions Bill, as brought from the House of Lords on 19th November 2008 [Bill 174]

Lords Amendments 67, 76, 78, 85, 86, 93, 94, 97, 99

25. These amendments would allow the Regulator to use its compliance powers in respect of workers without qualifying earnings who choose to opt in under clause 8. For example, Amendments 76 and 78 would allow the Regulator to issue compliance notices in respect of such workers.

Lords Amendments 68, 134, 169

26. These amendments make drafting changes to the references to the Pensions Regulator in the Bill.

Lords Amendments 69, 70, 71, 72, 73, 74, 75, 80, 100

27. This group of amendments would, for certain compliance functions, change references to “employer” to “person”. This is to ensure that the Regulator can exercise its powers in respect of those who have failed to comply with a duty imposed on them but who are not employers – for example previous employers. It would also cover cases under clause 9 where a prescribed person other than an employer may be subject to a duty to provide information.

Lords Amendment 77

28. This amendment would allow a compliance notice to require specific actions to be taken to put jobholders back in the same position they would have been in had the duty not been breached with regard to their entitlement to benefits under a hybrid scheme.

Lords Amendments 79, 209, 210, 211

29. Amendments 79, 209, 210 and 211 would limit the use of delegated powers in the Bill – as recommended by the House of Lords Delegated Powers and Regulatory Reform Committee. Amendment 79 removes an unnecessary power in clause 31. Amendments 209, 210 and 211 would provide that regulations made in relation to automatic enrolment, re-enrolment and opting out are subject to the affirmative procedure, and would allow regulations subject to different procedures to be laid together under the affirmative procedure – this would allow a single set of regulations on automatic enrolment (for example) to be made.

Lords Amendments 81, 82, 83

30. These amendments relate to the compliance provisions applying to third parties. Under Amendment 81, a third party could not be required to remedy a contravention of a duty. This is because a third party may not be in a position to do so. But there may be action that a third party can take to remedy, or prevent a recurrence of, the failure on the part of the third party that led to the contravention. Amendments 82 and 83 would allow a third party compliance notice to specify a period in which action should cease to be taken and inform the recipient of a possible fixed penalty.

Lords Amendments 84, 87, 89, 90, 91, 92, 95, 96, 98, 156

31. These amendments would ensure that unpaid contribution notices operate as intended. Amendments 84 and 89 clarify the wording on unpaid contributions. Amendments 87, 98 and 156 ensure that unpaid contributions can be required from previous employers. Amendments 90, 91, 92 and 98 would ensure that unpaid contributions can be required by a specified date. Amendment 95 gives the Regulator the power to require interest on late payments. Amendment 96 would allow the regulations that would determine how the Pensions Regulator calculates unpaid contributions to include provisions on contributions made by the employer on the jobholder's behalf as well as the employer's own contributions.

Lords Amendments 88, 119, 130, 135

32. Amendment 135 would introduce a new clause that would prohibit employers from trying to induce their workers to opt out from a qualifying workplace pension scheme. This prohibition applies whether or not the worker or jobholder ultimately opts out. Amendment 88 would allow the provisions on calculation and payment of contributions to apply to contraventions of clause 2(1), and contraventions of the inducements provision are to be treated in the same way as if they were contraventions of clause 2(1).

Lords Amendments 116, 117, 118, 126, 127, 128, 129, 131

33. These amendments would restructure the Bill so that Chapter 2 is focused on the central compliance and enforcement powers of the Regulator, Chapter 3 on employment and pre-employment safeguards and a new Chapter 4 on supplementary provisions about compliance and information-sharing.

Lords Amendments 101, 102, 103, 104, 106, 107, 109, 110

34. These amendments would clarify wording and requirements relating to the Pensions Regulator Tribunal. Amendments 102, 103 and 104 correct drafting references to appeals. Amendments 106 and 107 ensures that a review has to be sought before a case is referred to the Tribunal. Amendments 109 and 110 amend the Pensions Act 2004 to incorporate new references to the Tribunal.

Lords Amendments 105, 108

35. These amendments would ensure that the effect of a notice will be suspended until any review or reference to the Pensions Regulator Tribunal (appeal) in respect of that notice is completed.

