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Pension Schemes Bill

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The Pension Schemes Bill aims to encourage greater risk sharing in private pension arrangements and to allow for new types of pension arrangements based on the extent of risk that is borne by scheme members.

Key Points

- The Pension Schemes Bill seeks to enact changes to Northern Ireland that were introduced in Great Britain in The Pension Schemes Act 2015.
- Although pension matters are devolved to Northern Ireland, parity is retained with Great Britain in line with section 87 of the Northern Ireland Act 1998.
- The main aspects of the Bill are to encourage greater risk sharing in private pension arrangements and to allow for new types of pension arrangements based on the extent of risk that is borne by scheme members.
- During the passage of the Westminster Bill, Legislative Consent Motions were agreed by the Committee for Finance and Personnel, the Committee for Employment and Learning and the Committee for Social Development to ensure that aspects of the legislation were introduced at the same time as in Great Britain.
- The Committee for Social Development was briefed on the Equality Impact Assessment for the Bill on 30 April 2015.
- On 4 June 2015, the Minister for Social Development, Mr Storey, briefed the Committee for Social Development on the Bill and sought the Committee’s agreement that the Bill receive Accelerated passage given the parity principle and the Committee agreed.
- During the passage of the Westminster Pension Schemes Bill through the House of Lords and Commons issues were raised concerning the governance of the scheme and the development of adequate guidance.

Contents

1 Introduction

Although pension matters are devolved to Northern Ireland, parity is retained with Great Britain in line with section 87 of the Northern Ireland Act 1998.[1] In effect, there is a single pension system and regulatory regime across the United Kingdom.[2]

> *Section 87 of the Northern Ireland Act 1998 requires the Secretary of State for Work and Pensions and the Minister with responsibility for social security in Northern Ireland to consult each other with the aim of ensuring that, to the extent agreed by them,* ***the relevant legislation achieves single systems of social security, child support and pensions for the UK****. It also provides for arrangements to co-ordinate the operation of the relevant Great Britain and Northern Ireland legislation.*

This has meant that Pensions legislation instigated at Westminster is quickly adopted in Northern Ireland. The Chancellor of the Exchequer, George Osborne MP, as part of his 2014 Budget, announced the Coalition Government's intention to make a range of changes to the Pension System. These changes were subsequently introduced into law at Westminster on 3 March 2015, in The Pension Schemes Act. This put the onus on the Northern Ireland Assembly to initiate legislation to retain parity.

The Pension Schemes Bill (the Bill) currently before the Assembly seeks to enact the changes to Northern Ireland that were introduced in Great Britain in The Pension Schemes Act 2015.

The main aspects of the Bill are to encourage greater risk sharing in private pension arrangements and to allow for new types of pension arrangements based on the extent of risk that is borne by scheme members.

The Bill also outlines a number of consequential and other changes to existing pensions legislation and provides a framework for schemes to provide collective benefits which are described by the Department for Work and Pensions as follows:

> *Collective benefits allow members to share and pool a range of different types of risk with other members, both in the accumulation phase and the pay out phase. Members share risk within a shared asset pool that can enable members of the pension scheme to smooth investment returns and economic shocks over more than one generation.*[3]

[1] The Northern Ireland Act 1998. Available at: http://www.legislation.gov.uk/ukpga/1998/47/pdfs/ukpga_19980047_en.pdf
[2] Explanatory memorandum to the. Available at: http://www.legislation.gov.uk/uksi/2006/2659/pdfs/uksiem_20062659_en.pdf
[3] Pension Schemes Bill Information Note – Defined Ambition pensions and Collective Benefits, Department for Work and Pensions 2014, page 2. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/365557/pension-schemes-bill-2014-to-2015-defined-ambition-collective-benefits.pdf

1.1 Current arrangements

Currently, private pensions mainly take one of two forms: (1) a defined contributions pension (or “money purchase scheme”), which offers no certainty about the amount of money that will be offered to the holder on retirement, or (2) a defined benefits pension (or non-money purchase scheme), which offers the holder a salary-related pension, providing certainty about what will be paid in retirement.

