PENSIONS DASHBOARDS (PROHIBITION OF INDEMNIFICATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Pensions Dashboards (Prohibition of Indemnification) Bill as brought from the House of Commons on 23 January 2023 (HL Bill 92).

- These Explanatory Notes have been prepared by the Department for Work and Pensions with the consent of Lord Young of Cookham, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

1 The primary purpose of this Bill is to increase protection for pension savers by making it a criminal offence for pension scheme trustees or managers to reimburse themselves using the assets of the pension scheme in respect of penalties imposed under pensions dashboards regulations.

2 It achieves this by adding section 238G of the Pensions Act 2004 to the list of statutory provisions in section 256(1)(b) of that Act. Section 256(1)(b) prohibits any amount being paid out of the assets of an occupational or personal pension scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee or manager of the scheme in respect of a penalty they are required to pay under or by virtue of a statutory provision listed in (1)(b).

Policy background

3 Pensions dashboards are an electronic communications service, which will allow individuals to see their pensions information (including the State Pension) in one place online. Dashboards will help individuals to be reunited with lost pensions and support people in better planning for their retirement.

4 The Pensions Dashboards Regulations 2022 ("the Regulations") set out measures that need to be put in place to enable pensions dashboards to operate effectively. The Regulations place requirements on trustees or managers of relevant occupational pension schemes to connect their scheme to the Money and Pensions Service (MaPS) digital infrastructure for dashboards. The deadline for connection is set according to a timetable (the staging profile) for different cohorts of schemes, based on their type and size. Once connected, schemes will be required to respond to requests from individuals to find and view their pensions information, which must be returned via the individual's chosen dashboard in accordance with the Regulations and the relevant standards. The Financial Conduct Authority has published separate rules for personal and stakeholder pension schemes.

5 Pensions dashboard services will be made available to the public at a future date yet to be determined, known as the Dashboards Available Point (DAP). The Regulations provide for the Secretary of State for Work and Pensions to publish advance notice of the DAP.

6 If a trustee or manager of an occupational pension scheme fails to comply with the Regulations, the Pensions Regulator may take enforcement action which could include a financial penalty. Where this occurs, there is currently nothing in legislation to specifically prevent them from reimbursing themselves from the assets of the pension scheme. For context, the maximum penalties for a failure or contravention of the Regulations are £5,000 if the person is an individual or £50,000 if the person is a body corporate including corporate trustees. The Regulations also allow for multiple penalty notices to be issued by the Pensions Regulator in the event of multiple compliance breaches from a single event.

7 The proposed measure in this Bill would make it a specific criminal offence for pension scheme trustees or managers to reimburse themselves using the assets of the pension scheme in respect of penalties imposed under the Regulations. It would achieve this by amending section 256(1)(b) of the Pensions Act 2004 (which already makes similar provision for other areas of pensions legislation) to include the relevant pensions dashboards legislation.

Legal background

8 Section 256(1)(b) of the Pensions Act 2004 (No indemnification for fines or civil penalties) provides that no amount can be paid out of the assets of an occupational or personal pension scheme for the purpose of reimbursing, or providing for the reimbursement of, any trustee or manager of the scheme in respect of a penalty which they are required to pay under or by virtue of a list of specific statutory provisions.

9 Clause 1(1) (No indemnification for penalties under pension dashboards regulations) of the Bill adds section 238G of the Pensions Act 2004 to this list. Section 238G (inserted into the Pensions Act 2004 by the Pension Schemes Act 2021) is the power under which compliance provisions can be made in pensions dashboards Regulations i.e. penalty notices, to ensure certain requirements on trustees or managers of relevant occupational schemes as to cooperation, connection and the provision of information are complied with (see paragraph 6 above regarding penalties).

10 By virtue of the amendment in section 256(1)(b) of the Pensions Act 2004 by clause 1(1) of the Bill prohibiting indemnification for penalties under pensions dashboards regulations, other existing provisions in section 256 will also apply in respect of these dashboards penalties, including:

i. Where a trustee or manager of an occupational pension scheme is reimbursed out of the assets and knows or has reasonable grounds to believe they have been reimbursed, unless they have taken all reasonable steps to secure that they are not so reimbursed, they are guilty of an offence (section 256(4)). A person guilty of an offence is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment for a term not exceeding two years, or a fine, or both (section 256(5)).

ii. Where any amount is paid out of the assets in contravention of this prohibition, section 10 of the Pensions Act 1995 (civil penalties) applies to any trustee or manager who has failed to take all reasonable steps to secure compliance (section 256(3)).