Lords Amendments 111, 112, 113

36. Amendment 111 would correct drafting to ensure that the limit for fines applicable on summary conviction is appropriately expressed. Amendments 112 and 113 would introduce new clauses. The first would apply the offence of failure to comply with the new duties to responsible individuals within a body corporate and

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also make those individuals liable to be prosecuted. The second ensures that partnerships and unincorporated associations, partners and individual partners may be prosecuted.

Lords Amendments 114,115, 281

37. These amendments would make consistent provision for repeals in the Bill.

Lords Amendments 121, 125, 229, 236

38. These amendments provide for consistency in references to corresponding Northern Ireland legislation.

Lords Amendments 122, 124,

39. These amendments would amend clause 44 to ensure that the Regulator can inspect premises where the administration of a scheme relevant to the discharge of the employer duties is taking place, whether or not the scheme is in fact a qualifying scheme.

Lords Amendment 132

40. The amendment introduces a new clause which would add a new class of persons (those who have given notice to opt out) to the existing list of those who may make a complaint, or refer a dispute, to be investigated or determined by the Pensions Ombudsman can investigate (beneficiaries under a pension scheme). This would allow the Pensions Ombudsman to investigate complaints relating to a jobholder opting out of a pension scheme.

Lords Amendment 138

41. This is a drafting amendment that would put right an inconsistency in the wording of section 104D of the Employment Rights Act, as inserted by clause 55(2).

Lords Amendments 139*, 140, 141, 142, 143, 144, 145

42. Amendment 139 would replace the Secretary of State's power to establish a scheme with a duty to do so. The other amendments make drafting and consequential changes.

Lords Amendment 147

43. This amendment would put on the face of the Bill a duty for the Secretary of State to appoint a person to carry out a review of the operation of the scheme to be established under clause 58. The appointment would be made the end of 2016 at the earliest, and not less than five years after the date that contributions are first paid to the scheme. The review would have to consider the approach to annual contribution limits and the effect of restricting transfers from and into the scheme.

Lords Amendment 148*

44. This amendment would correct a drafting error in clause 69 subsection (7) where it refers to 'the corporation' and not 'the Authority'.

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Lords Amendments 149, 150, 240, 241

45. Amendments 149, 240 would provide that the Secretary of State can only provide financial assistance to the Personal Accounts Delivery Authority or the trustee corporation with the consent of the Treasury.

46. Amendments 150, 241 would provide that if any assistance is given in the form of a Government loan then it must be repaid with interest at a rate which meets the conditions that would apply under section 5 of the National Loans Act 1968.

Lords Amendments 151, 239, 283

47. Amendment 239 would allow the trustee corporation to delegate functions to any member of staff – including individuals who are on secondment or loan to the corporation. Amendment 151 similarly allows individuals who are not employees of the Personal Accounts Delivery Authority to be appointed as executive members and amendment 283 is a consequential amendment.

Lords Amendments 152, 280

48. These amendments would remove subsections in section 6 of the Welfare Reform and Pensions Act 1999 which are now redundant after changes to the Pensions Schemes Act 1993 made by the Pensions Act 2004. Amendment 152 would amend section 6 of the Welfare Reform and Pensions Act 1999 so that subsections (1), (2) and (4) are omitted. Amendment 280 is a consequential amendment to Schedule 9 (repeals).

Lords Amendment 159

49. The effect of this amendment would be that a director of a body corporate would not count as a worker for the purposes of Part 1 of the Bill unless the body corporate employed the director under a contract of employment and also employed at least one other person under such a contract. A director with other arrangements with the body corporate that would come within clause 77(4)(b) would not count as a worker.

Lords Amendments 161, 162, 207, 208, 212, 213, 230, 231

50. Amendments 161 and 162 would introduce new clauses to enable regulations to provide that categories of persons who are employed to work on vessels and categories of persons in offshore employment may be treated as workers for the purposes of Part 1 of the Bill.

51. Amendments 207, 208, 212 and 213 would ensure that provisions for Orders in Council for persons in offshore employment are contained within the new clause and that clause 115 and clause 116 continues to apply to regulations and orders made by the Secretary of State.

52. Amendments 230 and 231 would be consequential to amendments 162 and 163.

Lords Amendment 164

53. This amendment would amend the definition of "active member" to ensure that it can apply to workers without qualifying earnings under clause 8.

