

## **PENSION SCHEMES BILL 2025**

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

#### **CONTENTS**

A. INTRODUCTION .....	2
B. PURPOSE AND EFFECT OF THE BILL .....	2
C. ANALYSIS OF DELEGATED POWERS BY CLAUSE .....	7
Part 1, Chapter 1 – Local Government Pension Schemes .....	7
Part 1, Chapter 2 – Powers to pay surplus to employer .....	22
Part 2, Chapter 1 – Value for Money .....	27
Part 2, Chapter 2 – Consolidation of Small Dormant Pension Pots .....	34
Part 2, Chapter 3 - Scale and asset allocation .....	50
Part 2, Chapter 4 – Default Arrangements .....	71
Part 2, Chapter 5 – FCA-Regulated Pension Schemes: Contractual Override .....	74
Part 2, Chapter 6 – Guided Retirement .....	77
Part 3 - Superfunds .....	105
Part 4, Chapter 1 – Validity of certain alterations to salary-related contracted-out pension schemes .....	132
Part 4, Chapter 2 – Pension Compensation: Indexation .....	138
Part 4, Chapter 3 – Other miscellaneous provisions .....	141
Part 5 – General .....	146
Schedule .....	147

## A. INTRODUCTION

1. This memorandum has been prepared by the Department for Work and Pensions, the Ministry of Housing, Communities and Local Government and HM Treasury for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Pension Schemes Bill 2025 (“the Bill”). The Bill was introduced in the House of Commons on 5 June 2025.
2. 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

3. The Bill will modernise the UK pension system, drive economic growth, and ensure better retirement security for millions. The measures could help unlock significant investment in private assets, including infrastructure projects, boosting the UK economy. Additionally, an average earner who saves over their lifetime in a defined contribution scheme could see a significant boost in their pension pots, providing greater security in retirement and benefiting individual savers.
4. The Bill aims to capitalise on the UK’s significant opportunities for economic growth by creating larger, more efficient pension funds capable of making substantial investments in the UK economy. By consolidating fragmented and underperforming pension schemes into larger, well-governed entities, the Bill will ensure better returns and lower costs for members.
5. Part 1 of the Bill contains reforms to defined benefit (DB) pension arrangements.
6. Chapter 1 of Part 1 will enable reforms to investment management in the Local Government Pension Scheme (LGPS) in England and Wales. The aim of these reforms is to ensure that the management of LGPS investments delivers the full benefits of scale, including greater expertise, better value for money and improved resilience. The proposed measures are intended to ensure that:
  - a) all LGPS investments (currently around £400bn) are managed by LGPS asset pools.

- b) implementation of investment strategies set by the individual administering authority (AA) is delegated to the LGPS asset pool of which the AA is a member.
  - c) the Secretary of State can provide for mergers of AAs and asset pools if needed in the interests of improving administration.
- 7. The powers in Chapter 1 of Part 1 may also be exercised by the Scottish Ministers in respect of the LGPS for Scotland should they consider it appropriate to do so.
- 8. Chapter 2 of Part 1 reforms the regime governing trustee payments of surplus to employers and enables surplus to be paid out of more DB schemes. Trustee oversight and the regulatory framework will ensure responsible and secure sharing of surplus funds.
- 9. Part 2 of the Bill contains reforms to the defined contribution (DC) workplace pensions market, which aim to consolidate the market around a smaller number of larger well governed schemes, ensuring members are saving into pension schemes delivering value. It will require pension schemes to provide default retirement solutions, whilst maintaining the choices available under the pension freedoms.
- 10. Chapter 1 of Part 2 will confer powers on the Secretary of State to make regulations to evaluate and promote the provision of value for money by pension schemes. It will enable defined contribution occupational pension schemes to be compared based on the value they provide rather than just their cost.
- 11. Chapter 2 of Part 2 will enable the Secretary of State to make regulations to address the issue of small, fragmented pension pots. Enabling the consolidation of these smaller pots into larger 'default consolidators' will reduce waste and inefficiency in the current pension system.
- 12. Chapter 3 of Part 2 will require multi-employer DC pension schemes to participate in a default fund of at least £25 billion in order to be used for automatic enrolment purposes, so as to encourage smaller funds to merge into larger ones that are more likely to invest in productive finance in the UK. Additionally, the Secretary of State is granted the power to make regulations, following the production of a market report, which would require a minimum level of investment in certain assets, including UK assets, to be applied across these schemes subject to certain derogations.

13. Chapter 4 of Part 2 will allow the Government to make regulations to restrict the future operation of default funds which are not operating at scale and to require the consolidation of smaller default funds, in order to tackle existing fragmentation and prevent future fragmentation in the market. These powers are linked to a review of existing default funds that are not operating at scale, which must be carried out before the power to require consolidation of funds can be exercised.
14. In Chapter 5 of Part 2, provision is made for providers of automatic-enrolment and workplace pension schemes regulated by the Financial Conduct Authority to change the rules of the pension scheme, change the way in which a pension pot is invested, transfer a pension pot to a different pension scheme within the same provider or transfer a pension pot to another provider without individual member consent, where in the best interests of members, taken as a whole. It will include a range of safeguards and procedures which must be followed before an override or transfer can occur and will support the effective operation of other measures in the Bill such as the value for money framework and the consolidation of small pots.
15. Chapter 6 of Part 2 will require trustees or managers of defined contribution pension schemes to provide their members with solutions to manage their pension savings as they transition into retirement, including one or more default solutions to meet the needs of the generality of scheme members.
16. Part 3 of the Bill will outline the key concepts and create the legislative framework for operating pensions Superfunds. A superfund pension scheme is a defined benefit occupational pension scheme that receives the transfer of assets and liabilities from closed defined benefit occupational pension schemes. They offer a new way for sponsoring employers to secure their legacy scheme liabilities and focus on investing in their core business, where insurance buyout is out of reach. This will offer greater protection for members in closed legacy defined benefit schemes from the risk of losing part of their pension if their employer becomes insolvent. The Government committed to legislate for a regulated superfunds regime operating in the United Kingdom to replace the Pensions Regulator's interim supervisory regime.
17. Part 4 of the Bill contains miscellaneous measures. These include a measure to enable affected defined benefit occupational pension schemes to retrospectively validate historic benefit alterations by obtaining actuarial confirmation that the relevant alteration did not prevent the scheme from meeting contracting-out requirements. This addresses a widespread compliance issue highlighted by a legal judgment. Additionally, measures are included in Part 4 to provide for indexation on compensation paid by the Pension Protection Fund and the Financial Assistance

Scheme in respect of service before 1997, for members whose former schemes provided for this.

18. Other measures are included to extend payment of pensions compensation to people with terminal illness at an earlier stage in their illness; to reinstate the original policy intent that determinations of certain pension disputes by the Pensions Ombudsman resolve the dispute without the need for a further court order; to afford the Pension Protection Fund greater flexibility in setting the levy payable by defined benefit pension schemes; to amend the legislation relating to pensions dashboards; and to amend the Pensions Act 2008 to create a power to make regulations requiring employers to share updated information periodically with pension schemes. Additionally, the Bill makes provision for the abolition of the Pension Protection Fund administration levy, which is imposed to meet the administrative expenditure of the Board of the Pension Protection Fund in respect of its functions relating to the Pension Protection Fund and Fraud Compensation Fund. The Bill makes provisions for this expenditure to be met from the Funds and for expenditure of the Pension Protection Fund Ombudsman to be met from the general levy payable by pension schemes.
19. The Bill confers powers to make regulations on the Secretary of State and the Scottish Ministers in relation to the Local Government Pension Scheme. These powers are exercisable as scheme regulations under section 1 of the Public Service Pensions Act 2013. There is already a wide power for scheme regulations to make retrospective provision (section 3(3)(b)), subject to enhanced consultation and the affirmative resolution procedure where this would have significant adverse effects in relation to members of the scheme (sections 23 and 24(1)). Whilst the Government does not currently plan to exercise the powers in this Bill in such a way as to have retrospective effect (and does not understand the Scottish Ministers to have such a plan either), it nevertheless thinks that it is appropriate for section 3(3)(b) of the Public Service Pensions Act 2013 to continue to apply to ensure that there is no difference in the types of provision that can be made by scheme regulations in future. A draft of the regulations which the government proposes to make under clauses 1 and 2 and a draft of the regulations which the government proposes to make under clause 5 has been published for consultation on gov.uk<sup>1</sup>
20. There is one Henry VIII power conferred on the Secretary of State in relation to the Local Government Pension Scheme, which enables the grant of additional powers

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<sup>1</sup> <https://www.gov.uk/government/consultations/local-government-pension-scheme-in-england-and-wales-fit-for-the-future-technical-consultation>

to specified local authorities (for parity with powers exercisable by other relevant local authorities) to be achieved through the amendment or modification of existing primary legislation if that is the clearest way of doing so.

21. The Bill amends powers for the Secretary of State to make regulations in relation to the payment of surplus to employers and powers relating to the imposition of levies on pension schemes. It also confers new powers on the Secretary of State to make regulations in relation to the creation of a Value for Money regime, the consolidation of small, dormant pension pots, the creation of scale and asset allocation requirements, and detailed technical requirements to support the regimes for superfunds, guided pension benefit solutions and indexation of certain pre-1997 pension benefits. Many of these build on or follow precedents in existing powers and frameworks in pensions legislation.
22. There are two Henry VIII powers conferred on the Secretary of State in relation to small pots, including a power to amend the definition of 'small' and a power to amend existing legislation to facilitate the introduction of the small pots regime. A Henry VIII power is also conferred on the Secretary of State in relation to Chapter 3, in order to enable redundant material to be removed from the statute book in the event that the asset allocation measure is repealed because of the sunset provision that applies to it.
23. There are eight Henry VIII powers in relation to superfunds. Most of these powers come about precisely because detail has been included in the relevant clauses as to how the regime will work. For example, the clauses list the required documentation, information or processes in the Bill and then confer a power to amend the list. So, in formal terms, the Henry VIII power comes about because more information has been included about the intended regime than would have been the case had a power been taken to prescribe all the detail.
24. There is a Henry VIII power in relation to the validation of historic alterations measure in Chapter 1 of Part 4. This power enables incidental, supplementary, consequential, or transitional amendments to be made, particularly to ensure consistency with actuarial professional standards.
25. The Bill also confers powers to make regulations on HM Treasury in relation to contractual override measures, including a Henry VIII power, to widen the types of pension scheme in scope of the measure, to narrow the scope of the measure by specifying that it does not apply in certain circumstances, to amend the best interests test that controls when the override mechanism can be used, to specify

further legislative conditions which must be met before the contractual override measure can be used, to require the Financial Conduct Authority (FCA) to make certain rules, to disapply legislation (or require the FCA to disapply rules) which would affect the operation of the override and to make consequential amendments.

26. The Bill confers powers on both the Secretary of State and HM Treasury to make provision to reduce the number of smaller default pension arrangements in the defined contribution market.
27. The Bill confers powers on the Pensions Regulator and the Financial Conduct Authority to make rules and guidance about the schemes that they regulate.
28. The regime for regulating pension schemes is complex and it is crucial that it can be adapted to respond to changing financial and market conditions and innovations without the need to amend primary legislation, in order to protect members and benefit the economy. The powers detailed in this document will ensure that the regulatory regime for pension schemes can be kept up to date.

## C. ANALYSIS OF DELEGATED POWERS BY CLAUSE

### Part 1, Chapter 1 – Local Government Pension Schemes

#### ***Clause 1 – Power for scheme regulations to make provision about asset pool companies***

Power conferred on: *The Secretary of State and the Scottish Ministers (as the responsible authorities for a public service pension scheme for Local Government workers in England and Wales and for local government workers in Scotland respectively under section 2 of the Public Service Pensions Act 2013).*

Power exercised by: *Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).*

Parliamentary procedure: *In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. draft affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise made negative).*

## **Context and purpose**

29. The Local Government Pension Scheme for England and Wales (“LGPS”) is a defined benefits public service pension scheme for Local Government workers. Public service pension schemes are statutory pension schemes set up under the Public Service Pensions Act 2013 (“PSPA”). The detailed rules for how public service pension schemes should be set up and operated are generally set out in secondary legislation, known as scheme regulations. These are technical in nature and include both detailed rules about the benefits accrued under each scheme and about the way in which each scheme must be managed and run. Whilst there are some commonalities across all public service pension schemes, the different nature of the workforces they provide for means that there are significant differences between them (and therefore that it is appropriate to make provision relating to the circumstances of each particular scheme by secondary legislation).
30. Unlike the majority of the other defined benefits pension schemes under the PSPA, the LGPS is a funded scheme. That means that the scheme aims to achieve solvency by holding assets to cover the costs of the benefits payable. The LGPS is one of the world’s largest funded pension schemes, managing the pensions of 6.7 million members and investing £392 million worldwide as at March 2024.
31. The LGPS is administered, managed, and funded at a local level by 86 local authorities in England and Wales, each of which is required to maintain a pension fund. These authorities are ‘scheme managers’ for the purposes of section 4 of PSPA and are referred to as ‘administering authorities’ in the scheme regulations for the LGPS (and for the purposes of this memorandum).
32. Under scheme regulations, each administering authority is required to manage and invest its fund appropriately. Since 2015, those 86 administering authorities have come together in groups of their own choosing to move towards managing their investments through 8 LGPS asset pools. Different groups of administering authorities have adopted different approaches to pooling their funds, and there are varying levels of engagement with this across the scheme. As the PSPA does not explicitly contain any provision about pooling of investments by public service pension funds, the pooling arrangements are currently handled on a non-statutory basis, outside of the scheme regulations for the LGPS.
33. The Government believes that there is scope for the LGPS to go further on pooling, and that doing so can help to address fragmentation and inefficiency within the



scheme, unlocking investment potential through economies of scale. This Bill therefore contains provisions to enable the LGPS pooling arrangements to be put on a statutory basis.

34. In light of this, this clause sets out that scheme regulations for a Local Government scheme for England and Wales may make provision about asset pool companies. In particular, it enables such provision to include requirements or prohibitions on both administering authorities and asset pool companies. This will allow the Secretary of State to require asset pool companies to meet certain minimum standards which are considered necessary for the effective operation of pooling (such as knowledge and skills requirements, or FCA regulation). It also allows for such provision to include a mechanism through which the Secretary of State can require an administering authority to participate, or not participate, in a particular asset pool company. Finally, it allows for such provision to enable the Secretary of State to issue guidance to asset pool companies, and to issue directions to them in prescribed circumstances.
35. The Local Government Pension Scheme for Scotland is similarly a funded defined benefits public service pension scheme for local government workers. The rules relating to the Local Government Pension Scheme for Scotland are set out in regulations made by the Scottish Ministers which are similar to, but contain differences from, the LGPS rules that apply in relation to England and Wales. The Local Government Pension Scheme for Scotland is managed by 11 administering authorities which do not currently take part in pooling arrangements. As such, these reforms are not immediately relevant to the Local Government Pension Scheme for Scotland. However, as matters relating to occupational and personal pensions are outside the legislative competence of the Scottish Parliament, the Government has at the request of the Scottish Ministers extended this clause to Scotland so that the Scottish Ministers can make similar provision in respect of the Local Government Pension Scheme for Scotland if they choose to do so in future.

### **Justification for taking the power**

36. Whilst the PSPA contains broad powers for scheme regulations to make provision about the management of public service pension funds, it does not explicitly contain any provision about pooling of investments by those funds. This power is needed to put it beyond doubt that scheme regulations for the LGPS can make provision about pooling. Putting pooling on a statutory basis, rather than leaving it to administering authorities to decide whether and how to engage with pooling on a non-statutory basis, will provide greater clarity and ensure a wider adoption of best practice.

37. This clause sets out the key characteristics of the form of pooling that will be required (namely participation by every administering authority in one asset pool company, which is an investment management company wholly owned by administering authorities and established for the purposes of managing LGPS investments) on the face of the primary legislation, whilst leaving the technical detail to be set out in secondary legislation as is consistent with the wider approach to public service pensions under the PSPA. By providing a power to make provision about which asset pool company an administering authority must or must not participate in, and to make provision requiring administering authorities and asset pool companies to give effect to this, this clause ensures that there is a mechanism for resolving disputes between administering authorities and asset pool companies should they arise, whilst letting pooling configurations remain an authority-led process in the first instance.
38. Paragraph 12(a) of Schedule 3 to the PSPA contains an existing power for scheme regulations to include provision enabling the Secretary of State to give guidance and directions to administering authorities about the administration and management of the scheme. Regulations have been made under that power (the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2016, S.I. 2016/946) which requires administering authorities to have regard to such guidance when exercising their LGPS investment functions, and which enables the Secretary of State to give directions to those authorities in respect of those functions in prescribed circumstances. By providing that regulations may enable the Secretary of State to issue guidance to asset pool companies, and to give directions to them in prescribed circumstances (including following consultation of affected parties), the clause ensures that the formal recognition of pooling arrangements in legislation does not prevent this approach from being continued.