With a Defined Contributions (DC) scheme, it is the individual member of the pension who takes the risk about how much the pension will be worth at retirement. Whereas, with a Defined Benefits (DB) scheme the employer is liable to make up any shortfall in the pension pot to ensure that the member receives the agreed pension amount.

Given the increasing shortfalls in defined benefit pension schemes, as people live longer and older people become a larger proportion of the population, the number of employers offering these type of schemes has diminished. This means that, with the rise in individuals taking up defined contributions pensions, they are increasingly facing uncertainty about how much their pension will be worth to them on retirement.

The Pension Schemes Bill aims to facilitate a wider range of pension types to help people build up a good pension.

1.2 The Pension Schemes Act 2015

In the 2014 Budget, the Coalition government set out its intention to introduce new flexibilities to the way savers can access their DC pension pots with the stated aim of giving people more choice about how they fund their retirement. The Pensions Scheme Act 2015 received Royal Ascent on 6 March 2015.

The Act, which extends to England, Wales and Scotland:[4]

- Establishes a new legislative framework for private pensions, defining them on the basis of the promise they offer for members about their retirement benefits during the accumulation phase. The promise refers to all of the benefits (defined benefits), some of the benefits (shared risk), or there will be no promise (defined contributions); and
- Enables the provision of collective benefits (provided on the basis of allowing the scheme’s assets to be used in a way that pools risks across membership).

The Act also gives force to measures connected with the announcement in Budget 2014 that people aged 55 and over would have more flexibility about how to access their defined contribution pension savings from April 2015. It enables a prohibition on transfers out of unfunded public service pension schemes, except to other defined benefit schemes.[5]

[4] Pension Schemes Bill , Research Paper 14/44 21 August 2014. Available at: http://researchbriefings.files.parliament.uk/documents/RP14-44/RP14-44.pdf

[5] Ibid.

1.3 Legislative Consent Motions

Given that the Westminster Pension Schemes Act 2015 was to introduce changes from April 2015, during its passage through Parliament a number of aspects of the legislation needed to be implemented in Northern Ireland at the same time. Given the short time scales involved, it was felt that the most efficient way to enact the legislation in Northern Ireland was via Legislative Consent Motions.

During the passage of the Westminster Bill, Legislative Consent Motions were agreed by the Committee for Finance and Personnel, the Committee for Employment and Learning and the Committee for Social Development, details of which are at Table 1. These delegated powers of the Westminster Act will be introduced as regulations by the relevant Northern Ireland Departments.

Table 1. Northern Ireland Legislative Consent Motions related to the Pension Schemes Act 2015.

Legislative Consent Motion	Sponsoring Committee	Date agreed	Details
Pension Schemes Bill	Committee for Employment and Learning	24 Nov 2014	Extended to Northern Ireland the provisions of the Westminster Pension Schemes Bill dealing with A supreme court decision in the case of O'Brien v Ministry of Justice on the Part-time workers directive. The ruling led the Coalition Government to add an amendment to its Pension Schemes Bill to take account of the ruling regarding pensions for judicial office holders. Clause 76, Schedule 5
Westminster Pension Schemes Bill	Committee for Social Development	19 Jan 2015	Extended to Northern Ireland the provisions of the Westminster Pension Schemes Bill dealing with independent advice, drawdown, conversion of benefits and lump sums, rights to transfer benefits and the Financial Assistance Scheme as contained in clauses 51 to 53 and 61 to 66 of, and Schedules 2 and 4 to, the Bill
Pension Schemes Bill (Public Service Defined Benefit Schemes)	Committee for Finance and Personnel	17 Dec 2014	Extended to Northern Ireland the provisions of the Westminster Pension Schemes Bill dealing with restrictions on transfers out of public service defined benefits schemes and reduction of cash equivalents in relation to funded public service defined benefits schemes. Clause 71 to 73.

