

PENSIONS DASHBOARDS (PROHIBITION OF INDEMNIFICATION) BILL

Memorandum from the Department for Work and Pensions to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pensions Dashboards (Prohibition of Indemnification) Bill (“the Bill”). This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Pension Schemes Act 2021 made provision about pensions dashboards by inserting sections 238A to 238G into the Pensions Act 2004. Section 238D enables regulations to be made imposing duties on pension scheme trustees and managers. Section 238G enables regulations to be made to secure that pension scheme trustees and managers comply with their duties under section 238D. The 2021 Act inserted comparable provisions into The Pensions (Northern Ireland) Order 2005/255.
3. The primary purpose of this Bill is to increase protection for pension savers by prohibiting pension scheme trustees or managers from reimbursing themselves using the assets of the pension scheme in respect of penalties imposed by regulations made by virtue of section 238G of the Pensions Act 2004 or Article 215G of the Pensions (Northern Ireland) Order 2005/255.
4. Clause 1(1) and (2) of the Bill achieves this by adding section 238G to the provisions listed in section 256(1)(b) of the Pensions Act 2004 and Article 215G to the provisions listed in Article 233(1)(b) of the Pensions (Northern Ireland) Order 2005. One effect of these amendments is to make it an offence for pension scheme trustees and managers to reimburse themselves by using the assets of the pension scheme in respect of penalties imposed on them under regulations made by virtue of section 238G or Article 215G. Another effect is to make a trustee or manager liable to a civil penalty under section 10 of the Pensions Act 1995 or Article 10 of the Pensions (Northern Ireland) Order 1995 for failing to take all reasonable steps to secure compliance.

C. DELEGATED POWERS

Clause 2 - subsections (4) and (5) - Extent, commencement and short title

Power conferred on: Secretary of State (subsection (4)) and the Department for Communities in Northern Ireland (subsection (5)).

Power exercised by: Regulations made by statutory instrument (subsections (4) and (7)) and order made by statutory rule (subsections (5) and (8))

Parliamentary Procedure: none

Context and Purpose

5. Clause 2(4) contains a standard power for the Secretary of State to bring clause 1(1) (the amendment of section 256 of the Pensions Act 2004) into force by regulations made by statutory instrument.
6. Clause 2(5) contains the equivalent power for the Department for Communities in Northern Ireland to bring clause 1(2) (the amendment of Article 233 of the Pensions (Northern Ireland) Order 2005) into force by order made by statutory rule.

Justification for taking the power

7. Parliament has approved the principle of clause 1 by enacting it. Allowing for commencement by regulations or order enables the provisions of the clause to be brought into force at a convenient time.

Justification for the procedure

8. As is usual with commencement provisions, regulations under clause 2(4) and an order under clause 2(5) are not subject to any parliamentary procedure.

**Department for Work and Pensions
January 2023**