### **Justification for the procedure**

39. The procedure is consistent with the existing framework for making scheme regulations under the PSPA. This framework is well established and builds-in opportunities for scrutiny of proposed scheme regulations before they are made. In particular, there is a duty to consult before making any scheme regulations under this power, which becomes an enhanced duty to consult if the proposal would involve any changes to the 'protected' elements of the pension scheme or would involve retrospective changes which have significant adverse effects. Treasury consent is also required before any scheme regulations can be made.

## **Clause 2 – Power for scheme regulations to make provision about asset management**

Power conferred on: *The Secretary of State and the Scottish Ministers (as the responsible authorities for a public service pension scheme for Local Government workers in England and Wales and for local government workers in Scotland respectively under section 2 of the Public Service Pensions Act 2013).*

Power exercised by: *Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).*

Parliamentary procedure: *In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. draft affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise made negative).*

### **Context and purpose**

40. Paragraph 11 of Schedule 3 to the PSPA provides that scheme regulations for a funded public service pension scheme may include provision about the management of those funds. Scheme regulations for the LGPS currently provide for administering authorities to take all such management decisions (though as with all LGPS functions exercisable by an administering authority these decisions can be delegated if the administering authority so chooses). The Government considers that, in the context of the LGPS, pooling operates most effectively when the asset pool company makes all decisions relating to the management and investment of fund assets. In particular, this includes all decisions about whether and when to take out an investment, whether to continue to hold an investment, and whether and when to divest. Under the current non-statutory approach to pooling, whilst some administering authorities delegate these decisions so that they can be made in the context of their pooling arrangements, others continue to take these decisions mainly at a local level.
41. This clause therefore requires scheme regulations for the LGPS to make provision about the management of LGPS funds and assets. It further requires those scheme regulations to provide that each administering authority must participate in an asset pool company, and to provide for the relevant asset pool company to have responsibility for managing the investments and assets for each fund.

42. As with clause 1, whilst these reforms are not immediately relevant to the Local Government Pension Scheme for Scotland, they would be outside the legislative competence of the Scottish Parliament and so the Government has at the request of the Scottish Ministers extended this clause to Scotland so that the Scottish Ministers can make similar provision in respect of the Local Government Pension Scheme for Scotland if they choose to do so in future.
43. This clause also requires scheme regulations for the LGPS for England and Wales to provide that administering authorities must co-operate with strategic authorities to identify and develop local investment opportunities, so as to ensure that asset pool companies have an appropriate range of projects that they can invest in. 'Strategic authorities' are defined for these purposes as the Greater London Authority, Combined Authorities, Combined County Authorities, and (in areas where there are none of these authorities) prescribed authorities in England, and Corporate Joint Committees in Wales. The Government intends to introduce an equivalent duty on strategic authorities in England under the English Devolution and Community Empowerment Bill when Parliamentary time allows. This clause does not extend to Scotland as there is no equivalent structure in that jurisdiction to the strategic authorities in England or Corporate Joint Committees in Wales.

#### **Justification for taking the power**

44. Whilst the PSPA contains broad powers for scheme regulations to make provision about the management and investment of public service pension funds, it does not explicitly contain any provision about pooling of investments by those funds. This power is therefore needed to put it beyond doubt that scheme regulations can require all LGPS investment and asset management decisions to be taken through the asset pool companies. Putting pooling on a statutory basis, rather than leaving it to administering authorities to decide whether and how to engage with pooling on a non-statutory basis, will provide greater clarity and ensure a wider adoption of best practice. This clause sets out the key requirements that will be imposed on administering authorities in order to ensure that they fully engage with pooling (namely to require any management of LGPS funds and assets to be carried out by the asset pool company) on the face of the primary legislation, whilst leaving the technical detail to be set out in secondary legislation as is consistent with the wider approach to public service pensions under the PSPA.
45. In setting out a requirement for scheme regulations for England and Wales to provide for administering authorities to co-operate with strategic authorities to identify and develop investment opportunities this clause ensures that administering

authorities take action to ensure that there is an appropriate pipeline of investments that the LGPS can benefit from.

### **Justification for the procedure**

46. The procedure is consistent with the existing framework for making scheme regulations under the PSPA. This framework is well established and builds-in opportunities for scrutiny of proposed scheme regulations before they are made. In particular, there is a duty to consult before making any scheme regulations under this power, which becomes an enhanced duty to consult if the proposal would involve any changes to the 'protected' elements of the pension scheme or would involve retrospective changes which have significant adverse effects. Treasury consent is also required before any scheme regulations can be made.

### ***Clause 3 – Power to provide additional powers for specified administering authorities***

*Power conferred on: The Secretary of State (as the responsible authority for a public service pension scheme for local government workers in England and Wales under section 2 of the Public Service Pensions Act 2013).*

*Power exercised by: Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).*

*Parliamentary procedure: In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. draft affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise made negative).*

### **Context and purpose**

47. There are currently 86 administering authorities in the LGPS for England and Wales. Most of these are 'principal councils' (i.e. county councils, district councils or London borough councils in England, or county councils or county borough councils in Wales) and can exercise the full range of powers available to councils of that type. There is however no requirement that a body must be a principal council to be an administering authority. There are currently several administering authorities which are bodies of a different type, and which do not necessarily have the full range of powers that are available to principal councils.

48. The government is keen to ensure that there is a level playing field between the administering authorities in the LGPS for England and Wales, and that they all have the powers necessary to enable them to fully implement the reforms that are enabled by this Bill. This clause therefore makes provision to ensure that, if required, the Secretary of State can by regulations extend specified powers to specified administering authorities.
49. This clause does not apply in relation to the LGPS for Scotland. All 11 administering authorities are councils under the Local Government etc. (Scotland) Act 1994 and can exercise the full range of powers available to councils of that type, so there is already a 'level playing field'.

### **Justification for taking the power**

50. This clause addresses concerns about two specific areas where the government has been made aware that powers may not be available to administering authorities in the LGPS for England and Wales which are not principal councils:
- a) The first (in subsection (2)) relates to the powers available to local authorities under Part 6 of the Local Government Act 1972. These include powers to arrange for functions to be discharged by another authority, and powers to form joint committees.
  - b) The second (in subsection (4)) relates to the powers available to local authorities under the Local Authorities (Goods and Services) Act 1970 to provide administrative, professional, or technical services to any public bodies.
51. These powers are, or may be, used by administering authorities which are principal councils to collaborate in delivering their responsibilities in relation to the LGPS and in maintaining existing pooling arrangements. The government therefore considers it appropriate to extend these powers to other administering authorities that do not already have them. The government considers that it is preferable to take a power to do this, rather than making provision on the face of the Bill, as the technical detail of what specific additional powers are required will depend on the specific circumstances of each (non-principal council) administering authority. It may also be necessary to make further provision in due course if any non-principal council administering authorities are established after passage of the Bill.
52. These powers are expressed as being exercisable only in relation to an administering authority's functions as an administering authority (and not for any other purpose). In respect of subsection (4), the power is also expressed as only

allowing the Secretary of State to confer powers on the administering authority to provide administrative, professional or technical services to another scheme manager of a public service pension scheme, rather than allowing the administrative authority to provide such services to any public body, to ensure that there is a clear link between the power and the administering authority's role in relation to a public service pension scheme. Subsections (3) and (6) further provide that these powers may not be used to the extent that an administering authority already has the power in question.

53. Subsection (7) provides that scheme regulations made under these powers may amend or modify any Act passed before or in the same session as this Act. This is necessary to ensure that, if the clearest way of conferring the powers in question would be through the amendment, modification, or application of existing primary legislation then this can be achieved.

#### **Justification for the procedure**

54. The procedure is consistent with the existing framework for making scheme regulations under the PSPA. This framework is well established and builds-in opportunities for scrutiny of proposed scheme regulations before they are made. In particular, there is a duty to consult before making any scheme regulations under this power, which becomes an enhanced duty to consult if the proposal would involve any changes to the 'protected' elements of the pension scheme or would involve retrospective changes which have significant adverse effects. Treasury consent is also required before any scheme regulations can be made.

### ***Clause 4 – Exemption from public procurement rules***

*Power conferred on: a Minister of the Crown or the Welsh Ministers (being the applicable 'appropriate authority' pursuant to section 123 of the Procurement Act 2023).*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and Purpose**

55. Paragraph 2 of Schedule 2 to the Procurement Act 2023 makes provision for certain contracts known as 'vertical arrangements', to be exempted from procurement

controls. In order to qualify for the exemption, a contract must meet several criteria, and in particular, sub-paragraph (2)(c) requires that more than 80 per cent of the activities carried out by the contractor are carried out for the contracting party or parties.

56. Existing paragraph 2(6) confers on an ‘appropriate authority’<sup>2</sup> a power to make regulations detailing how exactly this percentage is to be calculated (‘vertical arrangements calculations’).
57. Clause 4 of this Bill adds new paragraph 2A to the schedule, creating a new type of procurement control exemption that will apply only to certain Local Government Pension Schemes (‘LGPS’) contracts between scheme managers and ‘asset pool companies’. The new provision will operate in a slightly different way compared to the 80 per cent test in existing sub-paragraph 2(c) and consequently clause 4 inserts a new power (paragraph 2A(4)) for appropriate authorities to make regulations to provide for details on how the ‘vertical arrangement calculations’ are to be done for a particular purpose of the new paragraph (2A) exemption, akin to the similar existing power in paragraph 2(6).

### **Justification for taking the power**

53. The intention in taking the power is to allow for technical detail of the method for carrying out the ‘vertical arrangements calculations’ with regards to LGPS contracts to be made in regulations, for the purpose of this new exemption.
54. Similar regulations have been made in exercise of the power in paragraph 2(6). The power in this Bill enables equivalent provision to be made in respect of these LGPS contracts under the new exemption.

### **Justification for the procedure**

55. While the power allows for the development of a narrow methodology on a technical subject area, the consequence of this calculation will determine whether or not certain LGPS contracting authorities are subject to the procurement regime. Given these consequences, it is appropriate that Parliament has the opportunity to scrutinise this methodology via the affirmative procedure.

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<sup>2</sup> Defined in section 119 of the Procurement Act 2023.



56. This is the same procedure as is applicable to regulations made under the similar power in paragraph 2(6) and therefore ensures a consistent approach.

## ***Clause 5 – Power for scheme regulations to make provision about governance reviews***

*Power conferred on: The Secretary of State and the Scottish Ministers (as the responsible authorities for a public service pension scheme for Local Government workers in England and Wales and for local government workers in Scotland respectively under section 2 of the Public Service Pensions Act 2013).*

*Power exercised by: Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).*

*Parliamentary procedure: In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. draft affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise made negative).*

### **Context and purpose**

57. Under scheme regulations for the LGPS, administering authorities are responsible for ensuring that they have appropriate governance in place and that they administer the scheme effectively and appropriately. Whilst there are many examples of good governance within the LGPS, the increasing size of the scheme over recent years means that it is more important than ever to ensure that there are consistently high standards across the scheme, with robust and resilient governance and administration in every administering authority. There is also evidence to suggest that good governance also has financial and wider benefits through a governance premium for well governed pension schemes which benefit from sustained and resilient returns compared to less well governed schemes. Well governed schemes are likely to be more effective and agile, and therefore better managing risk and picking up opportunities. The Government therefore thinks that, in addition to strengthening the position of the LGPS by going further with pooling, there is scope to go further in respect of governance.
58. In light of that, this clause provides a power for scheme regulations for the LGPS for England and Wales to make provision requiring administering authorities to carry out governance reviews. A governance review is a review of the effectiveness of an administering authority's governance over the review period, which is carried out by

an independent third party and subsequently published. Where scheme regulations make provision about governance reviews, this clause requires them to provide for governance reviews to be carried out at least once in respect of every prescribed review period –which the Government currently intends to set at three years to align with the LGPS valuation cycle – though it also requires them to provide for the circumstances in which the Secretary of State can require an administering authority to procure a governance review.

59. As with clause 1, whilst these reforms are not immediately relevant to the Local Government Pension Scheme for Scotland, they would be outside the legislative competence of the Scottish Parliament and so the Government has at the request of the Scottish Ministers extended this clause to Scotland so that the Scottish Ministers can make similar provision in respect of the Local Government Pension Scheme for Scotland if they choose to do so in future.

#### **Justification for taking the power**

60. Whilst the PSPA already contains broad powers for scheme regulations to make provision about the administration and management of the LGPS, it does not expressly include any powers to include provision relating to the assurance of scheme managers' governance arrangements. This power is therefore needed to put it beyond doubt that scheme regulations for the LGPS can include provision about governance reviews and ensures that such reviews can be embedded into the architecture of the LGPS. This clause sets out the key requirements that must be included in scheme regulations relating to governance reviews on the face of the primary legislation, whilst leaving the technical detail to be set out in secondary legislation as is consistent with the wider approach to public service pensions under the PSPA.

#### **Justification for the procedure**

61. The procedure is consistent with the existing framework for making scheme regulations under the PSPA. This framework is well established and builds-in opportunities for scrutiny of proposed scheme regulations before they are made. In particular, there is a duty to consult before making any scheme regulations under this power, which becomes an enhanced duty to consult if the proposal would involve any changes to the 'protected' elements of the pension scheme or would involve retrospective changes which have significant adverse effects. Treasury consent is also required before any scheme regulations can be made.

## **Clause 6 – Power for scheme regulations to make provision about merger of funds**

Power conferred on: *The Secretary of State and the Scottish Ministers (as the responsible authorities for a public service pension scheme for local government workers in England and Wales and for local government workers in Scotland respectively under section 2 of the Public Service Pensions Act 2013).*

Power exercised by: *Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).*

Parliamentary procedure: *In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. draft affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise made negative).*

### **Context and purpose**

62. Paragraph 11 of Schedule 3 to the PSPA provides that scheme regulations may make provision about pension funds for those public service pension schemes that have them, and that scheme regulations may in particular make provision about the administration, management and winding-up of any pension funds. This power does not however explicitly provide that scheme regulations may include provision about merger of pension funds. Whilst it might be reasonably thought that this was within the general intention of Parliament when it passed this power – and the Government has previously made provision for merger of LGPS funds in England and Wales in circumstances where this was supported by all of the parties concerned – the Government nevertheless considers that it would be appropriate for the existing power to be clarified in order to put it beyond doubt that this power extends to allowing the merger of two or more LGPS funds, particularly in circumstances where any of the parties do not support the merger.

### **Justification for taking the power**

63. This clarification of the existing power is needed to put it beyond doubt that scheme regulations can make provision for two or more existing LGPS funds to be merged. Such a merger would need to be given effect through secondary legislation, which is subject to consultation and Parliamentary procedure. That secondary legislation could include such consequential and transitional provision as is necessary to give

effect to the merger (including the transfer of assets and liabilities) under section 3(2)(b) of the PSPA.

### **Justification for the procedure**

64. The procedure is consistent with the existing framework for making scheme regulations under the PSPA. This framework is well established and builds-in opportunities for scrutiny of proposed scheme regulations before they are made. In particular, there is a duty to consult before making any scheme regulations under this power, which becomes an enhanced duty to consult if the proposal would involve any changes to the ‘protected’ elements of the pension scheme or would involve retrospective changes which have significant adverse effects. Treasury consent is also required before any scheme regulations can be made.

### ***Clause 7 – Amendments relating to scheme regulations***

*Power conferred on: The Secretary of State and the Scottish Ministers (as the responsible authorities for a public service pension scheme for local government workers in England and Wales and for local government workers in Scotland respectively under section 2 of the Public Service Pensions Act 2013).*

*Power exercised by: Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).*

*Parliamentary procedure: In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. draft affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise made negative).*

### **Context and purpose**

65. This clause provides that the scope of the provision that can be made by scheme regulations, under section 3(1) of the PSPA, is subject to the requirements set out in this Chapter. It also provides that scheme regulations may include consequential, supplementary, incidental, or transitional provision in relation to this Chapter. Finally, it provides that any requirement to consult in relation to provision made under this Chapter, or consequential, supplementary, incidental or transitional provision made in connection with this, under section 21 of the PSPA may be satisfied by consultation carried out before this Bill comes into force.

### **Justification for taking the power**

66. As the intention is that any secondary legislation made under this Chapter will be made by way of scheme legislation, it is appropriate to ensure that powers to make scheme regulations are consistent with the requirements set out in this chapter.
67. This clause ensures that any consequential, supplementary, incidental, or transitional provision that is required to ensure that regulations made under these powers can operate effectively can be included in the relevant scheme regulations. Note that under section 3(4) and (4A) of PSPA, the power to make consequential provision in respect of the PSPA (under section 3(2)(b)) or the Public Service Pensions and Judicial Offices Act 2022 (under section 3(2)(c)) included a power to amend any primary legislation passed before or in the same session as those Acts. For the avoidance of doubts, the amendments made by this clause **do not** include an equivalent power authorising consequential amendments to primary legislation in respect of this Act (as the existing power has not previously been used to make consequential amendments to primary legislation, and it was not considered that any consequential amendments to primary legislation would be needed here).
68. By enabling consultation carried out before this Bill comes into force to satisfy the requirement to consult under section 21 of the PSPA, this ensures that the measures relating to pooling can be brought in for the proposed commencement date of 1<sup>st</sup> April 2026, with consultation on draft regulations being carried out in parallel with passage of this Bill. This is consistent with provision that was included in section 21(3) (in respect of the PSPA) and (4) (in respect of the Public Service Pensions and Judicial Offices Act 2022).