Lords Amendments 171, 172, 173, 174, 175, 176, 242, 243, 244, 245, 246, 247 , 284

54. Amendments 171 to 176, and 284 would ensure that the consolidated amount additional pension accruals (under clause 89) is brought within the current provisions regarding revaluation and inheritance of Graduated Retirement Benefit and Additional Pension (SERPS and S2P). They would also provide for the deduction of a consolidated amount from the additional pension or widowed parents allowance payable where a person was also entitled to a guaranteed minimum pension in respect of any period between 1978 and 1997. Amendment 175 would require the Secretary of State to seek a report from the Government Actuary's Department (GAD) on how actuarial equivalence should be determined for the purposes of the calculation of the consolidated amount and to report to Parliament if any of GAD's recommendations are not followed.

Lords Amendments 177, 183, 285

55. This new clause and these amendments would enable the removal of the remaining rules that require the provision of survivor benefits from protected rights (contracted-out rights in defined contribution schemes). The change would come into effect at the same time as contracting out on a defined contribution basis is abolished (expected to be in 2012). This means that, assuming contracting out on a defined contribution basis ceases, there will be no requirements for how past protected rights must be used. Amendment 285 would amend Schedule 9 to this Bill to include the necessary repeals.

Lords Amendments 180, 183, 184, 185, 262, 263, 264, 266, 267, 268, 275

56. These amendments would provide that where, for example, a party to divorce is a member of more than one pension scheme which has transferred into the Pension Protection Fund (the "PPF"), the courts are able to make sharing orders relating to individual schemes where appropriate, and provide for the PPF to calculate compensation accordingly. This is done by making the provisions apply in respect of compensation referable to membership of individual schemes rather than to a member's rights to compensation from the PPF in respect of all schemes the person is a member of.

Lords Amendments 181, 182, 186, 213, 214, 272, 276

57. These amendments provide for the operation of the pension compensation sharing provisions in Scotland in a way that is consistent with the operation of pension sharing. For example, they would enable Scottish courts to make a pension compensation order specifying the amount, rather than the percentage, that is to be transferred, and provide for the PPF to calculate the sum to be transferred accordingly.

Lords Amendment 187

58. This amendment would correct an omission in the terminology referring to annulment in Scotland, by inserting the word “declarator”.

Lords Amendments 188, 192, 193

59. These amendments permit the Secretary of State to make regulations allowing the Board of the PPF to recover prescribed costs related to prescribed descriptions of activities carried out in connection with pension sharing and pension compensation sharing. Amendment 188 allows regulations to include provision for the offsetting of any charges owed by a party to the PPF Board against PPF compensation payable to that party.

60. Amendment 192 changes the order of the clauses so that the consequential amendments in Clause 104 follow the new clause inserted by amendment 193.

61. Amendment 193 inserts a new section into the Pensions Act 2004 which would allow regulations to make provision for the Board of the PPF to recover from the parties involved prescribed costs associated with the implementation of a pension sharing order.

Lords Amendments 189, 190, 191, 286

62. These amendments amend the provisions in the Pensions Act 2004 that specify which payments may be made out of the Pension Protection Fund, and ensure that the Board of the PPF can make payments from the fund to meet its liabilities to pay compensation under a pension compensation sharing order. They also permit the Board of the Pension Protection Fund to make arrangements for a person to carry out, on its behalf, specified functions associated with implementation of a pension compensation sharing order.

Lords Amendments 194, 195, 196, 197, 216, 217, 232

63. Amendment 194 would amend the definition of a Financial Assistance Scheme (“FAS”) qualifying scheme in section 286(2) of the Pensions Act 2004 so that exceptions could be made through regulations to the condition limiting the FAS to schemes that have been wound-up before 6th April 2005 (the date when PPF starts). Amendments 196 and 216 are consequential upon Amendment 194.

64. Amendment 195 would amend the definition of a FAS qualifying pension scheme under section 286(2) at paragraph (c) by inserting the words “if any” so that future regulations would not have to specify a condition about the employer when setting out whether a scheme will be a FAS qualifying scheme.

65. Amendment 197 would insert a new section in the Pensions Act 2004 (section 286A) which would continue to apply the restriction on annuitisation for FAS qualifying schemes. The provisions would be retrospective, so that the restriction on

annuitisation is continuous from the time when the previous period of restriction ended on 25th June 2008.

66. Section 286A also makes new provision under which any purchased annuity or agreement to purchase which is in contravention of the restriction can be made void by the FAS scheme manager.