11 Clause 1(2) of the Bill makes corresponding amendments to Article 233(1)(b) of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I.1)) by adding Article 215G of that Order to Article 233(1)(b).

Territorial extent and application

12 Clause 1(1) extends and applies to England and Wales and Scotland. Clause 1(2) extends and applies to Northern Ireland and Clause 2 extends and applies to England and Wales, Scotland and Northern Ireland.

13 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The Bill contains provision which would engage the Legislative Consent Motion process in the Northern Ireland Assembly.

14 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: No indemnification for penalties under pensions dashboards regulations

15 Subsection (1) provides for section 238G of the Pensions Act 2004 to be added to section 256(1)(b) of the Pensions Act 2004. Section 238G is the power under which compliance provisions can be made in regulations regarding pensions dashboards. The effect of which is that no amount can be paid out of the assets of an occupational or personal scheme for the purpose of reimbursing or providing for the reimbursement of, any trustee or manager of the scheme in respect of a penalty which they are required to pay under or by virtue of any penalty required to be paid under the Pensions Dashboards Regulations referred to in paragraph 6 above. Where this prohibition in section 256(1) is breached, an offence is committed where the provisions of section 256(1)(4) are satisfied.

16 Subsection (2) makes corresponding provision for Northern Ireland by amending Article 233(1) of the Pensions (Northern Ireland) Order 2005 (N.I.1)), by adding Article 215G of that Order to Article 233(1)(b).

Clause 2: Extent, commencement and short title

17 The provisions under this Clause are self-explanatory.

Commencement

18 Clause 1(1) comes into force on such day as the Secretary of State may by regulations appoint. Clause 1(2) comes into force on such a day as the Department for Communities in Northern Ireland may by order appoint.

19 Clause 2 will come into force on the day this Bill gains Royal Assent and becomes an Act.

Impact Assessment

20 There is no direct impact on business, charities or voluntary bodies.

21 There is no direct impact on the public sector.

22 An Impact Assessment has not been prepared for this Bill because this measure does not impose or lift any regulations from business, and so there is no direct regulatory impact. The measure is designed to act as a deterrent against trustees or managers of pension schemes using members' assets to reimburse themselves for potential fines or civil penalties, in line with other areas of pensions legislation. This helps to protect members' assets and support retirement outcomes.

23 There may be some indirect benefits, for example this measure may help reassure pension savers that protections are in place to deter unscrupulous trustees or managers of occupational pension schemes, providing greater confidence to save into a pension.

24 There may be a risk of increased public sector cost if an offence was subsequently committed and a prosecution (leading to a prison sentence, a fine, or both). However, this is not anticipated to be significant.

Financial implications of the Bill

25 The Bill does not impose any new costs or requirements on occupational or personal pension schemes or their sponsoring employers. Based on evidence to date, the financial implications of this Bill are considered to be negligible.

Parliamentary approval for financial costs or for charges imposed

26 The Bill does not require a money resolution or a ways or means resolution. A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking new expenditure – and a ways and means resolution is required where a bill authorises new charges on the people – broadly speaking, new taxation or other similar charges.

Compatibility with the European Convention on Human Rights

27 Private Members' Bills do not require human rights statements. However, the Government's view is that the Bill is compatible with the European Convention on Human Rights.

Related documents

28 The Government's consultation on the draft Pensions Dashboards Regulations 2022 is relevant to the Bill and can be read at: https://www.gov.uk/government/consultations/pensions-dashboards-consultation-on-the-draft-pensions-dashboards-regulations-2022

Annex A – Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1(1)	Yes	Yes	Yes	No	No	No	No	No
Clause 1(2)	No	No	No	Yes	No	No	Yes	Yes
Clause 2	In Part	In Part	In Part	In Part	No	No	Yes	Yes

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