

# LEGISLATIVE CONSENT MEMORANDUM

## THE PENSIONS SCHEMES BILL

### Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Communities, is:

*“That this Assembly agrees, in line with section 87 of the Northern Ireland Act 1998, to the principle of the extension to Northern Ireland of the provisions of the Pension Schemes Bill, relating to - Terminal Illness, Alienation or Forfeiture of Occupational Pension, Validity of Certain Alterations to Salary-Related Contracted-Out Pension Schemes, Pensions Dashboard and Contractual Override which was introduced in the House of Commons on 05 June 2025.”*

### Background

2. This memorandum has been laid before the Assembly by the Minister for Communities under Standing Order 42A(2). The Pensions Schemes Bill (the Bill) was introduced in the House of Commons on 05 June 2025. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/3982>

### Summary of the relevant parts of the Bill and its policy objectives

#### Terminal Illness

3. This measure extends the definition of terminal illness in the Pension Protection Fund (PPF) and Financial Assistance Scheme (FAS) so that members can receive payments sooner in their illness. The definition will change from a life expectancy of six months or less, to a life expectancy of 12 months or less, so aligning this with similar changes in social security legislation and with tax legislation. Earlier access to compensation can help alleviate financial stress and improve the quality of life for those facing terminal illnesses.
4. The terminally ill members of the PPF and FAS nearing the end of their life can receive payments earlier, providing financial support at a difficult time.

Some members with a life expectancy of less than 12 months but more than 6 months will receive payments they wouldn't have otherwise.

5. This measure was approved by the Assembly by way of a Legislative Consent Motion in 2024, for the Northern Ireland provisions to be contained in a Westminster Private Member's Bill; however, that Bill fell following the dissolution of Parliament for the 2024 General Election.

### **Alienation or Forfeiture of Occupational Pension**

6. This measure is aimed at restoring the original intent of The Pensions Ombudsman's (TPO) powers, as detailed when it was originally established in 1993. This is not about providing new powers.
7. Technical in nature, this measure will seek to restore the original policy intent and reaffirm the TPO as a competent court, removing the need for pension schemes to apply to the courts to enforce TPO decisions in relation to the recovery of overpayments.
8. Re-establishing the TPO powers to those of a competent court will alleviate pressures and cost for courts, schemes, and members, ensuring recovery costs are kept to a minimum.

### **Validity of Certain Alterations to Salary-Related Contracted-Out Pension Schemes**

9. This measure aims to restore certainty about schemes' liabilities and funding requirements. Following the High Court judgment in 2023, it is recognised that this ruling could have significant implications for similar schemes and for defined benefit pension schemes going forward.
10. It will allow schemes to clarify that benefit changes made between 1997 and 2016 met the Reference Scheme Test, even if they don't have written actuarial confirmation from the time the change was made.
11. The proposed measures will give affected schemes the ability to retrospectively obtain actuarial confirmation that the scheme continued to meet the Reference Scheme Test following a change to its benefit structure.
12. This would be done by way of a written confirmation from the actuary that they are satisfied that the scheme would have continued to meet the Reference Scheme Test after the amendment. The intent is for the written confirmation to be a statement of the actuary's professional opinion, and it is intended that guidance will be produced by the Pensions Regulator and the Institute and

Faculty of Actuaries to provide practical guidance for trustees and actuaries about the process for meeting the new requirements.

13. Where the actuary cannot now form a view that the Reference Scheme Test would have been met after a historic change, it remains the policy intention that they will not be able to provide retrospective confirmation, and the amendment will be void, on the principles established by the Virgin Media ruling. This is to safeguard the position of members and ensure that the new legislation is not used to validate amendments which would not have met contracting-out requirements.