### **Justification for the procedure**

69. The procedure is consistent with the existing framework for making scheme regulations under the PSPA. This framework is well established and builds-in opportunities for scrutiny of proposed scheme regulations before they are made. In particular, there is a duty to consult before making any scheme regulations under this power, which becomes an enhanced duty to consult if the proposal would involve any changes to the 'protected' elements of the pension scheme or would involve retrospective changes which have significant adverse effects. Treasury consent is also required before any scheme regulations can be made.

## **Part 1, Chapter 2 – Powers to pay surplus to employer**

### ***Clause 9 – Subsection (1) – Power to modify the application of section 36B of the Pensions Act 1995 in particular cases***

Power conferred on: *The Secretary of State.*

Power exercised by: *Regulations made by Statutory Instrument.*

Parliamentary procedure: *Negative resolution procedure.*

#### **Context and purpose**

70. Subsection (1) of this clause inserts section 36B into the Pensions Act 1995. The purpose of section 36B is to provide a mechanism for trustees of occupational pension schemes to introduce a power to pay surplus to a sponsoring employer (and to remove or relax restrictions on an existing power).
71. Like section 37 of the Pensions Act 1995, section 36B will apply to trust based occupational pension schemes. It includes provision at section 36B(7) delegating to the Secretary of State a power to prescribe that the section does not apply to a category of scheme or applies with prescribed modifications, in prescribed circumstances or to schemes of a prescribed description.
72. This power's purpose is to enable the Secretary of State to limit the types of schemes which can benefit from the power introduced by section 36B. It will also allow the Secretary of State to allow for the power introduced by section 36B to be modified in particular cases, such as in the case of sectionalised schemes.

#### **Justification for taking the power**

73. Section 37(8) of the Pensions Act 1995 already provides a power in relation to the payment of surplus, so that regulations may provide that section 37 does not apply, or applies with prescribed modifications, to schemes of a prescribed description. An equivalent power is needed in the power to modify schemes introduced by section 36B. For example, to clarify how the section 36B power to modify will apply in sectionalised and multi-employer schemes, and other atypical defined benefit scheme structures that may emerge.

### **Justification for procedure**

74. Regulations made under this power will be subject to the negative resolution procedure. This is consistent with the procedure for exercising the existing power to disapply and modify section 37 of the Pensions Act 1995, alongside which this power is likely to be exercised.

### ***Clause 10 – Subsection (2) – Power to restrict the exercise of a surplus payment power***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure on first use; negative procedure on subsequent use.*

### **Context and purpose**

75. Section 37 of the Pensions Act 1995 sets out how a power to pay scheme funds to a sponsoring employer may be exercised and sets restrictions on that power. This clause amends section 37 in order to provide a new framework for restricting the exercise of a scheme power to pay scheme funds to a sponsoring employer when the scheme is in surplus.
76. Section 37(3) of the Pensions Act 1995 sets a series of conditions which must be met before trustees may pay scheme funds to a sponsoring employer, including that the scheme's assets and liabilities must have been valued, a certificate must have been provided, and members must have been notified. It provides for the Secretary of State to prescribe such details as the method by which the scheme's assets and liabilities must be valued, and by whom, in order to determine whether the scheme is in surplus, the maximum amount which may be paid to the employer, and other requirements which must be certified as being met in order for scheme funds to be payable to a sponsoring employer.
77. This clause repeals these conditions and associated powers. It instead delegates to the Secretary of State a general power, in a new section 37(2A) of the Pensions Act 1995, to set conditions on the trustees' exercise of a scheme power to pay funds to a sponsoring employer. This is to be read in conjunction with new subsections (2B)

and (2C) of section 37. Subsection (2B) requires the power to be exercised to make the provision listed in that subsection. Subsection (2C) sets out a non-exhaustive list of other ways in which it may be exercised.

78. The purpose of this new general power is to allow the Secretary of State to put a new surplus payment regime in place. The provision required by new subsection (2B) of section 37 ensures that the regime will contain new provision for the core safeguards of the existing statutory regime – advance actuarial certification and member notification and requirements relating to the scheme's funding position – without being so prescriptive about the procedural framework through which these safeguards are delivered. The clause also anticipates, at new subsection (2C) of section 37, other ways in which the Secretary of State may exercise the power, although this list is not exhaustive. In particular, the Department anticipates that regulations will include additional and alternative requirements that will apply to surplus payments from superfund schemes, to broadly reflect the conditions that will apply to payments out of the capital buffer as permitted profit extractions.

#### **Justification for taking the power**

79. The general approach of this power, as detailed in new subsections (2B) and (2C) of section 37, is consistent with the regulation making powers that currently exist in sections 37(3) and (4) of the Pensions Act 1995. Similarly to the existing regime, the replacement power requires, as set out in new subsection (2B) of section 37, the Secretary of State to prescribe funding conditions which must be met in order for trustees to be able to pay scheme funds as surplus to an employer, and the advance actuarial certification and member notification that must be provided. The new approach of giving the Secretary of State a single general power, with a duty to exercise it in certain ways, is necessary because the current powers are part of a framework which is not suitable for the anticipated new surplus regime. It gives flexibility to structure the conditions that apply to a payment differently and more appropriately, for example, by requiring a scheme to meet funding tests based on valuations on more than one basis and requiring the advance certification to be much more up to date when a payment is made.
80. The overarching purpose of section 37 is to restrict the use of scheme powers to pay scheme funds to an employer to circumstances in which the scheme is in surplus, in order to protect member benefits, vesting all such powers in the scheme's trustees. Retaining the provision for key aspects of the existing regime (such as the funding basis on which surplus is identified) to be set out in regulations ensures that



there is flexibility to amend that regime in response to changing market and other conditions, including in order to ensure the legislation is achieving its purpose.

81. As is already reflected in section 37 of the Pensions Act 1995, the technical detail of aspects of this regime, such as how the scheme is valued and what certifications must be given by the scheme actuary, are best suited to regulations. This approach is consistent with similar areas of pensions legislation such as the scheme funding regime. Retaining provision for these conditions to be set in regulations will also mean that the Secretary of State can relatively easily consult with relevant stakeholders and make changes to the conditions where they need to be updated.

### **Justification for procedure**

82. While the powers which this power replaces are subject to the negative resolution procedure, regulations made under this power will be subject to the affirmative resolution procedure the first time it is used. The exercise of this power will set out the substantive conditions that apply to a payment of scheme funds to the employer, such as the funding conditions that must be met before any surplus can be paid and the actuarial certification that will be required. Consequently, it is considered that the use of the power should be subject to the affirmative procedure the first time it is used to afford increased Parliamentary scrutiny to that required by the current regime. The Secretary of State must also consult before exercising the power using this procedure.
83. The negative resolution procedure is considered appropriate for the subsequent use of the power once the main features of the policy have been implemented. This will also allow for regulations to be made relatively quickly to respond to developments in the pensions market and other economic conditions – for example to make different provision for new models of commercial consolidator should they appear in the pensions market.

## ***Clause 10 – Subsection (5) – Power to modify and disapply section 37***

*Power conferred on:* *The Secretary of State.*

*Power exercised by:* *Regulations made by Statutory Instrument.*

*Parliamentary procedure:* *Negative resolution procedure.*

## **Context and purpose**

84. Subsection (5) amends the existing power in section 37(8) of the Pensions Act 1995 for the Secretary of State to disapply and modify section 37 of the Pensions Act 1995. This amendment ensures that the power can be used to disapply and modify the regime to categories of scheme in their entirety.

## **Justification for taking the power**

85. This provision amends an existing power. The Department expects, subject to consultation, to use this power to retain the existing disapplication's and modifications of section 37, in order to provide that it generally applies only to defined benefit occupational pension schemes that are subject to the scheme funding regime. As the scheme funding regime can be disapplied in powers under the Pensions Act 2004, it is appropriate that the Secretary of State can also disapply section 37 without amending section 37 itself, so that the scope of the surplus regime can be amended, if necessary, to reflect changes to that regime.
86. The Department has also reviewed the existing power in light of the potential need for the Secretary of State to use it to modify the surplus payment regime in its application to superfund schemes, in order to be able to apply the same tests that apply to payments out of the capital buffers supporting those arrangements as to the schemes which they support.

## **Justification for procedure**

87. Regulations made under this power will continue to be subject to the negative resolution procedure. The amendment to the power is minor and the negative procedure remains appropriate. It is important that the Secretary of State can disapply or modify the existing regime quickly to ensure that it works as intended, particularly, in light of the importance of protecting member benefits.

## ***Clause 10 – Subsection (6) – Power to modify and disapply section 76***

**Power conferred on:** *The Secretary of State.*

**Power exercised by:** *Regulations made by Statutory Instrument.*

**Parliamentary procedure:** *Negative resolution procedure.*

### **Context and purpose**

88. Subsection (6) amends the existing power in section 76(8) of the Pensions Act 1995 for the Secretary of State to disapply and modify section 76 of the Pensions Act 1995. Section 76 contains restrictions on distributing scheme assets to a sponsoring employer when a trust-based occupational pension scheme is being wound up. This consequential amendment ensures that the power mirrors the amended power in section 37, which makes provision for paying scheme funds to a sponsoring employer when the scheme is not being wound up.

### **Justification for taking the power**

89. This provision amends an existing power to ensure that it reflects the equivalent power in section 37. The Department has no current plans to amend the regime for the distribution of scheme assets on wind-up but is seeking to maintain the alignment between the two powers in the event that it does decide to amend that regime.

### **Justification for procedure**

90. Regulations made under this power will continue to be subject to the negative resolution procedure. The amendment to the power is minor and the negative procedure remains appropriate.

## **Part 2, Chapter 1 – Value for Money**

### ***Clauses 11 to 17 – Power for the Secretary of State to make Value for Money regulations***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure on first use. Negative procedure for second and subsequent use of power in relation to prescribing categories of information under clause 11(2)(c).*

## **Context and purpose**

91. The Department for Work & Pensions, The Pensions Regulator (TPR) and the Financial Conduct Authority (FCA) have jointly developed a proposed Value for Money framework and regulatory regime (VFM framework). The proposed VFM framework will seek to enable a change in industry focus from short term cost (for members and employers) to the longer-term net value and service savers in schemes should receive, which will lead to better retirement outcomes. To do so, the framework defines value for money as the demonstration of a pension arrangement's performance against three main areas, namely: Investment, Costs and Charges and Quality of Service.
92. Encouraging a more holistic view of value should lead to:
- a) a reduction in the number of savers in poor-performing schemes.
  - b) greater transparency and comparability of key performance indicators across the DC market.
  - c) greater innovation and learning from best practice through transparency.
  - d) helping build scale in pension funds and supporting UK growth objectives.
93. The VFM framework will enable truer comparability, improve transparency of performance, and drive competition across all DC pension schemes to ensure the best financial outcomes for savers. It will help schemes to understand how far they are delivering value for money and identify actions needed to improve the value they provide to savers. Underperforming schemes will be required to take immediate action to improve the value they provide to savers, or where they cannot, to arrange a transfer of their members to an arrangement that does demonstrate value; thereby acting in savers' best interests.
94. Clause 11(1) grants the Secretary of State the power to make regulations (VFM regulations) for the purpose of evaluating and promoting best practice with regard to the provision of value for money by prescribed occupational pension schemes, and arrangements within schemes (for ease, referred to in this section of this memorandum as schemes). Further detail relating to this power is set out in clauses 11 – 17. The purpose of the power is to establish the legal requirements necessary for the functioning of the VFM framework. The main classes of obligation that the power will be used to create are set out in clause 11(2): requirements on schemes to make and publish assessments of their performance; and requirements on schemes to publish data about performance in accordance with prescribed metrics.

95. Other significant features of the framework that the power will be used to create are described in the following provisions:
- a) Clause 12(1) elaborates on the metric data that regulations may require schemes to publish.
  - b) Clause 12(2) provides that VFM regulations may create requirements about the process schemes should follow when publishing metric data.
  - c) Clause 14 provides that VFM regulations may provide for the form and content of member satisfaction surveys that schemes may be required to send to members.
  - d) Clause 15 provides that where VFM regulations require schemes to assign ratings to arrangements, they will set out further detail of the criteria which schemes are intended to follow when doing so and set benchmarks against which schemes should measure their performance.
  - e) Clause 16 makes provision for the consequences of an 'intermediate' VFM rating to be set out in regulations.
  - f) Clause 17 provides for regulations to set out more details about the consequences of a "not delivering" rating.
96. At various points, the clauses also make clear that VFM regulations can require TPR to perform various roles: clause 12(3) provides that TPR may be required to set templates that schemes must use to publish data; clause 13(3)(b) provides that TPR may be required to set benchmarks which schemes must compare themselves to; clause 14 provides that TPR may have a role in creating a member satisfaction survey; clause 17 provides for TPR to have discretion to take action to deal with schemes that are not providing value.

### **Justification for taking the power**

97. The VFM framework needs to be adaptive to future trends in the financial markets and will need to be flexible enough to ensure a consistent approach with the FCA's legislation in respect of contract-based schemes. Therefore, keeping the fine detail of the metrics and the operation of the VFM framework in secondary legislation enables the Government to undertake a detailed consultation and to work closely over a longer period with a wide range of stakeholders, including experts from TPR and FCA, to better understand the practical effects of the new requirements, the operability of the changes, and to fine tune the detail to better achieve the policy objectives in the final implementation of the framework. It will also allow changes to the working aspects of the framework to be made in the light of operational experience and market reaction whilst retaining the overall structure within primary legislation.

98. Taking these regulation making powers allows Parliament to have effective scrutiny over the main policy structure while allowing the more technical and less contentious details to be dealt with in secondary legislation. This balance works particularly well where we may need to amend or fine tune the technical detail and doing this in secondary legislation allows Parliament to scrutinise these details via the affirmative procedure and when specific operational changes are needed.
99. Delegation in relation to these matters is considered appropriate as the regulations are likely to contain a range of technical detail relating to the particular circumstances and nature of the scheme. The requirements will be assessed in light of experience, including that of TPR, and these requirements may therefore need amending and updating from time to time.

#### **Justification for the procedure**

100. We consider that the affirmative resolution procedure is appropriate in the first instance as we will be introducing significant new changes for pension schemes that should be subject to full Parliamentary scrutiny.
101. It is considered the negative resolution procedure is appropriate for second and subsequent use of the power in relation to prescribing categories of information, as these are likely to be minor adaptations rather than the introduction of something entirely new, which does not require a more stringent level of scrutiny.

#### ***Clause 11 – Subsection (6) – Power to issue guidance about value for money***

*Power conferred on: The Secretary of State.*

*Power exercised by: Issuance of guidance.*

*Parliamentary procedure: None applicable.*

#### **Context and purpose**

102. It is the Government's intention that the details of the Value for Money regime will be set out in regulations but that the Secretary of State may issue guidance to assist trustees with understanding what is required of them.

### **Justification for taking the power**

103. To ensure that scheme trustees and managers fully understand what is required of them by the value for money regulations, it is appropriate for there to be guidance setting out in more detail what is expected of schemes in terms of compliance and to which they must have regard. This can be readily updated to address any areas of uncertainty that may arise.

### **Justification for procedure**

104. It is appropriate for guidance to be prepared by the Secretary of State as it relates to legislative requirements but, as it will not in itself impose requirements on scheme trustees and managers, it is not considered necessary for it to be subject to a Parliamentary procedure. The Secretary of State is required to consult before issuing any guidance under this clause.

## ***Clause 18 – Compliance and oversight***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

105. Clause 18 provides that the Secretary of State can, by regulations, make provision for ensuring compliance with the value for money framework. This includes power to confer compliance functions on the Pensions Regulator (including power to issue a compliance notice, a third-party compliance notice or a penalty notice), power to determine the amount or maximum amount of any penalty, and power to provide for the Pensions Regulator to withdraw a penalty if conditions are met.
106. Clause 18 also provides for the Secretary of State to make regulations to provide for the Pensions Regulator to substitute the value for money rating assigned to the scheme by the trustees or managers for the rating that the Pensions Regulator considers should have been assigned.

### **Justification for taking the power**

107. It is considered appropriate to give power to the Regulator to issue notices under clause 18 to ensure schemes comply with their legal obligations under the VFM framework. It is also considered appropriate for the Regulator to substitute a rating by way of a directions notice in instances where a rating assigned by a trustee or manager is considered by the Regulator to be incorrect, to ensure that VFM ratings are accurate and credible.
108. The Regulator must set out the reasons for substituting the rating in the directions notice. This may involve the Regulator allocating a 'pending reassessment' rating and requiring the trustee or manager to redo the VFM assessment. As the nature of the information to be provided in a notice will need to vary depending on the nature of the failure or contravention and in light of operational experience, it is appropriate that the details of information to be included in notices can be set out in regulations.
109. It is also considered appropriate under clause 16(2) and 17(2) to require trustees or managers of arrangements rated 'intermediate' or 'not delivering' to submit an 'improvement plan' or 'action plan' respectively to the Regulator. This would enable trustees and managers of VFM regulated schemes to outline planned steps to improve the value for money offered by an arrangement, therefore allowing the Regulator to monitor a scheme's progress against these steps, holding them to account. This is important for ensuring savers are not left in underperforming schemes for significant periods of time without any improvement being made.
110. The powers given to the Regulator to specify the form and manner in which action and improvement plans are to be provided enables the Regulator to control how these plans are made and when subsequent plans should be submitted, in light of its experience of the practical issues concerned.