67. The new section would also include a regulation-making power which would enable a person other than the scheme manager to make the decision on whether to allow annuitisation, or make any purchase or agreement void. Amendments 217 and 218 are consequential to amendment 197.

Lords Amendments 198, 279, 287, 290, 225, 226, 227

68. These amendments relate to the Pensions Regulator's anti-avoidance powers under sections 38 to 51 of the Pensions Act 2004 (contribution notices and financial support directions). They are intended to address risks to pension scheme members' benefits and the Pension Protection Fund.

69. The amendments would introduce a new alternative test for the issue of contribution notices which is based on whether an act or failure has detrimentally affected in a material way the likelihood of scheme members' benefits being paid. The amendments would impose a requirement on the Regulator to set out in a code of practice the circumstances in which it expects to issue contribution notices under the new test. The amendments also make provision (in the new section 38B of the Pensions Act 2004) for a defence to the issue of a contribution notice under the proposed new test. This is intended to enable a degree of self-regulation. Amendment 198 would provide that the material detriment test be reviewed by the Secretary of State after 4 years of operation.

70. The amendments would remove "otherwise than in good faith" from the second limb of the existing grounds for the issue of contribution notices (under section 38(5)(a)(ii) of the Pensions Act 2004).

71. The amendments would clarify that the power to issue contribution notices may be exercised in relation to a series of acts or failures. The amendments would also set out new factors in relation to the Regulator's determination as to whether it is reasonable to issue a notice.

72. The amendments would address an anomaly in the insufficiently resourced test for the issue of financial support directions: this prevents regulatory intervention unless there is a single person associated or connected to the employer that is sufficiently resourced.

73. Finally the amendments would also enable the Regulator to secure that a contribution notice or a financial support direction could be issued in relation to a

relevant pension scheme to which members have been transferred, but only if a notice or direction could have been issued had the transfer not happened.

74. The amendments also set out the effective dates for the modified powers. Amendments 287, 290, 225, 226, 227 make consequential amendments relating to repeals and commencement in connection with the amended anti-avoidance powers (contribution notices and financial support directions).

Lords Amendment 200

75. This amendment inserts a new clause which would exempt certain administrative and other payments from the existing requirements of section 37 of the Pensions Act 1995 (payment of surplus to employer). The payments which would be exempt are similar to those which were exempt from section 37 before it was revised by the Pensions Act 2004, though they differ in some respects.

Lords Amendments 201,289, 218

76. These amendments would amend the provisions relating to the contracting out of the Regulator's functions under paragraph 21 of Schedule 1 to the Pensions Act 2004. These amendments remove the requirement to specify the identity of the contractor in regulations, and limit the cases in which determining whether to exercise a function may be contracted out to cases where the function is one of those specified in the amendment, which are functions that relate to the compliance regime under the Bill. Amendment 201 provides that regulations made under the existing power are not affected. Amendments 289 and 218 are consequential to the repeal provisions.

Lords Amendments 202, 203, 228

77. These amendments would allow individuals who reach State Pension age between 6 April 2008 and 5 April 2015 to buy up to an additional 6 years of voluntary Class 3 National Insurance contributions for tax years from 1975-76, providing they already have 20 existing qualifying years on their National Insurance record. A qualifying year for these purposes is one in which a person has paid, or been credited with, National Insurance contributions of a relevant class; it includes any years during which a person was precluded from regular employment by responsibilities at home.

78. The new clauses would come into force on 6th April 2009. Amendment 228 is consequential on this.

Lords Amendments 204,220

79. Amendment 204 would provide the Secretary of State with a power to make regulations which allow social security information on Pension Credit recipients to be supplied to energy suppliers, directly or through a third party.

These notes relate to the Lords Amendments to the Pensions Bill, as brought from the House of Lords on 19th November 2008 [Bill 174]

80. Amendment 220 would make consequential amendment to the commencement clause. Amendment 211 (mentioned above) would make regulations under amendment 204 subject to the affirmative procedure.

Lords Amendments 205, 206, 221, 222, 233, 234

81. Amendment 205 would enable a UK pensioner who has a German pension entitlement which is reduced or extinguished by a period of pre-1948 insurance to request that he is deemed not to have had such insurance.

82. This amendment further allows the Secretary of State or the Department for Social Development in Northern Ireland to make a payment to a UK pensioner whose pre 1948 insurance has been cancelled. The payment must not exceed the amount of benefit which would have been payable as a result of the pre 1948 insurance.