### **Pensions Dashboard**

14. The Pensions Dashboards (No. 2) Regulations (NI) 2023 set out requirements for pensions dashboards, allowing individuals to view their pension entitlements electronically, including the State Pension.
15. As the Pension Protection Fund (PPF) and the Financial Assistance Scheme (FAS) are compensation schemes rather than pension schemes, they are not currently in scope to connect to pensions dashboards. However, members of both the PPF and FAS will consider this compensation to form part of their retirement income, so their inclusion would be a significant improvement for users of pensions dashboards.
16. The measure will enable the display of pensions information from the PPF and the FAS on the government-backed pensions dashboard provided by the Money and Pensions Service.
17. Including PPF and FAS information in pensions dashboards would benefit approximately 150,000 people across the UK (and potentially more in the future if other pension schemes enter the PPF).

### **Contractual Override**

18. Contractual Override will enable providers to transfer a member's contract to another provider or to vary contractual terms, without individual members' consent, when in the members' best interests. This will facilitate greater consolidation and improve member outcomes.
19. It will include a range of safeguards and procedures which must be followed before an override, or a transfer can occur. It will also support the effective operation of other measures contained within the Bill such as the Value for Money framework and Small Pots consolidation.

20. The measure has overwhelming support from the industry, who have been calling on the Government to introduce Contractual Override.

### **Provisions which deal with a Devolution Matter**

21. The provisions which deal with a transferred matter relate to the Terminal Illness, Alienation or Forfeiture of Occupational Pension, Validity of Certain Alterations to Salary-Related Contracted-Out Pension Schemes, Pensions Dashboard and Contractual Override of the Pension Schemes Bill.

#### **Terminal Illness**

22. Clause 109(b)&(d) of the Bill makes amendments to the Pensions (Northern Ireland) Order 2005 and the Pensions (No.2) Act (Northern Ireland) 2008 to amend the definition of “terminally ill”, for purposes relating to compensation or assistance from the Pension Protection Fund or Financial Assistance Scheme, from six months to twelve months.

#### **Alienation or Forfeiture of Occupational Pension**

23. Clause 108(4), 108(5) and 108(6) of the Bill make amendments to the relevant parts of The Pensions (Northern Ireland) Order 1995 to re-establish the Pensions Ombudsman as a competent court for the purposes of resolving disputes arising from the alienation or forfeiture of occupational pension.

#### **Validity of Certain Alterations to Salary-Related Contracted-Out Pension Schemes**

24. Clause 104 provides the interpretation and scope of Validity of Certain Alterations to Salary-Related Contracted-Out Pension Schemes.
25. Clause 104(2) provides the definition of “NI Scheme” to satisfy section 5(2) of the Pension Schemes (Northern Ireland) Act 1993.
26. Clause 104(3) determines the “Scheme Actuary” in accordance with Article 47 of the Pensions (Northern Ireland) Order 1995.
27. Clause 104(6) and 104(7) defines the terms of a “potentially remedial alteration” and “positive action” in relation to a purported alteration.
28. Clause 104(8) defines alterations which are excluded from the scope of remediation.

29. Clause 105 deals with alterations of rules of salary related contracted out schemes confirming that certain alterations to scheme rules are valid.
30. Clause 106 provides similar rules, but for schemes that have been wound up.
31. Clause 107 provides the Department the power to make regulations to amend sections 104-106 by regulations, subject to negative resolution.

### **Pension Dashboards**

32. Clause 111(1) amends section 4A of the Financial Guidance and Claims Act 2018 to allow the Money and Pensions Service to provide information about the Pension Protection Fund and the Financial Assistance Scheme on its dashboard, including information that relates to an individual.