### **Justification for procedure**

111. We consider that the affirmative resolution procedure is appropriate. We will be introducing significant new changes for pension schemes that should be subject to full Parliamentary scrutiny.

## ***Clause 19 – Sharing of database where FCA makes corresponding rules***

*Power conferred on: The Secretary of State.*



*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

112. Clause 19 gives the Secretary of State the power to make regulations permitting the use of the electronic database for the publication or sharing of information relating to contract-based schemes. Provision for the electronic database is contained in clause 12, which provides that regulations may require a person appointed under the regulations to make available, for the publication or sharing of metric data, an electronic database. The electronic database is a key part of the VFM framework and will allow easier comparisons across the pensions market, assisting employers to make informed choices about where to enrol their employees. Clause 19 will facilitate this by enabling VFM data to be treated consistently across both the contract-based and trust-based sides of the pension industry.

### **Justification for taking the power**

113. The VFM framework will apply to both trust-based and contract-based defined contribution pension schemes. It is therefore essential that the FCA, who regulates contract-based DC schemes, has access to the electronic database. The power will allow the electronic database to be used by contract-based DC schemes. This will facilitate data-sharing, enabling consistent, transparent, and comparable VFM data across the contract-based and trust-based sides of the pension industry. This will create a better understanding of which schemes are providing the best possible value, and which schemes need to take the necessary steps to improve outcomes for their members. The power will only be used where the FCA rules for contract-based schemes correspond to the VFM framework.

### **Justification for the procedure**

114. The power is subject to the negative procedure. It has a technical function concerning the sharing of VFM data and so it is unnecessary to require debate in both Houses as a matter of course.

## Part 2, Chapter 2 – Consolidation of Small Dormant Pension Pots

### ***Clause 22 – Small pots regulations***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use. Negative procedure for subsequent use unless in respect of the requirement to prescribe a person to perform the functions in clause 23(1), the requirements to send transfer notices or transfer pension pots, or regulations which amend or repeal provision contained in an Act, in which case always affirmative.*

### **Context and purpose**

115. Clause 22(1) provides that the Secretary of State may make regulations so that small dormant pension pots held by auto-enrolment schemes are held by authorised consolidator schemes in authorised consolidator arrangements. The word ‘held’ acknowledges that, under the consolidation process, an eligible pot may be transferred to a consolidator, but it may also remain with the current scheme, if that scheme is also a consolidator.
116. ‘Small’ is defined in clause 22(2) as £1000 or less (but not nil). Clause 22(2) enables regulations to provide how and when the value of benefits is measured.
117. For the purpose of defining ‘dormant’, clause 22(3)(a) enables regulations to provide the period of time since the last contribution was made to the pension provided it is not less than 12 months, and the end of the period after which a pot is deemed dormant.
118. Clause 22(3)(b) enables regulations to prescribe steps which, if taken by an individual, will not count towards determining whether that individual has taken any step to confirm or alter the way in which their pension pot is invested. This power may be used to exempt what are considered as *de minimis* steps such as a step to request that the pension be invested in sharia compliant funds (and define the term ‘sharia compliant’) and make similar and equivalent provision for other conscience-based investing.

119. When combined with Clause 119 (regulations: general) that makes general provision about subordinate legislation and enables powers to be exercised either in relation to all cases to which the power extends, or in relation to those cases subject to specified exceptions, this clause delegates to the Secretary of State the power to prescribe that benefits in certain pension schemes are not eligible. This power may be used to exempt pots if the value of benefits falls to nil during the transfer window. This power may also be used to exclude from eligibility benefits where the scheme rules offer specific rights that may be lost on transfer, such as a right to a guaranteed annuity rate.
120. This power (with Clause 119) may be used to exclude from eligibility two forms of schemes with a small membership. This is on the grounds that the members of such schemes are often engaged with their investments. The power may need to define the terms ‘small self-administered scheme’ and ‘executive pension scheme.’
121. This power (with Clause 119) may also be used to prescribe an exemption for benefits where preserved rights as regards protection from an unauthorised payments charge under HMRC legislation may be in play and it may not be in a member’s interest for benefits to be transferred.

### **Justification for taking the power**

122. As the technical infrastructure that supports the consolidation of small dormant pension pots is expected to be developed and delivered ahead of implementation from 2030, it is not possible to state precisely what requirements will be placed on pension schemes within the primary legislation. Those requirements will also need to reflect the operational needs and any technical solutions developed for the way in which consolidation proposals are made (either under a centralised or federated model, discussed under clause 23 below), which will change over time. It would not be practicable or appropriate to include such detail in primary legislation, as this may hinder service development and delivery.
123. The Government will continue to work with the pensions industry to enable considered decisions to be taken on what requirements need to be included in secondary legislation and what should be the subject of guidance. This approach will enable the iterative development of elements of the policy.
124. The policy in relation to small dormant pension pots needs to be adaptive to future trends in workplace pension saving. Keeping the fine detail of the operation and

eligibility of this framework in secondary legislation enables the Government to undertake a detailed consultation and to work closely over a longer period with a wide range of stakeholders, including experts from TPR and FCA, to better understand the practical effects of the new requirements, the operability of the changes, and to ensure the detailed rules achieve the policy objectives. It will also allow changes to the working aspects of the framework to be made in the light of operational experience and market reaction whilst retaining the overall structure within primary legislation.

### **Justification for procedure**

125. Regulations made under this power will be subject to affirmative resolution for the first use and, mostly, negative for subsequent use. Where regulations are made in respect of the requirement to prescribe a person to perform the functions in clause 23(1), the requirements to send transfer notices or transfer pension pots, or regulations which amend or repeal provision contained in an Act, the procedure will always be affirmative.
126. The exercise of this power will relate to principal aspects of the policy that would otherwise be set out in primary legislation. Consequently, it is considered that the first use of the power should be subject to debate to afford adequate parliamentary scrutiny.
127. The affirmative procedure has previously been used in pensions legislation where significant aspects of the policy have been provided in delegated powers. For example, the financial assistance scheme created by s286 Pensions Act 2004 required the Secretary of State to make provision, by regulations, for a scheme for making payments to, or in respect of, qualifying members of qualifying pension schemes. Apart from one small matter, s316(2)(n) Pensions Act 2004 provides for those to be subject to the affirmative procedure. More recently the qualifying pensions dashboard service provisions, inserted at ss238A to G by the Pension Schemes Act 2021, provide for significant aspects of policy to be provided in delegated powers in ss238A, 238D and 238G. By virtue of s316(2)(ka), (kb) and (kc), regulations made under, respectively, ss238A (Qualifying pensions dashboard service), 238D (Information from occupational pension schemes) and 238G (Compliance), are subject to the affirmative procedure.
128. Once the principal features of the policy are set out in the first regulations, subsequent regulations are expected to make more minor changes, and so the negative procedure is, mostly, considered appropriate. Prescribing who is a

destination proposer (described further in clause 23 below) is a significant policy change because, under the centralised delivery model, this could involve the transfer of the functions of the central body making destination proposals, so the affirmative procedure is appropriate. Regulations in respect of the requirements that relate to the transfer of pots relate to members' rights about the information they are given and can effect without consent transfers where a member does not respond to a transfer notice. It is therefore considered appropriate for the affirmative procedure always to apply. Finally, it would be exceptional for amendments to primary legislation to be made other than under the affirmative procedure, and no such exceptional reasons exist, so that is also always subject to the affirmative procedure.

### ***Clause 23 – Determination of destination for small pots***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use. Negative procedure for subsequent use unless in respect of the requirement to prescribe a person to perform the functions in clause 23(1).*

#### **Context and purpose**

129. Clause 23(1) describes in greater detail the power in clause 22 and requires regulations to prescribe a person, or persons, to be responsible for various functions that will enable pots to be transferred. Such a person is described in clause 23(5) as a destination proposer.
130. Under subsection (1), regulations will require a destination proposer to make a default proposal, and one or more alternative proposals, for the consolidation of each small dormant pot. These proposals will then be specified in the transfer notice. Under subsection (2), such proposals must be notified to the trustees or managers of the auto-enrolment scheme (unless those trustees or managers are a prescribed person who made the proposal, in which case they would not need to be notified of their own decision – this is explained further in the following paragraphs).
131. There are two possible models by which the destinations of small dormant pots will be decided: a centralised model, in which one person will be responsible for all

proposals; or a federated model, under which responsibility would rest with consolidator schemes and ceding schemes themselves. Both options are currently being explored by the Government.

132. Under the centralised model, the current policy intention would be for this to be undertaken by the Department for Work and Pensions, but with the ability to transfer the functions to another body (yet to be determined) in the future. For that, an amendment to Part 1 of the Financial Guidance and Claims Act 2018 would be required. If a different body is chosen, this may require different primary legislation to be amended. The Henry VIII power in Clause 31(5) enables any such amendment to primary legislation to be made by regulations.
133. Under the federated model, as described above, responsibility for making proposals would rest with pension schemes themselves. The details of how this would work are being explored by the Government through engagement with industry. However, the current leading option would be for ceding schemes to notify each default consolidator about every eligible pot they hold. The consolidators would then be responsible for confirming whether they hold a pot for the individual and, if so, the size of the pot. If a member has a pot with one of the consolidators, the ceding scheme selects that consolidator as the default proposal, with the others being the alternative proposals. If the member has pots with multiple consolidators, the ceding scheme would make a default proposal based on which pot is the largest. If the member has no existing pot with a consolidator, allocation would happen via a carousel process, with the ceding scheme being responsible for overseeing this.
134. Subsection (4) enables a destination proposer to be a body corporate established by or under the regulations. This would, for example, enable the regulations to appoint authorised consolidator schemes as a destination proposer, or to require them to establish an entity that would be the/a destination proposer.

### **Justification for taking the power**

135. As per clause 22.

### **Justification for procedure**

136. The regulations made under this power will be subject to affirmative resolution on the first use and negative on any subsequent use, apart from when prescribing a destination proposer, which will always be subject to the affirmative procedure. These powers relate to core functions and, as principal aspects of the policy, would

otherwise be set out in primary legislation. Consequently, it is considered that the first use of those powers should be subject to debate to ensure adequate parliamentary scrutiny. Thereafter, once the policy is settled and minor changes are required, negative procedure is appropriate. Prescribing who is a destination proposer is a significant policy change because, under the centralised delivery model, this could involve the transfer of the functions of the central body making destination proposals, so the affirmative procedure is appropriate.

## **Clause 24 – Transfer notices**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

137. Clause 24 places limits on, and sets requirements about, how the power in clause 22(1) can be used.
138. Clause 24(1) requires that regulations must require the trustees or managers of an auto-enrolment scheme to send a transfer notice in relation to each small dormant pension pot, unless that pot is ‘exempt’ (see Clause 25) and that it must contain the matters set out in subsections (3) to (5). Subsection (4) requires the regulations to provide details of, or otherwise communicate, the terms of the contract, where a proposal entails a member being party to a contract. Subsection (5) enables regulations to prescribe the information that must be included in a transfer notice. This includes details of the pension pot, the authorised consolidator or arrangement it is proposed the pot is transferred to or held by, any alternative authorised consolidator or arrangement to which the pot could be transferred or held, and information about those schemes.

### **Justification for taking the power**

139. As per clause 22.

### **Justification for the procedure**

140. Regulations in respect of the requirements that relate to the contents of the transfer notice relate to members' rights about the information they are given and can effect without-consent transfers where a member does not respond to a transfer notice. This can include a member becoming party to a contract. It is therefore considered appropriate for the affirmative procedure always to apply.

## **Clause 25 – Exempt pots**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use.*

### **Context and purpose**

141. Clause 25(1)(a) enables regulations to provide that a pot is to be 'exempt' if it meets prescribed conditions; for example, where a protected pension age applies or the pot is invested in accordance with religious beliefs.
142. Clause 25(3) enables regulations to provide further detail as to how trustees or managers determine 'best interests'.

### **Justification for taking the power**

143. As per clause 22.

### **Justification for the procedure**

144. The regulations made under this power will be subject to affirmative resolution on the first use and negative on any subsequent use. These powers relate to core functions and, as principal aspects of the policy, would otherwise be set out in primary legislation. Consequently, it is considered that the first use of those powers should be subject to debate to ensure adequate parliamentary scrutiny. Thereafter, once the policy is settled and minor changes are required, negative procedure is appropriate.



## **Clause 26 – Transfer of small dormant pension pots**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

145. Clause 26 also places limits on, and sets requirements about, how the power in clause 22(1) can be used. It requires that, unless the member objects to the proposals in the transfer notice, regulations must require the trustees or managers to transfer or hold each transferable pension pot held by the scheme to the appropriate authorised consolidator scheme or arrangement. It requires that regulations must require the receiving authorised consolidator scheme or arrangement to hold the pot.

### **Justification for taking the power**

146. As per clause 22.

### **Justification for procedure**

147. Regulations in respect of the requirements that relate to the transfer of a pension pot and that can effect without-consent transfers where a member does not respond to a transfer notice have a significant impact on member rights. It is therefore considered appropriate for the affirmative procedure always to apply.

## **Clause 28 – Timing of transfers**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use.*

### **Context and purpose**

148. Clause 28 requires that the regulations prohibit the transfer of a pot or the change of an arrangement before expiry of the required notice period, and subsection (2) provides that the prescribed period cannot be less than 30 days.
149. Clause 28(3) requires that the regulations provide that where a pot is transferred or an arrangement is changed, it is done within the required transfer period. Subsection (5) provides for the scenario in which the trustees or managers of an auto-enrolment scheme have not been notified of the destination of the pot in sufficient time to comply with the required transfer period. This subsection enables regulations to be made to extend the required transfer period, with the further window beginning on the date on which the notification of the proposals is received.

#### **Justification for taking the power**

150. As per clause 22.

#### **Justification for the procedure**

151. The regulations made under this power will be subject to affirmative resolution on the first use and negative on any subsequent use. These powers relate to core functions and, as principal aspects of the policy, would otherwise be set out in primary legislation. Consequently, it is considered that the first use of those powers should be subject to debate to ensure adequate parliamentary scrutiny. Thereafter, once the policy is settled and minor changes are required, negative procedure is appropriate.

### ***Clause 29 – Authorisation of consolidator schemes etc by the Pensions Regulator***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use.*

#### **Context and purpose**

152. Clause 29(1) requires that the regulations enable an eligible master trust scheme to apply for authorisation of the scheme or an arrangement under the scheme. Clause 29(2) provides that the regulations must specify the application process and the conditions that must be met to be authorised, and that the Pensions Regulator must grant an application where those provisions are complied with.
153. Clause 29(3) provides that regulations may permit or require the Pensions Regulator, where prescribed conditions are, or cease to be, met in relation to an authorised consolidator scheme or arrangement to require the trustees or managers to take prescribed steps including that such a scheme or arrangement can no longer be included in a transfer notice.
154. Clause 29(4) provides examples of conditions which could be prescribed including fees charged and value for money rating assigned. This power allows for conditions to include exercise of a discretion by the Pensions Regulator.
155. Clause 29(5) enables regulations to permit or require the Regulator, where authorisation is withdrawn in respect of a scheme or arrangement, to require the trustees or managers to take prescribed steps. This power can be exercised in relation to 'relevant pension pots.' This is to manage the fact that the sums or assets comprising the small dormant pension pot may have changed, for example it may have increased following investment growth of the original sums or assets.
156. Clause 29(6) gives an example of how the power in subsection (5) could be used; to limit the fees that may be charged.

#### **Justification for taking the power**

157. As per clause 22.

#### **Justification for procedure**

158. Regulations made under this power will be subject to affirmative resolution for the first time and negative thereafter. The exercise of this power will relate to principal aspects of the policy that would otherwise be set out in primary legislation. Consequently, it is considered that the first use of the power should be subject to debate to afford adequate parliamentary scrutiny. Thereafter, once the policy is settled and minor changes are required, negative procedure is appropriate.