1.4 Accelerated Passage

As Pension legislation is devolved to Northern Ireland, the Committee for Social Development was advised by Department of Social Development officials that proposals for a Bill corresponding to the Westminster Pension Schemes Act would be coming forward. The Committee was briefed by the Committee on the proposals for the Pensions Schemes Bill and the results of the Department's Equality Impact Assessment at its meeting on 30 April 2015.[6]

On 4 June 2015, the Minister for Social Development, Mr Storey, briefed the Committee on the Bill and sought the Committee's agreement that the Bill receive Accelerated passage given section 87 on the Northern Ireland Act 1998 which places an onus on Ministers to retain single UK systems of social security, child support and pensions for the UK.

At its meeting on 4 June the Committee for Social Development agreed that the Pension Schemes Bill should proceed via accelerated passage.[7]

2 The Pension Schemes Bill

On 22 June 2015, The Pension Schemes Bill was introduced to the Northern Ireland Assembly. The Bill has 4 Parts, 53 Clauses and 2 Schedules.

2.1 Part 1 – Categories of Pension Scheme

Part 1 of the Bill relates to categories of pension scheme. It contains provisions to introduce new definitions into the legislative framework for private pensions, establishing three mutually exclusive categories of scheme type, based on the different types of promise offered to members during the accumulation phase about their pension savings when they come to access them.

In the defined benefit scheme, the member has a full pensions promise about the rate of retirement income that they will receive for life from a fixed normal pension age. The shared -risk scheme — also known as "defined ambition" — contains a promise about some of the retirement benefits, whether as income or a lump sum. The defined contribution scheme has no promise about the benefit outcome.

In the case of a scheme not fitting exclusively into one of those definitions, regulations must provide for a scheme to be treated as two or more separate schemes, each falling within a category.

Regulations may also be made to provide for any other circumstances in which a scheme is to be treated as two or more separate schemes. They may also set out further details about requirements of and exceptions for defined benefit schemes.

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[6] http://data.niassembly.gov.uk/HansardXml/committee-13445.pdf
[7] http://data.niassembly.gov.uk/HansardXml/committee-13918.pdf

2.2 Part 2 – Collective Benefits

Part 2 concerns collective benefits and defines collective benefits that may be provided by pension schemes.

Collective benefits are provided on the basis of allowing the scheme's assets to be used in a way that pools risks across the membership. It does not offer a specific pension promise on the level of benefit payable, but there will be a target benefit. To provide scheme members with some confidence about what they might expect from the scheme, the target must be achievable within a specified probability range.

Examples of collective arrangements can be found operating in the Netherlands, Denmark and parts of Canada, where evidence suggests that, when governed appropriately, they can provide a greater degree of stability in pension outcomes than individual defined contribution schemes. Part 2 also contains a series of regulation-making powers relating to the governance of schemes providing collective benefits. Requirements may be set out in secondary legislation on scheme reporting, the payment of benefits, benefit targets and valuation.

2.3 Part 3 – General changes to legislation about pension schemes

This Part contains amendments to existing legislation, mostly as a consequence of the change to scheme definitions set out in Part 1 and the provisions about collective benefits in Part 2. It aims to ensure that current legislative requirements relating to scheme governance and administration apply in the appropriate way to the new categories, and enables requirements on governance and administration to apply to the specific needs of members of shared risk schemes. Firstly, it introduces a regulation-making power to set out conditions for a pensions promise being obtained from a third party (clause 36), provides a new requirement for managers to act in the best interests of members when taking certain decisions in relation to shared risk schemes and collective benefits (clause 37), and changes existing regulation-making powers which require schemes to disclose information to members (clause 38). It contains measures relating to the preservation and revaluation rules of pension rights according to benefit type (clauses 39 and 40) for members leaving a scheme before normal pension age. It provides for collective benefits and “Regulatory Own Funds” schemes to be exempt from the indexation requirements set out in the 1995 Order and provides new regulation-making powers to exclude pensions of a prescribed description from those indexation requirements (clauses 41, 42 and 43). Finally, it removes the statutory requirement for regulations to provide that the Pensions Regulator compile and maintain a register of trustees (clause 44), and makes changes to subsisting rights legislation to ensure members are protected against detrimental modifications to rights in a shared risk or defined benefits scheme (clause 45). Finally, it provides a new definition of “normal benefit age” and “normal pension age” in relation to pension sharing and divorce etc. (clause 46).