### **Contractual Override**

33. Clause 48(1) inserts the contractual override mechanism, referred to as unilateral changes, into the Financial Services and Markets Act 2000 (FSMA) as Part 7A.
34. Subsection (2) inserts a new section into Part 7 of FSMA - 117A Pension schemes to which this Part applies. This new section sets out which pension schemes the unilateral change rules apply to. It covers Financial Conduct Authority (FCA) regulated defined contribution (DC) workplace pension schemes or other pension schemes which may be prescribed by the Treasury.
35. Subsection (2) also inserts a new section into Part 7 of FSMA – 117B Unilateral Changes. This enables providers to change the terms of members pension contracts, scheme rules or trust deeds, change investments or transfer members to a new arrangement, which can be either to a new scheme or arrangement within the same provider, or to a new provider or trust-based pension scheme.
36. A unilateral change applies to “a description of pension pot”. This means that a provider describes the pension pots (defined in section 117I) to which the change applies. A change could apply to a whole arrangement or scheme, or a subset of an arrangement or scheme.
37. Subsection (2) also inserts a new section into Part 7 of FSMA –117C Effect of transfer of pension pot on membership of scheme etc. This new section makes further provision about the legal effect of transfers, such as making members a party to the new scheme or arrangement they are moved to.

38. Subsection (2) also inserts a new section into Part 7 of FSMA – 117D Best interests test. This new section sets out the best interests test, which must be met before a unilateral change can occur. This test requires a provider to reasonably conclude that the unilateral change is reasonably likely to lead to a better outcome for directly affected members (taken as a whole) and a no worse an outcome for the other members of the scheme (taken as a whole). “Directly affected” is defined in subsection (3).
39. Subsection (2) also inserts a new section into Part 7 of FSMA – 117 E Certification by independent person. This new section sets out the requirement for providers to receive certification from an independent person that the best interests test has been met and other requirements complied with, before a unilateral change can occur. The person appointed must be independent of the provider and meet expertise requirements set out in FCA rules.
40. The FCA must make further rules about the independent person, including independence requirements, certification requirements and terms of appointment.
41. Subsection (2) also inserts a new section into Part 7 of FSMA – 117F Unilateral change notice. This new section sets out the requirement for notice to be given before a unilateral change. Notice must be given to members affected by the change. The provision requires the FCA to make rules specifying information to be included in a notice (subsection (2)) and specifies certain details about what those rules must include (subsection (3)).
42. Subsection (2) also inserts a new section into Part 7 of FSMA – 117G Further duties to make FCA general rules. This new section requires the FCA to make rules relating to fees, information disclosures, and record keeping.
43. Subsection (2) also inserts a new section into Part 7 of FSMA – 117H Powers to make regulations. This new section allows the Treasury to make regulations relating to the scope of the power, modify the best interests test, disapply legislation (or require the FCA to disapply rules) which restricts or affects the making of unilateral changes, make consequential amendments and prescribe further preconditions to the making of a unilateral change.
44. It also allows the Treasury to direct the FCA to make rules requiring the inclusion, in the terms of the independent person’s appointment, of a term providing that members of a pension scheme may enforce the terms of the independent person’s appointment under the Contracts (Rights of Third Parties) Act 1999.

45. Subsection (2) also inserts a new section into Part 7 of FSMA – 117I Interpretation of Part. This new section defines various terms for the purposes of this Part

## **Reasons for making the Provisions**

### **Terminal Illness**

46. Currently, the Pension Protection Fund (PPF) can make a one-off lump sum payment to someone who has not yet drawn their PPF compensation but is terminally ill. The Financial Assistance Scheme (FAS) makes similar provision through allowing early payment of financial assistance. Both the PPF legislation and the FAS regulations use the same definition of terminal illness.
47. This provision will allow for the definition of terminally ill as being twelve months instead of six, to allow earlier access to eligible members of these schemes.
48. The Bill currently provides that this provision will be operational two months after Royal Assent.

### **Alienation or Forfeiture of Occupational Pension**

49. This will reaffirm the Pensions Ombudsman as a competent court, removing the need for pension schemes to apply to the courts to enforce Ombudsman decisions in relation to the recovery of overpayments.
50. Re-establishing the Ombudsman powers to those of a competent court will alleviate pressures and cost for courts, schemes, and members, ensuring recovery costs are kept to a minimum by reinstating the original policy intent of ensuring an efficient and accessible means of resolving pension complaints
51. The Bill currently provides that this provision will be operational two months after Royal Assent.