## Clause 31 – Further provision about contents of small pots regulations

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use unless in respect of regulations made under subsections (5) and (6) which amend or repeal provision contained in an Act, in which case always affirmative.*

### **Context and purpose**

159. Clause 31(1) provides more detail on the scope of the power in clause 22(1). It provides examples of how it could be used.
160. Paragraph (a) enables regulations to authorise the Pensions Regulator to charge a prescribed fee in respect of an application for authorisation.
161. Paragraph (b) provides for regulations to confer a right of appeal to the First-tier Tribunal or the Upper Tribunal. This could be used, for example, to confer a right of appeal where the Pensions Regulator makes a decision to prevent an authorised consolidator from being permitted to receive small dormant pension pots because the scheme is not providing value for money.
162. Paragraphs (c) to (f) enable regulations to make provision about information sharing and record keeping, including improving the accuracy and completeness of information held by relevant pension schemes.
163. Paragraph (g) enables regulations to limit the fees that may be charged by a relevant pension scheme in connection with the transfer of a pension pot under the regulations.
164. Paragraph (h) describes how a liability framework may be established, under which compensation may be required to be paid to someone who has suffered a loss because of a breach of small pots regulations. Those that may be responsible for paying compensation includes the Secretary of State; this would be used if the federated delivery model is adopted (see clause 23 above). However, regulations will be clear that this is only in cases where the responsible scheme is no longer operating and is unable to pay compensation. Any such payments made by the

Secretary of State will be recoverable via the General Levy. Further, under the regulations the payment of compensation could be delegated by the Secretary of State to an arm's length body, or another person such as a consolidator scheme of which an affected party is now a member.

- 165. Paragraph (i) enables regulations to confer additional functions on a relevant person, including a function involving the exercise of a discretion.
- 166. Paragraph (j) enables regulations to provide for the delegation of a function conferred by the regulations.
- 167. Clause 31(5) confirms that the overarching power in clause 22(1) is capable of being exercised so as to amend or repeal provision contained in an Act, and as such is a Henry VIII power.
- 168. It is possible that consequential amendments may need to be made to Part 1 of the Pension Schemes Act 2017 (Master Trusts) to enable an eligible master trust to be authorised and operate as an authorised consolidator. It is also possible that amendments may need to be made to the Pensions Act 2004 to enable the Pensions Regulator to exercise the functions that will be imposed by the small pots regulations.
- 169. Clause 31(6) provides two examples of how the power could be used. First, it would enable regulations to amend section 146 of the Pension Schemes Act 1993 (functions of the Pensions Ombudsman) so as to confer on the Pensions Ombudsman the function of investigating and determining complaints or disputes relating to a destination proposer. Second, it would enable regulations to amend section 175 of that Act (levies towards certain expenditure) so as to include expenditure of a destination proposer (for example, to cover the operating costs of the central body under a centralised model), or the Secretary of State in relation to any requirements to pay compensation.

#### **Justification for taking the power**

- 170. As per clause 22.

#### **Justification for procedure**

- 171. The regulations made under this power will be subject to affirmative resolution for the first use and negative for any subsequent use unless in respect of regulations

made under subsections (5) and (6) which amend or repeal provision contained in an Act, in which case they will always be subject to affirmative resolution. Some of these powers will relate to core functions and, as principal aspects of the policy, would otherwise be set out in primary legislation. Consequently, it is considered that the first use of those powers should be subject to debate to afford adequate parliamentary scrutiny. Thereafter, as the regulations will be of an administrative nature, negative is appropriate. It will always be appropriate for regulations amending Acts to be subject to the affirmative procedure.

## ***Clause 32 – Enforcement by the Pensions Regulator***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use.*

### **Context and purpose**

172. Clause 32(1) provides that small pots regulations may make provision with a view to ensuring the compliance of any person who is not FCA-regulated with any provision of the regulations.
173. Clause 32(2) provides examples of how that power could be used; the Regulator may issue a compliance notice, a third-party compliance notice, and a penalty notice. Regulations may provide for the making of a reference to the First-tier Tribunal or Upper Tribunal in respect of the issue of a penalty notice or the amount of a penalty.
174. Clause 32(3) allows the regulations to make provision for determining the amount, or the maximum amount, of a penalty in respect of a failure or contravention and subsection (4) limits the value of any penalties.
175. Clause 32(9) provides that ensuring compliance extends to a requirement or restriction imposed by the Pensions Regulator under the regulations.

### **Justification for taking the power**

176. As per clause 22.

### **Justification for procedure**

177. The regulations made under this power will be subject to affirmative resolution for the first use and negative for any subsequent use. Some of these powers will relate to core functions and, as principal aspects of the policy, would otherwise be set out in primary legislation. Consequently, it is considered that the first use of those powers should be subject to debate to afford adequate parliamentary scrutiny. Thereafter, as the regulations will be of an administrative nature, negative is appropriate.

## ***Clause 33 – Enforcement by the FCA***

*Power conferred on: HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

178. Clause 33(1) enables the Treasury to make regulations to enable the FCA to take action for monitoring and enforcing compliance of an FCA-regulated person with any provision of small pots regulations.

179. Clause 33(2) enables the regulations to apply, or make provision corresponding to, regulations made by virtue of clause 32 in respect of enforcement by the Pensions Regulator, or any provision of the Financial Services and Markets Act 2000, with or without modification.

### **Justification for taking the power**

180. As per clause 22.

### **Justification for procedure**

181. The regulations made under this power will be subject to affirmative resolution. These powers will relate to core functions of the FCA and, as principal aspects of

the policy, would otherwise be set out in primary legislation. Consequently, it is considered that the powers should be subject to debate to afford adequate parliamentary scrutiny.

### ***Clause 34 – Power to alter definition of ‘small’***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

182. Clause 34(1) contains a power to amend primary legislation: the Secretary of State may increase or decrease the definition of ‘small’ in clause 22(2), which relates to the pot size eligibility requirement for automatic consolidation. It is not expected that the power will be used to decrease the amount.
183. Clause 34(2) provides that before changing the amount the Secretary of State must consult such persons as they consider appropriate, and publish details of the proposed amendment, and the Secretary of State’s reasons for making the proposal, in such manner as the Secretary of State considers appropriate, and consider any representations made.

#### **Justification for taking the power**

184. As per clause 22.

#### **Justification for procedure**

185. Regulations made under this power will be subject to affirmative resolution. The exercise of this power will relate to a principal aspect of the policy and will amend primary legislation. In keeping with such powers, it would be appropriate for the procedure to be affirmative.



## **Clause 38 – Amendments of the Financial Services and Markets Act 2000 (“FSMA”)**

*Power conferred on: Financial Conduct Authority.*

*Power exercised by: Rules made in accordance with Part 9A of FSMA.*

*Parliamentary procedure: None applicable.*

### **Context and purpose**

186. This provision has the objective of enabling FCA-regulated pension schemes to be consolidator schemes or consolidator arrangements. HM Treasury considers it is not appropriate for the legislation to set out all the specific provisions relating to the rules that must be complied with by an FCA-regulated pension scheme that wishes to act as a consolidator scheme or arrangement. Therefore, clause 38(3) inserts a new S.137FBC to FSMA. This provision delegates the setting of the further detailed rules to the FCA.

### **Justification for taking the power**

187. HM Treasury considers that detail relating to FCA-regulated pension schemes that wish to be consolidator schemes or consolidator arrangements is more appropriately contained in rules made by the FCA. As the supervisory body for FCA-regulated pension schemes, the FCA is best placed and has the required technical knowledge to detail the rules that must be complied with. This is consistent with the use of FCA rules as part of the FSMA approach to regulation in the pensions market.

### **Justification for procedure**

188. There is no parliamentary procedure. The FCA's general rule-making powers in Part 9A of FSMA 2000 do not have formal parliamentary oversight. These powers are specific rule-making powers, which replicate the procedures that apply to the FCA's general rule-making powers, and as such HM Treasury do not consider it appropriate to provide for formal parliamentary oversight. Instead, safeguards provided in Part 9A of FSMA will apply; in particular, sections 138C (evidential provisions), 138F (notification of rules) and 138I (consultation by the FCA).

## **Part 2, Chapter 3 - Scale and asset allocation**

### ***Clause 40 – Subsection (4) – Power to exempt relevant master trust schemes from the scale and asset allocation requirements and to provide for the approval of schemes that have previously been approved under the transition pathway***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

189. This clause amends the quality requirements for UK money purchase schemes in the Pensions Act 2008 to insert a new ‘scale’ requirement and a new ‘asset allocation requirement’ on authorised master trust schemes and some types of personal pension arrangements. There is a broad consensus, supported by evidence, that scale in pension schemes leads to economies and efficiencies, as well as enabling greater expertise and diversification in investments. The asset allocation requirement is designed to be used if the industry fails adequately to diversify its investments into private markets, for example by failing to meet voluntary commitments.

190. Regulations may be made to specify master trusts that are exempted from these requirements, including setting out how schemes can apply for exemption and how applications will be determined. The regulations will also identify the relevant Regulatory Authority who will determine applications. Regulations may also be made which provide that the relevant master trusts that have previously been approved under the transition pathway may be approved under the scale requirement.

#### **Justification for taking the power**

191. We anticipate that the market will reshape as a consequence of these significant measures. It is therefore important to retain flexibility to amend the circumstances in which temporary relief from the conditions can be given, to meet the needs of the changing market and possible future eventualities. This is particularly important for

the transition pathway so that any unexpected circumstances such as economic shocks can be managed effectively. This power may also be used to deal with the effect that unexpected economic events have on pension investments. Much of the detail to be prescribed under this power will also relate to the application process and therefore be technical in nature.

### **Justification for procedure**

192. Regulations will be subject to the affirmative procedure to allow a high level of Parliamentary scrutiny of the circumstances where providers may not be subject to the significant structural changes implemented through these measures.

### ***Clause 40 – Subsection (4) – Power to permit the appropriate regulator to suspend requirements (master trusts)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

193. This clause amends the quality requirements for UK money purchase schemes in the Pensions Act 2008 to insert a new ‘scale’ requirement and a new ‘asset allocation requirement’ on authorised master trust schemes and some types of personal pension arrangements.
194. Regulations may be made to permit the appropriate regulator to determine that a master trust should be temporarily treated as meeting the conditions in section 20(1A), with the objective of providing time in which the impact on employers caused by a master trust ceasing to be a qualifying scheme can be mitigated.
195. Regulations may also make provision for the appropriate regulator to require trustees or managers of a master trust to prepare a plan showing how they propose to meet the new conditions.

### **Justification for taking the power**

196. We anticipate that the market will reshape as a consequence of these significant measures. It is therefore important to retain flexibility to amend the circumstances in which temporary relief from the conditions can be given, to meet the needs of the changing market and possible future eventualities. This power may also be used to deal with the effect that unexpected economic events have on pension investments.
197. We consider it appropriate to confer a power on the Regulatory Authority to act without an application from a scheme to determine if a master trust should be treated for a period of time as if it meets conditions in (1A). The purpose of this is to allow a sufficient window for a master trust to support employers to move to a scheme with scale, or to meet asset allocation requirements at a pace that mitigates unintended consequences for savers.
198. The power also grants regulators the ability to require a plan from a relevant master Trust so that the regulator can determine if it is sufficient to meet scale and, or asset allocation requirements. This will support the regulator in determining where an exemption may be appropriate and the duration it should stand for.

#### **Justification for procedure**

199. Regulations will be subject to the affirmative procedure to allow a high level of Parliamentary scrutiny of the circumstances where providers may benefit from temporary relief from these measures.

#### ***Clause 40 – Subsection (8) – Power to exempt group personal pension schemes from the scale and asset allocation requirements and to provide for the approval of schemes that have previously been approved under the transition pathway***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

200. Regulations may be made to specify group personal pension plans that are exempted from the scale and investment requirements, including setting out how schemes can apply for exemption and how applications will be determined. The regulations will also identify the relevant Regulatory Authority who will determine applications.
201. Regulations may also be made which provide that relevant group personal pension schemes that have previously been approved under the transition pathway may be approved under the scale requirement.

#### **Justification for taking the power**

202. We anticipate that the market will reshape as a consequence of these significant measures. It is therefore important to retain flexibility to amend the circumstances in which temporary relief from the conditions can be given, to meet the needs of the changing market and possible future eventualities. This is particularly important for the transition pathway so that any unexpected circumstances such as economic shocks can be managed effectively. This power may also be used to deal with the effect that unexpected economic events have on pension investments. Much of the detail to be prescribed under this power will also relate to the application process and therefore be technical in nature

#### **Justification for procedure**

203. Regulations will be subject to the affirmative procedure to allow a high level of Parliamentary scrutiny of the circumstances where schemes may not be subject to the significant structural changes implemented through these provisions.

### ***Clause 40 – Subsection (8) – Power to permit the appropriate regulator to suspend requirements (group personal pensions)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

204. This clause amends the quality requirements for UK money purchase schemes in the Pensions Act 2008 to insert a new 'scale' requirement and a new 'asset allocation requirement' on authorised master trust schemes and some types of personal pension arrangements.
205. Regulations may be made to permit the appropriate regulator to determine that a group personal pension scheme should temporarily be treated as meeting the conditions in new section 26(7A) and (7B), with the objective of providing time in which the impact on employers caused by a group personal pension scheme ceasing to be a qualifying scheme can be mitigated.
206. Regulations may also give the appropriate regulator the power to request a plan from group personal pension schemes, showing how the scheme proposes to meet the scale requirement.

#### **Justification for taking the power**

207. We anticipate that the market will reshape as a consequence of these significant measures. It is therefore important to retain flexibility to amend the circumstances in which temporary relief from the conditions can be given, to meet the needs of the changing market and possible future eventualities. This power may also be used to deal with the effect that unexpected economic events have on pension investments.
208. We consider it appropriate to confer a power on the Regulatory Authority to act without an application from a scheme to determine if a GPP should be treated for a period of time as if it meets conditions in (1A). The purpose of this is to allow a sufficient window for a GPP to support employers to move to a scheme with scale, or to meet asset allocation requirements at a pace that mitigates unintended consequences for savers.
209. The power also grants regulators the ability to require a plan from a relevant GPP so that the regulator can determine if this is sufficient to meet scale requirements. This will support the regulator in determining where an exemption may be appropriate and the duration it should stand for.

#### **Justification for procedure**

210. Regulations will be subject to the affirmative procedure to allow a high level of Parliamentary scrutiny of the circumstances where providers may benefit from temporary relief from these measures.

## ***Clause 40 – Subsection (12) – New section 28A: power to make provision about the requirement for MSDA approval (master trusts)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

211. A new section 28A is inserted into the Pensions Act 2008 which sets out the process by which a master trust may apply for approval as participating in a main scale default arrangement (“MSDA”) and the criteria which the scheme must meet to gain approval. The key feature of a MSDA, which is that it contains at least £25 billion in assets under management, is set out in the Bill. Power is conferred on the Secretary of State to:

- a) prescribe additional conditions for approval,
- b) make provision about the amounts that are to be excluded when calculating the minimum amount of £25bn that a scheme must hold,
- c) make provision about how a scheme must evidence how they satisfy the criteria for holding a main scale default arrangement,
- d) make provision about the meaning of ‘common investment strategy,’
- e) make provision about the application process, including time limits, procedures, and the process for withdrawal of approval,
- f) make provision about the appeal process in relation to an approval decision, and
- g) make provision for the Regulator to maintain and publish a list of relevant master trusts that meet the scale requirements.

212. Power is also conferred on the Secretary of State to make regulations that provide for the connection that must exist between a relevant master trust and another scheme in order for the relevant master trust to count the assets of that scheme towards the minimum amount in subsection 28A(3).

### **Justification for taking the power**

213. We anticipate that the market will reshape as a consequence of these significant measures and that the nature of default arrangements and strategies operated by the market will change. It is therefore important to retain flexibility to amend the exemptions to the regime, to meet the needs of the changing market.
214. Whilst the main scale default arrangement is central to the operation of the scale requirements, Government needs to retain flexibility to be able to adapt the detail of its design to reflect how arrangements are structured in the future. The MSDA concept also bridges two existing and separate regulatory regimes, so care will need to be taken to make sure that the MSDA can be adapted to reflect technical changes in the evolution of the two regulatory regimes.
215. Flexibility is also needed to enable a system to be built to manage the exit of schemes from the market where they do not meet the requirements. The system will need to be responsive to the needs and shifting dynamics of the market.
216. Some detail covered by these regulations will also deal with the application process itself, which will be technical in nature.
217. The Government's intent is that providers that currently offer several schemes should be able to count assets held in those schemes towards the scale requirements. This power will allow the government to ensure that regulations take account of the existing corporate structures of these providers, following consultation.

#### **Justification for procedure**

218. Regulations will be subject to the affirmative procedure to ensure a high level of Parliamentary scrutiny. The measures which are the subject of these delegated powers will lead to significant structural changes to the automatic enrolment defined contribution market, into which millions of employees and thousands of employers pay their pension contributions.

#### ***Clause 40 – Subsection (12) – New section 28B: power to make provision about the requirement for MSDA approval (group personal pensions)***

*Power conferred on: The Secretary of State.*



*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

219. A new section 28B is inserted into the Pensions Act 2008 which sets out the process by which a group personal pension plan may apply for approval as participating in a main scale default arrangement and the criteria which the scheme must meet to gain approval. The key feature of a main scale default arrangement, that it must contain at least £25 billion in assets under management, is set out in the Bill. Power is conferred on the Secretary of State to:

- a) prescribe additional conditions for approval,
- b) make provision about the amounts that are to be excluded when calculating the minimum amount of £25bn that a scheme must hold,
- c) make provision about how a scheme must evidence how they satisfy the criteria for holding a main scale default arrangement,
- d) make provision about the meaning of 'common investment strategy,'
- e) make provision about the application process, including time limits, procedures, and the process for withdrawal of approval,
- f) make provision about the appeal process in relation to an approval decision,
- g) make provision for the Regulator to maintain and publish a list of relevant group personal pension schemes that meet the scale requirements, and
- h) make regulations that provide for the connection that must exist between a group personal pension scheme and another scheme in order for the group personal pension scheme to count the assets of that scheme towards the minimum amount in subsection 28B(3).