2.4 Part 4 – General

Part 4 deals with general provisions. It contains matters relating to the application of the Bill and regulations made under it, including powers to make consequential amendments and to commence provisions by order. It also makes general provision about regulations under the Bill.

3 Consultation and the EQIA

Given that the Bill received accelerated passage through the Assembly, the Committee for Social Development did not consult on it. However, many of the measures outlined in the Pension Schemes Bill have already been consulted on in Northern Ireland as part of the Westminster consultation process. Responses from Northern Ireland were considered alongside those sent by individuals and organisations in England, Scotland and Wales.[8]

The Department for Social Development did however conduct an Equality Impact Assessment (EQIA) and on 30 April 2015 it briefed the Committee for Social Development on its conclusions.[9]

During the briefing officials advised that the results of the EQIA showed that the Bill:

> *is expected to have a mainly positive impact on each of the section 75 groups. However, the introduction of collective benefits could potentially, depending on scheme design, have an adverse differential impact on younger workers, in so far as there may be a measure of risk transfer from older to younger scheme members. However, where that is the case, we expect that to reduce over time as they move closer to pension age.*

The Department's EQIA identifies that the Bill contains regulation-making powers to restrict significant amounts of intergenerational risk transfer; for example, by requiring schemes to remain well funded or to take specified actions to tackle a deficit.[10]

The Department received one response to its EQIA consultation. This was from the Commissioner for Older People for Northern Ireland. The Commissioner acknowledged that savings to private pensions have been decreasing in recent decades and was supportive of the Bill's objectives, recognising the need to encourage greater risk-sharing in private pension arrangements.[11] The Commissioner's response highlighted the need for shared-risk pension products to be transparent about how risk is split between the provider and the buyer.

[8] https://www.gov.uk/government/consultations/reshaping-workplace-pensions-forfuture-generations
[9] http://data.niassembly.gov.uk/HansardXml/committee-13445.pdf
[10] Ibid.
[11] Ibid.

The Department advised that the provisions in the Bill that require certain decisions on shared-risk schemes and collective benefits be made in the best interests of members and the inclusion of various regulation-making powers to ensure robust governance of schemes and transparency for scheme members (Clauses 37 and 38) "*should be sufficient to alleviate the concerns raised by the commissioner*".[12]

During the briefing on the EQIA, the Committee for Social Development asked the Department to explain the protections for pension holders regarding the schemes. The Departmental officials explained that the purpose of the Bill is to introduce a system where pension scheme members have more guarantees and protections than in a defined contributions scheme.[13]

Members also sought clarity regarding responsibility for informing employees of the implications of the legislation on the part of employers.

Officials pointed out that the Department will gain powers (clause 38) setting out requirements to keep certain persons informed of various matters including the scheme's constitution, its administration and finances, and the rights and obligations that may arise under the scheme.

The Committee asked officials to explain the finding in the EQIA that the new legislative framework could introduce some unfairness for younger people.[14]

The Department advised that overall there was a collective benefit but that there was a slight risk that if those closest to retirement face a stock market not doing well then money will be taken from the fund asset pool to top-up the pension and this could lead to issues for those retiring in future years.

However, to make sure that that is not a major factor, a scheme will have to take into account that it will have to have its funds in overall balance and to operate inside a certain range. For example, the fund should be within 89% to 140% of the amount of money that it needs to pay people.