83. Amendment 206 inserts a new clause explaining what is meant by a period of pre-1948 insurance.

84. Amendments 221 and 222 would allow for these new clauses to come into effect on Royal Assent.

85. Amendments 233 and 234 would extend the new clauses to Northern Ireland.

Lords Amendments 215, 288, 235

86. This new clause would re-enact the existing pre-consolidation Order making power contained in section 321 of the Pensions Act 2004 to enable errors to be corrected, spent provisions to be removed and ambiguities to be clarified on consolidation of private pensions legislation from 1993 to the current Bill.

Lords Amendments 219, 224

87. These amendments would make changes to the commencement provisions. 219 allows the provisions under clause 111 to come into force on Royal Assent. 224 allows all of the regulation-making powers in the Bill to come into force on Royal Assent.

Lords Amendments 237, 238

88. Amendment 238 would replace the current limit on the maximum term of appointment of a member of the trustee corporation. The current limit is a four year term, with the possibility of one further period of four years. The new limit would be a five year term, with the possibility of one further period of five years.

Amendment 237 would impose a requirement on the Secretary of State, where a chair of the trustee corporation has been appointed, to consult the chair before making subsequent appointments.

Lords Amendments 248, 251, 252, 253, 257, 258, 260

89. These amendments would provide for the calculation and payment of entitlement under a pension compensation order where the transferor is entitled to pension compensation by virtue of his status as a person connected with a member of a scheme for which the PPF has assumed responsibility. They would also operate on the provisions relating to compensation paid to survivors on the death of a member following a compensation sharing order, so that surviving civil partners and other persons prescribed by regulations will be eligible, as well as widows and widowers. They do this by providing for references to widow or widower to include a “surviving partner”.

Lords Amendments 249, 250, 254, 255

90. These amendments would remove provision for compensation calculated following a compensation sharing order to be reduced to the 90% level where the transferor’s compensation would already have been so reduced.

Lords Amendments 256, 261, 259, 277, 278

91. These amendments would allow a person with future rights to Pension Protection Fund compensation to apply for and receive a lump sum in lieu of those rights if he is suffering from a progressive disease and his death in consequence can be reasonably expected in the following six months.

92. Amendments 256 and 261 would ensure that terminal illness lump sums are also available to people whose rights to PPF compensation derive from a pension compensation sharing order. Amendment 261 sets out the eligibility criteria for terminal illness lump sums for such people, and inserts provisions relating to application, determination, the consequences of receiving a terminal illness lump sum and disclosure of certain information.

93. Amendment 259 provides that compensation paid to survivors is not lost because a person has taken a terminal illness lump sum.

94. Amendment 277 makes consequential amendments to Schedule 7 to the Pensions Act 2004 following from the creation of terminal illness lump sums by amendment 278. For example, it makes provision to ensure that the lump sums are available and for the consequences of receiving a payment, including the protection of survivors’ compensation.

95. Amendment 278 would insert a new paragraph into Schedule 7 to the Pensions Act 2004 which sets out the eligibility criteria for terminal illness lump sums and provisions relating to application, determination, the consequences of receiving a terminal illness lump sum and disclosure of certain information.

These notes relate to the Lords Amendments to the Pensions Bill, as brought from the House of Lords on 19th November 2008 [Bill 174]

Lords Amendments 265, 269, 270, 271, 273, 274

96. These amendments would change the provisions setting out the circumstances in which an outstanding attachment order prohibits a fresh order being made, so that an attachment order would prevent the making of a pension compensation sharing order or further attachment order only where the original order has not been discharged.

Lords Amendment 282

97. This amendment adds the repeal made by clause 75(3) (winding up of the Personal Accounts Delivery Authority) to Schedule 9 (repeals).

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

98. Amendment 194 would extend Financial Assistance Scheme eligibility to schemes which have previously not been able to qualify for either FAS or the PPF. This would result in a small number of additional members being brought into FAS, increasing long-run costs by an estimated 0.4%. There may be a few schemes that may identify themselves at a later date and this could increase costs to 0.7%. This change will lead to an increase in the cost of FAS of £10m to £20m on a net present value basis over the full duration of FAS.

99. Amendments 202 and 203 would generate an estimated increased benefit expenditure of around £0.6bn in Net Present Value terms to 2050 in 2008/9 price terms. These costs will be met by a planned increase in the price of Class 3 National Insurance Contributions.

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