

# **PENSIONS (SPECIAL RULES FOR END OF LIFE) BILL**

## **EXPLANATORY NOTES**

### **What these notes do**

These Explanatory Notes relate to the Pensions (Special Rules for End of Life) Bill as brought from the House of Commons on 22 May 2024 (HL Bill 80).

- These Explanatory Notes have been prepared by the Department for Work and Pensions with the consent of Lord Popat, 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.

This is a revised version to correct paragraphs 23 and 27 (commencement provisions in the Bill)

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## Overview of the Bill

- 1 The Pensions (Special Rules for End of Life) Bill will amend existing legislation covering both the Pension Protection Fund and Financial Assistance Scheme definition of terminal illness, so that people with a life expectancy of up to twelve months (instead of six months) can receive terminal illness payments.

## Policy background

- 2 The Pension Protection Fund (PPF) was established by the Pensions Act 2004. It pays compensation to members of eligible defined benefit (DB) pension schemes where the sponsoring employer became insolvent on or after 6 April 2005 and the scheme has insufficient assets to secure its pension liabilities at least to the level of compensation that would be payable by the PPF.
- 3 The Financial Assistance Scheme (FAS) at its inception applied to schemes that started to wind up between 1 January 1997 and 5 April 2005. Since its inception it has been reviewed and extended both in terms of its coverage and the amount of assistance that it pays. The FAS makes payments to members of qualifying schemes that are unable to secure their pension liabilities in full.
- 4 Currently, the PPF can make a one-off lump sum payment to someone who has not yet drawn their PPF compensation but is terminally ill. The 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.
- 5 Terminal illness is currently defined in pensions legislation as: “if ... the person's death in consequence of that disease can reasonably be expected within 6 months.” This means that both the PPF and FAS currently make payments where medical evidence shows that a member has a life expectancy of up to 6 months.
- 6 This eligibility criteria was set in line with the social security special rules for end-of-life provisions for certain benefits originally introduced in 1990. The eligibility rule for these benefits was extended to 12 months by the Social Security (Special Rules for End of Life) Act 2022. The changes in this bill restore the original policy intent that there be alignment between the two sets of measures.

## Legal background

- 7 Pensions legislation contain special provisions which apply where a claimant is terminally ill.
- 8 Paragraph 25B(3) of Schedule 7 to the Pensions Act 2004 and Paragraph 12(3) of Schedule 5 to the Pensions Act 2008 both define the eligibility criteria for a ‘terminal illness lump sum’ based on a life expectancy of 6 months.
- 9 Schedule 6 to the Pensions (Northern Ireland) Order 2005, and Schedule 4 to the Pensions (No.2) Act (Northern Ireland) 2008 mirror the 2004 and 2008 Acts and use the same terminal illness definition.
- 10 Regulation 2(9) (Interpretation) of the Financial Assistance Scheme Regulations 2005 provides that ‘a person is “terminally ill” at any time if at the time he suffers from a progressive disease and his death, in consequence of that disease, can reasonably be expected within six months’. Regulation 17(3D)(b)(i) of the 2005 Regulations (Annual Payments) provides for the period of

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life expectancy in relation to progressive disease.

## Territorial extent and application

- 11 Clause 2 of the Bill sets out the territorial extent. The Bill will extend and apply to England, Wales and Scotland and Northern Ireland.
- 12 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.
- 13 Private pensions are a reserved matter in relation to both Scotland (reserved by paragraph F3 of the Scotland Act 1998) and Wales ('occupational and personal pensions' reserved by paragraph 134, Head F, Schedule 7A of the Government of Wales Act 2006).
- 14 Private pensions are devolved in Northern Ireland. However, historically the Northern Ireland Assembly has made legislation which mirrors that made in Great Britain. The Bill, by extending to Northern Ireland, does contain provisions that will engage the legislative consent process in the Northern Ireland Assembly. Legislative consent was agreed by the Assembly on 22 April 2024.
- 15 The Financial Assistance Scheme Regulations already extend to Northern Ireland.
- 16 If the Government or member in charge of the bill introduce or accept amendments to the bill during its passage through Parliament which relate to matters within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

## Commentary on provisions of Bill

### Clause 1: Changes to periods of life expectancy

- 17 Clause 1 will amend the current definition of 'terminal illness' (which is normally referred to as 'end of life') used in the relevant provisions of the Pension Protection Fund and the Financial Assistance Scheme legislation. This definition determines a person's eligibility for either a one-off lump sum payment or an early payment from either scheme.
- 18 Subsections (1) and (2) amend the definition of 'terminal illness' by changing the period of life expectancy from the current 6-months to 12 months in respect of Pension Protection Fund compensation payments.
- 19 Subsection (3) and (4) make similar provision for Northern Ireland and amend the definition of 'terminal illness' by changing the period of life expectancy from the current 6 months to 12 months in respect of Pension Protection Fund compensation payments.
- 20 Subsection (5) amends the definition of 'terminal illness' and the 'period of life expectancy in relation to progressive disease' in relation to the Financial Assistance Scheme Regulations 2005 from six months to 12 months.

### Clause 2: Extent and commencement

- 21 Subsection (1) provides that subsections (1) and (2) of clause 1 of the bill extend to England and Wales and Scotland. Subsection (2) provides that subsections (3) and (4) of clause 1 will extend to Northern Ireland.

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- 22 Subsection (3) provides that subsection (5) of clause 1, clause 2 and clause 3, extend to England, Wales and Scotland, and Northern Ireland.
- 23 Subsection (4) provides that subsections (1), (2) and (5) of clause 1 will come into force at the end of the period of four months beginning with the day on which the Act is passed. Subsection (5) provides that subsections (3) and (4) of clause 1 will come into force at the end of the period of four months beginning with the day on which the Act is passed. Subsection (6) provides that clauses (2) and (3) of the Bill come into force on Royal Assent.
- 24 Subsections (7) and (8) provide that regulations made under subsection (4) or an order made under subsection (5) may contain transitional or saving provisions.
- 25 Subsection (9) provides that regulations under subsection (4) will be made by statutory instrument. Subsection (10) provides that an Order made under subsection (5) is exercisable by statutory rule.

### Clause 3: Short title

- 26 Clause 3 establishes the short title of the Act (once passed) as the Pensions (Special Rules for End of Life) Act 2024.

## Commencement

- 27 The main provisions in clause 1 of this Bill come into force at the end of the period of four months beginning with the day on which the Act is passed. The remaining provisions come into force on the day on which this Bill is passed as an Act.

## Financial implications of the Bill

- 28 There are no additional costs associated with the measures in this bill.

## Parliamentary approval for financial costs or for charges imposed

- 29 A ways and means resolution is not required for this Bill. A money resolution is required where a bill authorises new charges on the public revenue – broadly speaking, new public expenditure. Clause 1(5) may lead to public expenditure under or by virtue of other Acts, in particular under regulations under section 286 of the Pensions Act 2004. The House of Commons passed the necessary money resolution for this Bill on 22 April 2024.

## Compatibility with the European Convention on Human Rights

- 30 As this is a Private Member's Bill, the Secretary of State is not required to make a statement under Section 19 of the Human Rights Act 1998. However, the Government's view is that the bill is compatible with the European Convention on Human Rights.

## Duty under section 20 of the Environment Act 2021

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- 31 The Secretary of State for Work and Pensions is of the view that the Bill, as introduced to the House of Commons, does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.



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