### **Justification for taking the power**

220. We anticipate that the market will reshape as a consequence of these significant measures and that the nature of default arrangements and investments operated by the market will change. It is therefore important to retain flexibility to amend the exemptions to the regime, to meet the needs of the changing market. Justification for taking the powers under section 28B are similar to those given above in respect of the justification given for powers in relation to section 28A.

221. The Government's intent is that providers that currently offer several schemes should be able to count assets held in those schemes towards the scale requirements. This power will allow the government to ensure that regulations take

account of the existing corporate structures of these providers, following consultation.

### **Justification for procedure**

222. Regulations will be subject to the affirmative procedure to ensure a high level of Parliamentary scrutiny. The measures which are the subject of these delegated powers will lead to significant structural changes to the automatic enrolment defined contribution market, into which millions of employees and thousands of employers pay their pension contributions.

### ***Clause 40 – Subsection (12) – New section 28C: power to make provision about the asset allocation requirement***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

223. New section 28C is inserted into the Pensions Act 2008 to provide for an asset allocation requirement to be imposed on relevant master trusts and group personal pension schemes. Power will be conferred on the Secretary of State to:

- a) prescribe a percentage of the totality of assets held in funds of a scheme to be qualifying assets,
- b) prescribe the types of assets that will be ‘qualifying assets,’
- c) specify other criteria that must be met by qualifying assets, including about where they are located, their link to economic activity in the United Kingdom and the type of market that they are traded in,
- d) prescribe conditions about the arrangements under which qualifying assets must be held,
- e) assign different descriptions of asset to different fractions of the prescribed percentage,
- f) make provision about how schemes can evidence that they meet the asset allocation requirement,
- g) set out the procedure that must be followed in order for a scheme to obtain regulatory approval demonstrating that they meet the qualifying investments

- requirement, including how a scheme may appeal if they disagree with the decision made, and
- h) provide for a relevant regulator to maintain and publish a list of master trusts that are approved as meeting the qualifying investments requirement.

### **Justification for taking the power**

224. We anticipate that the market will reshape as a consequence of the measures set out in the Bill. Voluntary industry commitments have already been made to increase investment in private assets. Government wishes to retain flexibility to make regulations to impose requirements on the market if voluntary commitments are ineffective. The Secretary of State's use of the power to make regulations under section 28C is also subject to the duty to prepare and publish a report under subsection (11), and a separate duty to consult such persons as the Secretary of State considers appropriate about that report under subsection (13), before the power can be exercised.

### **Justification for procedure**

225. Regulations will be subject to the affirmative procedure in order that they are subject to a high level of Parliamentary scrutiny.

## ***Clause 40 – Subsection (12) – New section 28C: power to issue guidance about the effect of regulations made under section 28C***

*Power conferred on: The Secretary of State.*

*Power exercised by: Issuance of guidance.*

*Parliamentary procedure: None applicable.*

### **Context and purpose**

226. New section 28C is inserted into the Pensions Act 2008 to provide for an asset allocation requirement to be imposed on relevant master trusts and group personal pension schemes. Paragraph (9)(b) provides that the Secretary of State may issue guidance about the effect of regulations made under section 28C to which master trusts and group personal pensions must have regard.

### **Justification for taking the power**

227. Given the scope of matters to be covered by regulations made under clause 28C, it seems likely that statutory guidance about the effect of these regulations would aid interpretation.

### **Justification for procedure**

228. No particular procedure will be required in respect of the issuing of guidance under paragraph (9)(b). The substantive regulations that the guidance is concerned with will be subject to the affirmative procedure.

## ***Clause 40 – Subsection (12) – New section 28D: power to make provision about the information that must be provided to the Regulatory Authority in relation to the allocation of assets (master trust and GPP)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

229. New section 28D is inserted into the Pensions Act 2008 to enable the Secretary of State to make regulations that require the trustees or managers of a master trust or the provider of a group personal pension scheme to give to the Regulatory Authority information in relation to the allocation of assets in those schemes. These regulations may also provide for the type and form of that information, and the timeframe for providing it.

### **Justification for taking the power**

230. We consider it appropriate to confer a power on the Secretary of State to require the trustees or managers of a master trust, or the provider of a group personal pension scheme, to provide the appropriate Regulatory Authority with information on the allocation of assets in those schemes. This will enable the Secretary of State to assess the progress pension providers have made against their commitments to invest in private assets and make an informed decision on whether to activate the

reserve asset allocation powers. Secondary legislation is appropriate for this function in order to provide enough flexibility to appropriately address the technicalities of asset classes and ownership and, where necessary, to align with approaches taken under the new Value for Money regime.

### **Justification for procedure**

231. A lower level of scrutiny (as compared to the substantive regulations made under powers created under clause 40) is appropriate for regulations made in connection to the provision of information on this particular topic, therefore the negative resolution procedure is appropriate. Providers should already hold or be able readily to obtain most or all of this information.

### ***Clause 38 - subsection (12) – new section 28E: power to make provision about the transition pathway relief***

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative resolution procedure

### **Context and purpose**

232. A new section 28E is inserted into the Pensions Act 2008 which will permit relevant Master Trusts and group personal pension schemes to apply to the regulator for relief from the requirement for MSDA approval on the basis that they qualify for a transitional pathway. This is designed for schemes that may be too small to meet the scale requirement under clause 28A or 28B by 2030 but have at least £10bn in assets in a single default arrangement and have a plan to grow to the £25bn scale requirement.

233. Power will be conferred on the Secretary of State in relation to this transitional pathway to:

- a) prescribe additional conditions that a relevant Master Trust or a group personal pension must meet in order to qualify for transitional relief,
- b) require schemes that are approved under section 28E to take prescribed steps, including in relation to producing plans for increasing their scale and in connection with governance and investment capability,

- c) make provision about the criteria for making determinations that the appropriate regulator may make in relation to approvals under section 28E,
- d) make provision about time limits, procedures and appeals that are relevant to the application process.
- e) make provision for the appropriate regulator to maintain and publish lists of schemes that are approved under section 28E.

#### **Justification for taking the power**

234. We anticipate that the market will reshape as a consequence of the measures set out in the Bill. Powers under section 28E are needed to make sure that smaller providers are properly taken account of by the new measures. The requirements will need to be responsive to the practicalities of diverse providers' plans for growth, and requirements must accordingly be capable of adaptation. Much of the detail to be prescribed under the powers in section 28E also relates to procedure and process and is accordingly technical in nature.

235. Regulations made under section 28E are also subject to the duty to consult with such persons as the Secretary of State considers appropriate in subsection (8).

#### **Justification for procedure**

236. Regulations will be subject to the affirmative procedure in order that they are subject to a high level of Parliamentary scrutiny.

### ***Clause 40 – Subsection (12) – New section 28F: power to make provision about new entrant pathway relief***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

237. A new section 28F is inserted into the Pensions Act 2008 which will permit relevant master trusts and group personal pension schemes to apply to the regulator for relief

from the requirement for MSDA approval under a new entrant pathway. This relief is designed to allow for the development of innovative models in the future.

238. Power will be conferred on the Secretary of State in relation to this new entrant pathway to:

- a) prescribe conditions that must be met by a scheme in order to qualify for the new entrant pathway,
- b) make provision for time limits, procedures and appeals relating to the approval process,
- c) provide for the appropriate regulator to maintain and publish a list of relevant master trusts and group personal pension schemes that are approved under section 28F.

239. Further power is conferred on the Secretary of State to make provision about the meaning of 'strong potential to grow' and 'innovative product design' for the purposes of the approval given under new section 28F.

#### **Justification for taking the power**

240. This is needed to enable the scale requirements to be adapted to maintain competition and to reflect developments and innovations in the market. Maintaining competition and innovation is seen as desirable and therefore we need to allow for growth to scale over a period of time. It is difficult to precisely foresee what innovation will look like in the future, so the powers must be broad enough to anticipate this and consider factors around innovation. Some elements of these regulations will also concern the application process for an approval and accordingly will be technical in nature.

241. Regulations made under section 28F are also subject to the duty on the Secretary of State to consult such persons as she considers appropriate.

#### **Justification for procedure**

242. Regulations will be subject to the affirmative procedure in order that they are subject to a high level of Parliamentary scrutiny.

### ***Clause 40 – Subsection (12) – New section 28G: power to make provision about the suspension of the asset allocation requirement***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

243. A new section 28G is inserted into the Pensions Act 2008 which will permit relevant master trusts and group personal pension schemes to apply to the regulator for relief from any asset allocation requirement that may be imposed under section 28C.

244. Power will be conferred on the Secretary of State in relation to this provision to:

- a) make provision for authorising the appropriate regulator to determine that a scheme in question is to be treated for a specified period as if it were exempted from the requirement for approval under section 28C,
- b) make provision that, in order for such relief to be granted, the appropriate regulator must determine that the asset allocation requirement would cause material financial detriment to the scheme or members of the scheme,
- c) make provision about other criteria to be taken into account by the appropriate regulator when making a determination,
- d) make provision about time limits and procedures in connection with applications,
- e) make provision about the basis on which the appropriate regulator will determine that a scheme in question is to be treated for a specified period as if it were exempted from the requirement for approval under section 28C, including what evidence the regulator will take into account, and,
- f) make provision for a referral of the appropriate regulator's determination to the Upper Tribunal.

245. The Secretary of State is required to make regulations under this section so that they have effect when regulations under sections 28C(1) or (2) also have effect.

### **Justification for taking the power**

246. If the asset allocation requirement is brought into force, section 28G will form a significant safeguard to protect the interests of pension savers. The design of this safeguard – in essence, determining in which circumstance it is right that a pension scheme should be able to deviate from the asset allocation requirement – will need to be responsive to the nature of the asset allocation requirement itself, the



conclusions of the report published by the Secretary of State under section 28C(11), and general market conditions. It also seems likely that, given the changes in the pension market that will be driven by measures across the Bill, that the nature of this safeguard is likely to change over time. Some elements of these regulations will also concern the application process for an approval and accordingly will be technical in nature.

### **Justification for the procedure**

247. Regulations will be subject to the affirmative procedure in order that they are subject to a high level of Parliamentary scrutiny.

### ***Clause 40 – Subsection (12) – New section 28H(10): power to make regulations regarding risk notices issued to master trusts by the Regulatory Authority***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

248. A new section 28H is inserted into the Pensions Act 2008 which permits and sets out the process by which the Regulatory Authority may give a risk notice to the trustees or managers of a master trust if it considers that there is an issue of concern with the master trust and considers that the master trust will, or is likely to, cease to meet the conditions for approval under sections 28A or 28C. A risk notice will require the master trust to prepare a resolution plan and submit this to the Regulator.

249. Power is conferred on the Secretary of State to:

- a) make provision about the information that a risk notice must contain,
- b) provide for dates relevant to the submission of a resolution plan.

### **Justification for taking the power**

250. We consider that it is appropriate to give a power to the Regulator to issue a resolution plan or revised plan where there is an issue of concern. We wish to enable the Regulator to take action to resolve the areas of concern before they need to consider more interventionist enforcement measures. The powers to do this and framework are all contained within the Bill and subject to Parliamentary scrutiny.
251. The nature of the information to be provided will vary depending on the form of the concern identified and in light of operational experience. We consider that it is appropriate that the detail of the information that must be set out in a notice issued by the Regulator and the maximum time period for the trustees or managers to respond is set in regulations. This is because the regulations only relate to operational details in respect of risk notices, for example we would expect the information to be provided to relate to the issue of concern and the Regulator's rationale for this.

#### **Justification for the procedure**

252. A lower level of scrutiny (as compared to the other substantive regulations made under powers created under clause 40) is appropriate for regulations made in connection to some discrete detail relating to the technical function of the risk notice. This approach is also consistent with regulation making powers available in relation to the Pension Regulator's ability to issue a risk notice under its other supervisory functions (see section 29(12) Pension Schemes Act 2021, for example).

#### ***Clause 40 – Subsection (12) – New section 28I: power to make provision to impose financial penalties***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

253. A new section 28I is inserted into the Pensions Act 2008 to enable the Secretary of State to make regulations that will enable the Regulatory Authority to impose financial penalties on trustees or managers of a master trust or the provider of a group personal pension scheme for accepting contributions while failing to meet the

approval conditions under sections 20(1A), 28A and 28C and to impose financial penalties on group personal pension schemes where they accept contributions while failing to meet the approval conditions under section 26(7a) or (7b).

254. The penalties provided for under this new section must not exceed £100,000 in relation to each employer from which contributions are accepted. The section also provides that the Secretary of State must make provision about a right of appeal against the imposition of the penalty.

#### **Justification for taking the power**

255. It is appropriate that regulators should have the power to issue a penalty to those running schemes if those schemes accept contributions without complying with the new conditions. The power allows for detailed provision to be made and to ensure parity across the trust and contract-based market. Using secondary legislation allows the Department for Work and Pensions to work with Treasury as well as the Pensions Regulator and FCA to make detailed provisions for penalties.

#### **Justification for the procedure**

256. It is appropriate that regulations made under this power should be subject to a high level of Parliamentary scrutiny, matching other substantive powers created under Clause 40.

### ***Clause 40 – Subsection (12) – New section 28J: power to make regulations to enable the Financial Conduct Authority (FCA) to monitor and enforce compliance of any FCA-regulated person in relation to Chapter 3***

*Power conferred on: HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

257. A new section 28J is inserted into the Pensions Act 2008 to give the power to the Treasury to make regulations to enable the FCA to take action to monitor and enforce compliance of any FCA-regulated person with any provision of or under Chapter 1 of Part 1 of the Pensions Act 2008.
258. These regulations may apply or make provision corresponding to any provision made by or under Part 1 of the Pensions Act 2008 in relation to the Pensions Regulator; or any provision of the Financial Services and Markets Act 2000 with or without any modification.

#### **Justification for taking the power**

259. We consider that it is appropriate to give a power to the Treasury to make regulations to enable the FCA to take action to monitor and enforce compliance of any FCA-regulated person in accordance with the provisions of or under Chapter 1 of Part 1 of the Pensions Act 2008. This is necessary to ensure that the FCA has sufficient powers to effectively regulate group personal pension schemes in relation to the Scale and Asset Allocation measures.

#### **Justification for the procedure**

260. Regulations will be subject to the affirmative procedure in order that they are subject to a high level of Parliamentary scrutiny.

### ***Clause 40 – Subsection (17) – Power to make amendments to section 20 Pensions Act 2008 should section 40 be repealed as a consequence of section 117(6)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

#### **Context and purpose**

261. Regulations may be made to enable the Secretary of State to make consequential amendments to clause 40 in the event that the asset allocation requirement has been repealed as a result of the ‘sunset provision’ in section 117(6). Section 117(6)

provides that the elements of clause 40 that relate to the asset allocation measure will be repealed if they have not been brought into force before the end of 2035. The purpose of the clause 40(17) power is to 'tidy up' and clarify the statute book, by allowing for the removal of repealed provisions.

### **Justification for taking the power**

262. We consider it appropriate to confer a power on the Secretary of State to make consequential amendments to clause 40 in order to ensure that the law is clear and that the Pensions Act 2008 does not contain repealed legislation.

### **Justification for the procedure**

263. The negative resolution procedure is appropriate because the power may only be used to amend clause 40 in consequence of repeals made by the 'sunset' provision in clause 117(6). A comparatively lower standard of scrutiny is appropriate for this limited purpose.

## ***Clause 41 – Subsection (8) – New section 12A Pension Schemes Act 2017: power to specify further matters that the Pensions Regulator must take into account when deciding whether a master trust scheme has sufficient investment capability***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use.*

### **Context and purpose**

264. A new section 12A is inserted into the Pension Schemes Act 2017, which relates to an additional investment capability authorisation criterion that master trust schemes must comply with. This new criterion, inserted by clause 41(7) will require master trust schemes to satisfy the Pensions Regulator that they have appropriate systems in place for managing investment strategy, monitoring outcomes, delivering effective governance and that they have appropriate strategies for recruiting and retaining

expert staff. Power will be conferred on the Secretary of State under the new section 12A(1) to:

- a) Make provision about the meaning of terms that are relevant to the new investment capability criterion, and,
- b) specify further factors that the Pensions Regulator must take into account in deciding whether it is satisfied about the matters mentioned in the section.

265. The purpose of this provision is to ensure that master trust schemes have sufficient expertise to invest in a way that is beneficial to UK economic growth and their members (for example, by selecting private assets).

#### **Justification for taking the power**

266. The master trust authorisation framework as a whole is designed to be flexible enough to adapt to changing conditions and market best practice. This power is drafted in line with powers available to the Secretary of State in respect of the existing criteria (for example, section 8(4) Pension Schemes Act 2017). It is anticipated that in future, new standards relating to investment practice will develop and it will be appropriate to build these into the authorisation regime.