The Committee also asked for an explanation of why the EQIA suggested that ethnic minority groups may be more likely to be on lower pension incomes overall but that this was not deemed an issue. The Departmental officials advised that the number of people from ethnic minorities who are in schemes is proportionately smaller when examined across the whole of the population but that there was nothing in the Bill that would prevent this from improving.

[12] Ibid.
[13] Ibid.
[14] Ibid.

4 The Westminster Pension Schemes Act 2015

Given that the Pension Schemes Bill has received accelerated passage, to gain an insight of any possible issues, it is helpful to refer to the passage of the Westminster Pension Schemes Act 2015 as the current Bill replicates this Act. It should be noted however that the Westminster Act is larger as it contains clauses enacting powers that were outlined in the Legislative Consent Motions outlined in Table 1.

The Bill went through its House of Commons stages between 26 June and 25 November 2014 and through the House of Lords between 26 November and 5 February 2015. During the Committee stage in the House of Commons (between 21 October and 4 November 2014), the Government made 72 amendments which significantly restructured the Bill.

On its passage through the House of Lords the debate focused mainly on the introduction of a 'guidance guarantee' for people approaching retirement with defined contribution pension savings from April 2015. Issues raised by the Opposition included proposals for:

- An annuity brokerage service;
- Governance arrangements;
- A charge cap in drawdown funds; and
- Arrangements for monitoring the impact of the pension freedoms.

On the specific aspects of the Bill various clarifications and clarifying amendments were provided by the Government. The main issues covered in the debates and at Committee Stage are outlined below and a fuller synopsis of the House of Commons and House of Lords stages of the Bill can be found in two Westminster Research Publications; Pension Schemes Bill 2014-15 – House of Commons stages and Pension Schemes Bill 2014-15 – House of Lords Stages. The main legislative issues were raised in the House of Lords stages and are outlined here.

4.1 Governance

On the issue of Governance (Clauses 36 to 38), during Committee Stage, Lord Bradley argued that managers of collective schemes should be required to "*act in the best interests of members of the scheme.*"[15] He argued that the Bill did not go far enough on governance and that the governance rules have to be robust right from the very beginning.

At Report Stage, Lord McAvoy said the Bill did not go far enough to address governance issue in defined contribution schemes.[16] Lord Bourne responded that the

[15] http://researchbriefings.files.parliament.uk/documents/SN07030/SN07030.pdf
[16] Ibid.

Government had been consulting on minimum governance standards and would lay regulations before Parliament.

The draft Occupational Pension Schemes (Charges and Governance) Regulations 2015 were laid before Parliament on 4 February 2015 and, if passed, apply minimum governance standards for occupational pension schemes providing money purchase benefits.

4.2 Investments

Lord McAvoy proposed that a power to make regulations should be replaced with a duty to do so in two instances. One related to clause 14, which would allow regulations to be made requiring scheme trustees or managers of collective schemes to prepare an investment strategy. The other related to clause 15, which would allow regulations to be made requiring the trustees or managers to report on the performance of collective benefit investments. He asked whether the Government could imagine leaving these powers unused.[17] Baroness Drake supported this, saying that:

> *[…] it seems to me pretty inconceivable that a collective benefits scheme would be allowed to operate without the preparation of such a statement, particularly given the way in which such a scheme is managing risk on a collective basis across and between different generations of savers, and where the individuals in the scheme do not have a well -defined pot over which they have clear and individual ownership.*[18]

Lord Bourne responded that he believed that the permissive approach being taken by the Government was correct:

> *The difference here is between "may" and "must". We believe that driving this forward in the way that we are, in conjunction with the industry, is appropriate and that this is likely to deliver—indeed, will deliver—the best result.[…] I should also say that this is related to trust schemes. Further work and conversations are required with the Financial Conduct Authority to establish how it will regulate non-trust-based schemes offering collective benefits. It may be that it is more effective and appropriate for some of the regulation-making powers under Part 2 to be used in relation to occupational schemes only, and for the FCA to make parallel provision in relation to personal pension schemes.*[19]