### **Validity of Certain Alterations to Salary-Related Contracted-Out Pension Schemes**

52. This measure seeks to bring forward legislation to ensure that provisions are in place to confirm that the necessary confirmation from the Scheme Actuary under Section 37 of the Pension Schemes Act 1993; equivalent Northern

Ireland provision is Section 33 of the Pension Schemes (Northern Ireland) Act 1993, has been met and will continue to be met in future cases.

53. The Bill currently provides that this provision will be operational two months after Royal Assent.

### **Pension Dashboards**

54. The Legislative Consent Motion covers only the amendment to the Financial Guidance and Claims Act 2018 which allows the Money and Pensions Service to provide information about the Pension Protection Fund (PPF) and the Financial Assistance Scheme (FAS) on its dashboard, including information that relates to an individual. The remaining elements of the measure will be legislated for through the parity Executive Bill.
55. Right now, the PPF and FAS aren't included because they're considered as compensation schemes, not traditional pension schemes. But many people rely on these payments as part of their retirement income. Adding them to the dashboards would make the service much more effective for members of PPF and FAS.
56. The Bill currently provides that this provision will be operational two months after Royal Assent

### **Contractual Override**

57. This measure primarily deals with reserved financial matters; however, it is included within the Legislative Consent Motion because of its link to pension policy which is devolved.
58. The measure will enable providers to transfer a member's contract to another provider or to vary contractual terms, without individual members' consent, when in the members' best interests. This will facilitate greater consolidation and improve member outcomes.
59. It will include a range of safeguards and procedures which must be followed before an override, or a transfer can occur.



## **Reasons for utilizing the Bill rather than an Act of the Assembly**

60. Although pensions are a devolved matter, there is, in effect, a single system of pensions in Northern Ireland and Great Britain, including many pension schemes which operate across the jurisdictions.
61. The timeline for progressing the Westminster Bill presents several challenges for introducing corresponding measures through an Executive Bill. A parity Executive Bill would not normally be introduced to the Assembly until there is no further opportunity for amendments to the corresponding Westminster Bill. This means that it would be difficult for an Executive Bill to complete its passage through the Assembly and meet the same operational date as the Westminster Bill.
62. If equivalent provisions are not in place in Northern Ireland at the same time as in Great Britain, this could have adverse effects on the citizens here.
63. If it is not agreed that provisions in the Bill extend here, it would be necessary to have those included in a separate Assembly Bill to ensure that parity between the jurisdictions is maintained. However, this would mean that people in Northern Ireland would not benefit from these beneficial changes at the same time as those in Great Britain and this could have adverse effects on the citizens here.
64. The intention is that the Westminster Bill will achieve Royal Assent by Spring 2026. It would, therefore, be beneficial timewise to agree that the relevant provisions in the Bill extend to Northern Ireland.

## **Consultation**

65. DWP, alongside HM Treasury, conducted a consultation on the UK Government's pension investment review proposals. The consultation ran from 14 November 2024 to 16 January 2025.
66. Building on feedback from the consultation process, the government was able to finalise its policy position and responses are being utilised to guide the legislative reforms in the Westminster Bill.
67. Of the five measures listed in the Legislative Consent Motion proposals, only the Contractual Override measure received any relevant feedback, the details of which were used to set the final policy position on this measure.

## **Human Rights and Equality**

68. An equality screening exercise has been conducted, and the Department is satisfied that the proposed amendments have no significant implications for equality of opportunity. The proposed changes are largely beneficial for scheme members.

## **Financial Implications**

69. No costs to the public purse are expected.

## **Summary of Regulatory Impact**

70. A Regulatory Impact Assessment is not required for the Bill as it has no direct impact on business, charities or voluntary bodies.

## **Engagement to date with the Committee for Communities**

71. The Committee has been consulted as part of the Legislative Consent Motion process.

## **Conclusion**

72. The view of the Minister for Communities is that, in the interests of good government, the provisions of the Bill dealing with devolution matters should remain in the Bill.

**Department for Communities**

**Date: 2 October 2025**