#### **Justification for procedure**

267. The affirmative resolution procedure is considered appropriate for initial development of the powers in order that this be subject to a high level of Parliamentary scrutiny. The framework can then be adjusted with greater flexibility thereafter. This approach is consistent with the approach to comparable regulation making powers granted in relation to other master trust authorisation criteria under the Pension Schemes Act 2017 (see sections 7 – 11).

### ***Clause 41 – Subsection (8) – New section 12B: power to make provision as to what factors the Pensions Regulator will consider when deciding whether a master trust scheme meets the scale requirement***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure for first use and negative procedure for subsequent use.*

### **Context and purpose**

268. A new section 12B is inserted into the Pension Schemes Act 2017, which relates to an additional authorisation criterion relating to the scale requirement that master trust schemes must comply with. This new criterion, inserted by clause 41(7), will require master trust schemes to satisfy the Pensions Regulator that they have complied with the scale requirement. New section 12B(1) will confer power on the Secretary of State to make regulations which make provision about how the Pensions Regulator is to decide whether it is satisfied that a master trust scheme satisfies this new scale requirement criterion, including specifying matters which the Pensions Regulator must take into account.
269. The purpose of this provision is to help align the existing master trust authorisation regime with the new scale requirement.

### **Justification for taking the power**

270. The master trust authorisation framework as a whole is designed to be flexible enough to adapt to changing conditions and market best practice as it evolves. This power is drafted in line with powers available to the Secretary of State in respect of the existing criteria (for example, section 8(4) Pension Schemes Act 2017). It is anticipated that in future, new standards relating to a main scale default arrangement may develop as the market evolves and it will be appropriate to build these into the authorisation regime.

### **Justification for the procedure**

271. The affirmative resolution procedure is considered appropriate for initial development of the powers in order that this be subject to a high level of Parliamentary scrutiny. The framework can then be adjusted with greater flexibility thereafter. This approach is consistent with the approach to comparable regulation making powers granted in relation to other master trust authorisation criteria under the Pension Schemes Act 2017 (see sections 7 – 11).

## **Part 2, Chapter 4 – Default Arrangements**

## ***Clause 42 – Subsection (1) – Power to make regulations for the purpose of restricting the ability of the provider of a pension scheme to begin operating a non-scale default arrangement***

*Power conferred on: The Secretary of State and HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

272. The purpose of this provision is to give powers to Secretary of State and the Treasury to make regulations to restrict the creation of new non-scale default arrangements without regulatory approval. This new clause seeks to limit future market fragmentation. The regulations will set out the basis for regulators to decide whether to approve a non-scale default arrangement and to provide for penalties in breach of the prohibition.

### **Justification for taking the power**

273. While the main scale default arrangement is central to the operation of scale, there remains a concern about the level of fragmentation in non-scale default arrangements. We consider it appropriate to give regulators the power to be able to restrict the operation of new arrangements without regulatory approval and to set out the reasons for when approval should be given. It is important that these reasons can change over time as the market evolves.

274. These powers also bridge two existing and separate regulatory regimes so care is needed to ensure we take account of this and can be responsive as these regimes develop in the future.

### **Justification for the procedure**

275. The affirmative resolution procedure is considered appropriate in order that regulations made under this power are subject to a high level of Parliamentary scrutiny. The measures which are the subject of these delegated powers will lead to significant structural changes to the automatic enrolment defined contribution market, into which millions of employees and thousands of employers pay their pension contributions.



## **Clause 44 – Subsection (1) – Power to make regulations about the consolidation of non-scale default arrangements into approved main scale default arrangements**

*Power conferred on: The Secretary of State and HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

276. This new provision will give powers to the Secretary of State and The Treasury to make regulations to require consolidation of default arrangements as appropriate, subject to any exemptions, following the outcome of a review of the non-scale default arrangements operated by providers of pension schemes, by the Secretary of State and the Treasury. These regulations cannot be made until the review on non-scale default arrangements required by clause 43 has been completed and the report published and must take account of the review's conclusions.

### **Justification for taking the power**

277. Any action taken to drive consolidation will need to be responsive to the outcome of the review to be undertaken on non-scale default arrangements. The findings of the review will help to shape the regulations; however, it will be important that we can respond in a timely manner to protect members' interests where the review finds that there is no justifiable exemption for a non-scale default arrangement to continue.

### **Justification for the procedure**

278. The affirmative resolution procedure is considered appropriate in order that regulations made under this power are subject to a high level of Parliamentary scrutiny. The measures which are the subject of these delegated powers will lead to significant structural changes to the automatic enrolment defined contribution market, into which millions of employees and thousands of employers pay their pension contributions.

## **Part 2, Chapter 5 – FCA-Regulated Pension Schemes: Contractual Override**

### ***Clause 48 – Power to make further provision for the purposes of the contractual override provisions***

*Power conferred on: HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure if the regulations amend or repeal any provision of an Act. Negative procedure for any other regulations.*

#### **Context and purpose**

279. New section 117B of the Financial Services and Markets Act 2000 (FSMA) provides that, where certain conditions are satisfied, pension providers will be able to amend the terms of a pension scheme, change investments held in respect of a member or transfer that member to another scheme or arrangement. This will help to enable and accelerate greater consolidation in the relevant pensions market and improve saver outcomes. The override will apply to FCA-regulated workplace pensions.
280. Clause 48 confers a power on HM Treasury to, through secondary legislation, narrow the scope of the measure by specifying that it does not apply in certain circumstances, to amend the best interests test that controls when the override mechanism can be used, to specify further legislative conditions which must be met before the contractual override measure can be used, to require the FCA make certain rules, to disapply legislation (or require the FCA to disapply rules) which would affect the operation of the override and to make consequential amendments.

#### **Justification for taking the power**

281. The pensions market is constantly evolving and is influenced by external factors. This power will allow HM Treasury to make changes to the operation of the mechanism to address changes in the market and developments in the use of the mechanism to ensure that the override mechanism continues to work effectively to deliver consolidation and in consumers' best interests.

### **Justification for the procedure**

282. HM Treasury considers that it is appropriate that Parliament is afforded the opportunity to scrutinise any regulations which amend or repeal any provision of an Act and therefore, that the power is subject to the affirmative procedure in those circumstances. In all other circumstances, HM Treasury considers that the negative procedure is appropriate.

### ***Clause 48 – Power to widen the scope of the pension schemes that the override provision applies to***

*Power conferred on: HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

283. New section 117B FSMA provides that, where certain conditions are satisfied, pension providers will be able to amend the terms of a pension scheme, change investments held in respect of a member or transfer that member to another scheme or arrangement. This will help to enable and accelerate greater consolidation in the relevant pensions market and improve saver outcomes. The override will apply to current and former FCA-regulated workplace contract-based defined contribution pensions.

284. New section 117A(2)(c) FSMA confers a power on HM Treasury to, through secondary legislation, make further provision to allow HM Treasury to widen the pension schemes in scope of the override.

### **Justification for taking the power**

285. It is envisioned that the override will initially apply to workplace pension schemes only as this is where HM Treasury sees the most benefit to consumers. However, it is important that HM Treasury has a power to determine that other pension schemes, such as individual pensions, should be within the scope of the override provision. This will ensure fairness across the pensions market as it will enable the provision

to apply to other pension products which HM Treasury determines could benefit from the provision.

286. In addition, pension products are constantly evolving and being created. Without a power to widen the scope of the override, consumers who have pension schemes which have been created after the legislation comes into force would not have access to the override. This could lead to a two-tier system whereby some consumers can benefit from the override, and, for no proper policy reason, others could not.

### **Justification for the procedure**

287. HM Treasury considers the negative procedure is appropriate for this provision, which will allow the scope of the override mechanism to be widened to reflect the need for market fairness and to reflect external product and market changes.

## ***Clause 48 – Rules relating to the override provision***

*Power conferred on: Financial Conduct Authority.*

*Power exercised by: Rules to be made in accordance with Part 9A of the Financial Services and Markets Act 2000.*

*Parliamentary procedure: None applicable.*

### **Context and purpose**

288. This Bill has the objective of encouraging growth and consolidation of pension arrangements. To do so, this Bill will allow for the transfer of contract-based pensions schemes without the consent of the member. HM Treasury considers it is not appropriate for the legislation to set out all the specific provisions relating to how the override will operate, for example, who a contractual override notice must be sent to, how the notice must be conveyed, the relevant notice period and the contents of the notice. Therefore, clauses 41 to 49 delegate the setting of the further detailed framework for the use of the override provision to the FCA.

### **Justification for taking the power**

289. HM Treasury considers that the detail relating to the operation of the contractual override is more appropriately contained in rules made by the FCA. As the supervisory body for contract-based pension arrangements, the FCA is best placed and has the required technical knowledge to set out in its rules how providers will be required to use the override in practice. This is consistent with the use of FCA rules as part of the FSMA approach to regulation in the pensions market.

### **Justification for the procedure**

290. There is no parliamentary procedure. The FCA's general rule-making powers in Part 9A of FSMA 2000 do not have formal parliamentary oversight. These powers are specific rule-making powers, which replicate the procedures that apply to the FCA's general rule-making powers, and as such HM Treasury do not consider it appropriate to provide for formal parliamentary oversight. Instead, safeguards provided in Part 9A of FSMA 2000 will apply, in particular, sections 138C (evidential provisions), 138F (notification of rules) and 138I (consultation by the FCA), FSMA.

## **Part 2, Chapter 6 – Guided Retirement**

### ***Clause 49 – Subsection (1)(b) – Power to prescribe circumstances, times, or intervals for reviewing the design and (if appropriate) number of default pension benefit solution(s)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

291. When pension scheme members seek to access their defined contribution pension pots, they face complex decisions about how they should access their pension benefits to meet their financial needs for perhaps two decades or more in retirement. This is because there are multiple ways of taking pension payments, and individuals also need to assess how much they need to withdraw each year without over or under spending, as well as considering the tax implications of making withdrawals.

292. Clause 49 requires relevant schemes to design and make available ‘default pension benefit solutions’ (hereafter “default solutions”) for their members. These are methods of paying members their pension benefits once they are ready to withdraw them. The purpose of providing default solutions is to help members to receive their pension benefits without the member having to make complex choices about how they want to receive those benefits.
293. Clause 49(1)(b) grants a power to prescribe when or in what circumstances the design, and if appropriate number, of default solutions must be reviewed.

#### **Justification for the power**

294. Taking the power provides flexibility to alter the review period or events should for any reason the initial review period or events set lead to suboptimal results. This may be the case if either the review is too frequent, leading to unnecessary administrative work and cost, or too infrequent, leading to the default solutions no longer suiting the scheme’s membership as it develops.

#### **Justification for the procedure**

295. The frequency of reviews may have a significant impact on the suitability of the default solution(s) for a scheme’s membership. However, schemes are able to review their suitability when they see fit, and the prescribed times or circumstances will simply set minimum requirements for when reviews must take place. The setting of minimum review times or circumstances for default solutions does not justify use of the affirmative procedure.

### ***Clause 49 – Subsection (3)(d) – Power to prescribe conditions that default solutions must meet***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

296. Clause 49(3) defines a default solution. Clause 49(3)(d) allows the Secretary of State to impose additional conditions on default solutions and so grants the ability to require that they contain certain features. By way of example, the power could be used to allow the Secretary of State to prescribe that a default solution must provide members with the ability to exit after their initial selection, or for the withdrawal rate to be capped where drawdown is relied on.

### **Justification for the power**

297. The introduction of the duty to provide default solutions is novel and it is unclear what products schemes will look to provide. It may be that some are unsuitable while others contain features that lead to better outcomes for members. The power will allow the law to respond to the market and ensure default solutions contain features that provide good member outcomes. Moreover, some of the requirements may contain granular detail better suited to secondary legislation.

### **Justification for the procedure**

298. The power allows the Secretary of State to intervene and to a certain extent determine the design of default solutions. As the power goes towards affecting a key element of the policy it is appropriate to subject it to a greater degree of scrutiny.

## ***Clause 49 – Subsection (4)(d) – Power to prescribe factors trustees and managers must take account of when determining what default solutions to make available***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

299. Clause 49(4) sets out several considerations trustees and managers must take into account when deciding what default solution to provide their members. These considerations will help guide the development of appropriate default solutions. This power allows for additional considerations to be prescribed.

### **Justification for taking the power**

300. Clauses 49(4)(a) to (c) set out basic requirements to consider. As default solutions are a new innovation, we do not know exactly how the market will evolve following introduction of these measures. There may therefore be innovations in the types of default solutions that are offered by schemes (compared to products which are available today) and lessons to learn as the policy is evaluated. Accordingly, it is necessary to take a power to provide flexibility and allow the law to respond to developments in the market.

### **Justification for the procedure**

301. Prescribing the factors to be considered may have a significant impact on the default solutions a scheme decides to make available. As the power affects a key feature of the policy it is appropriate to subject it to a greater degree of scrutiny.

## ***Clause 49 - Subsection (5) – Power to make provision about how trustees or managers are to assess members’ needs and interests***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

302. Section 49(5) requires trustees or managers to take account of the needs and interests of the scheme’s membership when determining the number and design of the default solutions to be available. This power allows the Secretary of State to require schemes to assess members needs and interest in a particular way.

### **Justification for the power**

303. There is a risk that the evidence trustees use to inform their pension benefit strategies will be either very basic or vastly different. If it becomes apparent that this is happening the power allows the Secretary of State to specify minimum standards. To ensure their approach is fair and representative, this power could, for example, be used to require trustees or managers to use co-design principles and user testing



to assess the needs and interests of their members. It is not appropriate to put these standards in place on the face of the Bill as there is no clear indication that these risks will appear, and as a starting point it is appropriate to allow schemes to decide how best to assess their members' needs.

### **Justification for the procedure**

304. The power has the potential to impose fairly onerous obligations on trustees, if, for instance, it included requirements to undertake user testing, and so justifies a greater degree of Parliamentary scrutiny.

### ***Clause 49 – Subsection (6)(a) – Power to prescribe cases where a default pension benefit solution is not required to provide a regular income for eligible members***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

305. Clause 49(6)(a) allows the Secretary of State to specify descriptions of eligible members for which the requirement that the default solution must provide a regular income in retirement need not apply. Not all members will benefit from having a default solution designed on this basis, for instance those with smaller pension pots. The power if exercised will provide schemes with the option to design alternative default solutions for these members.

### **Justification for the power**

306. The duty to design and make available default solutions is novel and the power will provide flexibility to respond to market developments. If over time it becomes clear that a particular group may benefit from having a default solution designed on an alternative basis the law will be able to be adjusted to allow for this. If members with smaller pots are included in the exemption, the power ensures the threshold for exclusion can be adjusted when necessary.

### **Justification for the procedure**

307. This power will be subject to the negative procedure.

308. The negative procedure strikes the right balance between allowing the law to be changed periodically while ensuring adequate scrutiny and either House the option to debate the exercise of the power. For example, if members with small pots are to be excluded the provision will need to be amended from time to time to account for inflation.

### ***Clause 49 – Subsection (6)(b) – Regulation making power to specify descriptions in s42(3)(b)***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

309. Clause 49(6)(b) allows the Secretary of State to define the meaning of ‘designed to provide a regular income’ and ‘retirement’ in clause 49(3)(b).

### **Justification for the power**

310. This allows for the standardisation of the terms ‘designed to provide a regular income’ and ‘retirement’ if a need for consistency arises, ensuring that the provisions are applied uniformly and transparently across relevant pension schemes. The power will also allow for further detail to be prescribed if this proves necessary. For instance, it would allow regulations to clarify that ‘designed to provide a regular income’ means that a regular income is expected to be provided for the whole of a member’s lifetime.

### **Justification for the procedure**

311. The exercise of this power will be subject to the affirmative procedure.

312. Regulations introduced under this power allow for key concepts that determine the perimeters of the policy to be altered and so a greater degree of scrutiny is justified.

***Clause 49 – Subsection (7) – Regulation making power to define ‘eligible members’ and ‘relevant scheme’***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

**Context and purpose**

313. The powers at clause 49(7) allow the Secretary of State to exempt certain members and schemes from the operation of the clause.
314. Certain members may not benefit from having their pension paid through a default solution suitable to the wider membership, for example, those in hybrid schemes with a significant defined benefit entitlement. Other members will not require the support provided by default solutions as they will be able to make informed decisions themselves, in particular members of executive schemes who have a significant degree of control over the administration and governance of the scheme.

**Justification for taking the power**

315. The exemptions will be technical in nature and so suited to secondary legislation. It is established practice to provide for complex exemptions in pensions law through secondary legislation (see for example the definition of ‘executive pension scheme’ at regulation 1(1) The Occupational Pension Schemes (Scheme Administration) Regulations 1996). Secondary legislation allows for any exemptions, particularly those which are novel in nature, to be kept under review and for the policy to be adapted if this proves desirable.

**Justification for the procedure**

316. The power allows for the policy to be disapplied to certain members, such as individuals that have a significant defined benefit entitlement and members of executive pension schemes, and so its exercise has the potential to justify debate in both houses.