4.3 Annual review

Lord Bradley proposed requiring the Secretary of State to report annually on progress in the establishment of combined benefit schemes. In response, Lord Bourne said that the Government thought this could be more appropriately monitored in other ways, for

[17] Ibid.
[18] Ibid.
[19] Ibid.

example through the Office for National Statistics, which conducts surveys and collects data. In addition, Cabinet Office guidance already required a review within three to five years of Royal Assent.[20]

4.4 Duty to consider scale

Lord Bradley proposed placing a duty on trustees "*to consider whether the scheme has sufficient scale to deliver good value for members.*"

Lord Bourne said the Government did not belief that forcing scale would necessarily drive good governance, investment expertise or low costs. Its analysis showed that there were "*already effective benefits of scale operating within the marketplace, including significant consolidation of schemes*." It believed the appropriate framework was already in place.

Lord Bradley responded that his amendment was not about forcing scale but looking at what was in members' best interests.[21]

Lord McAvoy returned to the issue at Report Stage, saying that that:

> *[…] we should always be looking to get best value and protect the interests of the public throughout this process. Strengthening the arm of the Pensions Regulator will help to achieve that scale.*[22]

Lord Bourne responded that "*trustees' existing fiduciary duties already require them to act in their members; best interests, so it would be unusual if they did not consider this point.*" A specific requirement to do so would introduce unnecessary cost and complexity.

Lord McAvoy responded that it was reasonable to require trustees to consider the issue but withdrew his amendment.

4.5 Requirement to maintain a register of independent trustees

Lord McAvoy probed the rationale for clause 44 which would remove the requirement on the Pensions Regulator to maintain a register of independent trustees. Lord Bourne said the register was superfluous:

> *[…] there is already an existing power for the Pensions Regulator to appoint trustees where he can appoint a trustee without reference to the register […]*[23]

[20] Ibid.
[21] Ibid.
[22] Ibid.
[23] Ibid.

4.6 NEST restrictions

Lord Bradley proposed that the Government lift the restrictions on the National Employment Savings Trust (NEST) within one month of Royal Assent rather than in April 2017. NEST was established to support automatic enrolment by ensuring that all workers have access to a low-cost workplace pension scheme. Its design - including the annual contribution limit and transfer restrictions - was intended to focus NEST on its target market of low to moderate earners and smaller employers who the market found difficult to serve. Lord Bourne responded that there were two issues to consider:

> *The first is that we want NEST to fulfil its core function. We believe it is doing that very well and do not want to disturb that. The second is that 2017 is only two and a bit years away, and we believe it could take a significant amount of time to vary the state aid consent, but we will have another look at that issue.*[24]

Lord Bradley returned to the issue at Report Stage, arguing again that the restrictions should be lifted more quickly:

> *NEST has been a success […] we should celebrate the fact that it has provided a high quality, low-cost product in an important market that has not always or often service the saver well. Restrictions remain that prevent NEST building on that success.*[25]

Lord Bourne said the evidence showed that the restrictions were not in fact preventing NEST from serving its target market. The Government wanted NEST to focus on the roll-out of auto-enrolment to small and micro-employers:

> *The scale of this challenge should not be underestimated – for example, during 2016, around half a million small employers will need to enrol their workers, which is an average of more than 40,000 employers per month.*[26]

Furthermore, if the Government intended to lift the restrictions earlier, it would need to check with the European Commission whether this would breach state aid rules.

Draft regulations were approved by the House of Lords on 3 February 2015 and by the House of Commons on 2 February 2015.

The National Employment Savings Trust (Amendment) Order 2015 (SI 2015/178) remove the annual contribution limit and the transfer restrictions imposed on NEST from 1 April 2017.

[24] Ibid.
[25] Ibid.
[26] Idib.