## ***Clause 50 – Subsection (5)(b) – Power to prescribe time and circumstances when/where trustees and managers must enter into transfer arrangements***

*Power conferred on: The Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

317. Clause 50(5)(b) requires schemes to enter into transfer arrangements to effect a transfer of members' cash equivalent to a receiving scheme, where either the first or second conditions are met. The power allows the Secretary of State to determine when or in what circumstances this transfer must take place.

### **Justification for taking the power**

318. It is necessary to set out in law when transfers to a qualifying scheme are to take place to ensure there is consistency across the market and the policy intent is fulfilled. There are a number of factors to consider when determining when transfers should take place, and it is important that requirements can be amended to reflect learnings from implementation, and so that the experiences of members can be taken into account. Taking the power grants flexibility to adjust this detail as required.

### **Justification for the procedure**

319. The timing of these transfers may have a significant impact on members, particularly if they lead to a gap between retiring and being able to withdraw their pension. As a result, it is appropriate to subject the exercise of the power to a greater degree of scrutiny with use of the affirmative resolution procedure.

## ***Clause 50 – Subsection (5)(c) – Power to prescribe further steps that are required for transfers***

*Power conferred on: The Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

320. Clause 50(5)(c) provides that the Secretary of State may require schemes that are in scope of the guided retirement provisions to undertake further steps to affect a transfer in addition to those provided for in primary legislation.

321. This power supports the implementation of the transfer mechanism for members for whom it is not practicable to provide a default solution within the principal scheme. It ensures that trustees or managers can be required to take any additional, potentially technical, or administrative, steps to facilitate the proper operation of the transfer process.

### **Justification for taking the power**

322. The nature of the steps required may vary over time and depend on evolving industry practices and administrative systems. Delegating this power allows for responsive and detailed rules to be developed without the need for primary legislation. The steps may also involve complex operational matters (e.g. data sharing, member communications, coordination with receiving schemes) that are better suited to secondary legislation. Moreover, the power ensures that the Secretary of State can impose necessary safeguards or procedural requirements to protect members' interests during the transfer process if this becomes necessary.

### **Justification for procedure**

323. The exercise of the power is to be subject to the affirmative procedure.

324. The power permits the Secretary of State to impose potentially onerous obligations on trustees and managers, such as coordinating processes with another organisation to ensure a smooth member journey, and significantly supplement how transfers are to take place. This justifies increased parliamentary scrutiny and debate in both Houses.

## **Clause 50 – Subsection (6)(c) - Power to prescribe conditions that a qualifying pension solution must meet**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

325. Clause 50 makes provision for trustees or managers to be able to transfer members to another scheme. The member will then instead receive what is termed a ‘qualifying pension benefit solution’ under the receiving scheme designed on the same principles as a default pension benefit solution. Trustees or managers will be able to transfer members if they have determined it is not reasonably practicable for their scheme to provide default pension benefit solutions, or if they have determined that another scheme could provide a better outcome for members.
326. Clause 50(6)(c) mirrors clause 49(3)(d) and allows for conditions imposed on default solutions to be replicated for qualifying pension benefit solutions, as this is to replicate the former in its substantive features.

### **Justification for taking the power**

327. As explained above, it remains unclear how schemes will look to fulfil their duty to provide a default solution. The power to prescribe further conditions to this allows the law to incorporate positive features and prohibit negative ones developed in the market.
328. It is important that a qualifying pension benefit solution is an equivalent to a default solution so that where a transfer takes place to a receiving scheme a member is not prejudiced and provided with a fundamentally different form of payment to a default solution. The power allows Government to require a qualifying pension benefit to contain any features imposed on a default solution under regulations.

### **Justification for procedure**

329. The exercise of the power is to be subject to the affirmative procedure.

330. The power permits the Secretary of State to potentially significantly supplement the nature of a qualifying pension benefit solution and in doing so alter a central element of the policy. This justifies greater scrutiny, as does any changes to the default solution.

***Clause 50 – Subsection (8) – Power to prescribe circumstances, times, or intervals for reviewing suitability of qualifying pension benefit solutions***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

**Context and purpose**

331. Clause 50(8) requires schemes to review the suitability of any qualifying pension benefit solutions they make available to their members. A power is taken to prescribe when or in what circumstances this review must take place. This power serves the same purpose as that at clause 49(1)(b) and ensures the main solution made available to members remains suitable for them.

**Justification for taking the power**

332. Clause 50(8) requires schemes to review the suitability of any qualifying pension benefit solutions they make available to their members. A power is taken to prescribe when or in what circumstances this review must take place. This power serves the same purpose as that at clause 49(1)(b) and ensures the main solution made available to members remains suitable for them.

**Justification for procedure**

333. The principle that such reviews should take place will be debated and agreed during the passage of the Bill. Schemes are able to review their suitability of qualifying solutions when they see fit, and the prescribed times or circumstances will simply set minimum requirements for when reviews must take place. The negative resolution procedure is appropriate for this power because it is limited to specifying

the circumstances and timing for reviews of the suitability of qualifying pension benefit solutions rather than introducing new policy.

334. The negative procedure offers proportionate parliamentary oversight for such detail while allowing flexibility to adjust review requirements in response to market developments, consumer needs, or regulatory experience following implementation of the policy.

### ***Clause 50 – Subsection (9)(c) – Power to prescribe conditions that a qualifying solution must meet***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

335. Clause 50(9) defines a qualifying solution. Clause 50(9)(c) allows for further conditions to be prescribed, allowing additional requirements to be imposed on qualifying solutions. The power mirrors that at clause 49(4)(d).

#### **Justification for taking the power**

336. The power allows the Secretary of State to supplement the requirements for qualifying solutions to ensure they provide good outcomes for members. Some of this detail may be technical and so better suited to secondary legislation. It is also necessary to have a power to set certain detailed requirements in regulations so they can be amended as needed in response to developments in the market and members' experiences.

#### **Justification for the procedure**

337. The power allows the Secretary of State to affect what qualifying solutions look like. As the power goes towards affecting a key element of the policy it is appropriate to subject it to a greater degree of scrutiny.



***Clause 50 – Subsection (13) – Power to make provision about the conditions in subsection (2) and (3), including about the basis on which determinations are to be made***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

**Context and purpose**

338. Clause 50(1) provides that schemes do not need to design and make available default solutions where either the first or second condition has been met. Clause 50(2) provides that the first condition is that the trustees or managers have determined that it is not reasonably practicable for them to design and make available to the members concerned default solutions. Clause 50(3) provides that the second condition is that a qualifying solution will provide a better outcome for the members concerned than any default solution that the scheme could design and make available to them.
339. Clause 50(13) grants a power to make further provision about the conditions, and to prescribe on what basis a determination that a condition has been satisfied is to be made.
340. This allows the conditions to be further developed and for the Secretary of State to set out the circumstances that will amount to it not being reasonably practicable for a scheme to design and make available a default solution, as well as those that will amount to a qualifying solution providing a better outcome for the members concerned.

**Justification for taking the power**

341. The ability for schemes to transfer members for the delivery of qualifying solutions forms a central part of the policy. Taking a power to refine the conditions where these transfers are permitted allows the law to be developed and a more detailed statutory test to be set in secondary legislation if this is considered appropriate.

342. It is necessary to retain flexibility and use secondary legislation to determine the conditions under which transfers are permitted if for any reason these need to be expanded or limited.

### **Justification for the procedure**

343. The power allows the Secretary of State to determine under what circumstances transfers are to be permitted. As transfers are a significant feature of the policy objective and the power affects these it is appropriate to subject it to a greater degree of scrutiny.

### ***Clause 50 – Subsection (14) – Power to require certain schemes to accept transfers***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

344. Clause 50(5) requires principal schemes to identify a receiving scheme that is able to and agrees to accept a transfer of transferable members. It may be that some schemes are unable to find a receiving scheme to accept transferable members.
345. Clause 50(14) grants the Secretary of State the power to require certain schemes, mentioned at clause 50(15), to accept these members where the principal scheme has used reasonable endeavours to find a receiving scheme but has been unable to do so (and met any other prescribed conditions).

### **Justification for taking the power**

346. It remains unclear whether principal schemes will have difficulties with finding receiving schemes, as agreements between parties would be commercial decisions. The power is taken so that the issue can be addressed if it arises.

### **Justification for the procedure**

347. If exercised the power will impose an obligation on master trust schemes and/or consolidator schemes to accept members in certain circumstances. This is a significant obligation to impose and so the exercise of the power justifies a higher degree of scrutiny.

### ***Clause 50 – Subsection (16) – Power to prohibit or limit charging fees in respect of transfers***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

#### **Context and purpose**

348. Clause 50(16) provides the Secretary of State with the power to prohibit or limit the charging of fees in respect of transfers made under the transfer arrangements in relation to both principal and receiving schemes. The purpose of this power is to ensure that members are not disadvantaged by excessive or inappropriate charges when their accrued rights are transferred to a receiving scheme. It supports the policy objective of facilitating better retirement outcomes through permitting transfers by ensuring where this occurs members are protected from potential erosion of their pension savings through fees.

#### **Justification for taking the power**

349. It is not uncommon for schemes to impose direct fees in respect of transfers. Taking a power to prohibit or limit these allows for detailed provision better suited to secondary legislation to be made and provides flexibility for the law to adapt to market developments. It also allows the Secretary of State to intervene at pace to protect members if evidence of detriment arises.
350. Similar powers are provided under Part 2 of the Occupational Pension Schemes (Charges and Governance) Regulations 2015 and so there is precedent for limits on fees to be set out in secondary legislation.

#### **Justification for procedure**

351. The negative resolution procedure is appropriate for this power because the principle of the policy will be debated and agreed by Parliament during the passage of the Bill. The delegated power is intended only to set out the detailed and technical provisions necessary to implement that principle, such as specifying the circumstances in which transfer fees may be prohibited or limited, and any exceptions. These details are expected to be operational rather than matters of significant policy.
352. The negative procedure provides proportionate parliamentary oversight for such technical measures, while ensuring flexibility to respond to market developments.

***Clause 50 – Subsection (17) – Power to determine manner in which cash equivalents are calculated and verified***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

**Context and purpose**

353. Clause 50(17) provides that regulations may provide for the manner in which the cash equivalent of accrued rights is to be calculated and verified for the purpose of a transfer.

**Justification for taking the power**

354. The power will be used to provide technical provisions concerning valuation of benefits better suited to secondary legislation.
355. Pensions law in general relies on secondary legislation to detail how transfer values are to be calculated (see for example the Occupational Pension Schemes (Transfer Values) Regulations 1996). Taking the power to do so here ensures the use of secondary legislation is consistent.

**Justification for procedure**

356. The valuation of money purchase benefits is a fairly straightforward assessment and so prescribing detail concerning this to ensure consistency and clarity is not a significant feature of the policy. As a result, the negative procedure is appropriate.

### ***Clause 51 – Subsections (1) (2) and (4) – Power to prescribe timing of certain communications***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

#### **Context and purpose**

357. Clauses 51(1), (2) and (4) require schemes to send certain information concerning the default or qualifying solution to members so that they are aware of their availability. A power is taken in each of these subsections to determine when these communications must be sent.

#### **Justification for taking the power**

358. Taking a power to determine when these communications are to be sent provides flexibility and allows for the timing to be integrated and amended in line with the timing of other communications set out in secondary legislation, primarily the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013. It will also allow timings to be updated based on any learnings following implementation of the policy.

#### **Justification for procedure**

359. Regulations under these subsections will only set out technical detail around the timing of communications rather than introducing new policy. These matters are operational and unlikely to be controversial. The negative procedure provides proportionate parliamentary oversight for such detail, while allowing flexibility to adjust timings promptly in response to practical experience following implementation.

360. The use of the negative procedure here is also in line with powers contained in section 113 of the Pension Schemes Act 1993, which confers a power on the Secretary of State to make regulations requiring pension schemes to keep (amongst other persons) members informed of various constitutional, financial and administrative matters relating to the scheme. The way schemes comply with these requirements can be determined by guidance made by the Secretary of State, or a prescribed body

***Clause 51 – Subsection (3) – Power to prescribe how default solution is presented when a member applies to receive benefits***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

**Context and purpose**

361. Default and qualifying solutions are intended to be the default way in which members receive their pension benefits, unless they actively engage with their retirement planning and opt to receive payment by a different method. It is thus necessary for these solutions to be presented as the default option when a member applies to receive benefits, but for them to have the ability to opt out and receive further information on alternative payment options. Presenting the default or qualifying solution as the default method to receive payment ensures members are guided to an option that is generally suitable for the scheme's membership or a particular cohort within this.

**Justification for the power**

362. The presentation of the default and qualifying solution is an administrative detail, though one important to the policy objective. It is nonetheless more appropriate to address this sort of granular, administrative detail in secondary legislation than in an Act of Parliament.

363. Taking the power also provides the opportunity for consultation and ensures the presentation of the default solution can be adjusted if for any reason the need arises to present it in conjunction with any specific information not initially prescribed.

### **Justification for procedure**

364. The negative resolution procedure is appropriate for this power because it is limited to specifying the manner in which the default or qualifying solution is presented to members when they apply to receive benefits. The principle that members should be presented with a default or qualifying benefit solution will be debated and agreed during the passage of the Bill. The regulations under this subsection will only provide technical detail, such as the format, wording, or presentation standards, rather than introducing new policy. These matters are operational and unlikely to be controversial.
365. The negative procedure offers proportionate parliamentary oversight for such detail while allowing flexibility to adapt presentation requirements in response to consumer testing or industry practice.
366. Before this power is exercised the Secretary of State must consult. Following input from the industry, the Secretary of State will be well placed to make appropriate provision.
367. Paragraph 360 also applies here.

### ***Clause 51 – Subsection (5) – Power to prescribe communications to be sent regarding benefit options***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

368. The collection of powers at clause 51(5) grant the Secretary of State the ability to require schemes to send at prescribed times or intervals: information about the pension benefit solutions on offer within the scheme and available to the member (clause 51(5)(a)); general information about other options in the market for receiving benefits (clause 51(5)(b); the information set out at subsections 51(2) (clauses

51(5)(c) and (d)); and any other general information prescribed to assist members in deciding how to receive their benefits (clause 51(5)(e)).

369. These powers are intended to allow the Secretary of State scope to develop a set of communication obligations which support members in understanding their options for retirement and making informed decisions.

### **Justification for the powers**

370. The powers may be used to make detailed provision, the particular nature of which is better suited to secondary legislation. Taking the powers also allows for the obligations to be amended easily in the future and for the process of amendment to match that in the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013, the two sets of regulations being complementary to one another.

371. Other detailed communication obligations are set out in secondary legislation, primarily the above-mentioned regulations, and so taking a power and doing so in respect of these obligations allows for a consistent approach to be taken.

### **Justification for procedure**

372. The principle that schemes should provide members with information to support members to make informed decisions about their pension will be debated and agreed during the passage of the Bill. The regulations will only set out technical detail—such as when and how often these communications must occur—rather than introducing new policy. These matters are operational and unlikely to be controversial.

373. The negative procedure provides proportionate parliamentary oversight for such detail while allowing flexibility to adjust timings and content in response to consumer needs or industry practice based on learnings following implementation.

374. Paragraph 360 also applies here.

## ***Clause 51 – Subsection (8) – Power to require trustees and manager to request information from members***

*Power conferred on: The Secretary of State.*



*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

375. Clause 51(7) grants trustees or managers the power to request any information they consider reasonably necessary for the purposes of designing or reviewing, or in the case of qualifying solutions, identifying, pension benefit solutions; or determining which pension benefit solution may be appropriate for the member. Clause 51(8) grants the Secretary of State a power to require trustees and managers to exercise the power at clause 51(7).

### **Justification for the power**

376. For schemes to develop pension benefit solutions suitable to meet the needs of their members they will need to engage with them to understand their needs and circumstances. The power at clause 51(7) ensures they can be required to do so and can be used to clarify the use to which this information can be put once gathered.

377. If some schemes fail to attempt to engage with their membership, the power at clause 51(8) allows for them to be compelled to do so. Taking the power grants the Secretary of State the ability to intervene should a scheme fail to exercise the power at clause 51(7).

### **Justification for the procedure**

378. The exercise of the power does not affect a central aspect of the policy. As a result, the negative procedure provides the appropriate level of scrutiny.

## ***Clause 51 – Subsection (9) – Power to impose requirements on trustees and manager regarding requesting information from members***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

379. This power allows the Secretary of State to impose requirements on the exercise of the power granted to trustees and managers to request information from members under clause 51(7). By way of example, it could be exercised to require trustees and managers to send members questionnaires seeking to elicit information relevant to designing a default solution or to determining which default solution is most suitable for a member.

### **Justification for the power**

380. Taking a power to impose requirements on how trustees and managers exercise their functions under subsection (7) allows the Secretary of State to intervene if there is a risk some schemes will fail to properly exercise these functions. Schemes gathering information from members to design and make available appropriate solutions is a novel function and it is useful to retain flexibility to adapt the law based on learnings from initial implementation.

381. Moreover, the power may be used to make detailed provision, the particular nature of which will be better suited to secondary legislation

### **Justification for procedure**

382. The power is subject to the negative procedure as it concerns a minor detail and one the Secretary of State will be well-placed to address following consultation with stakeholders and learnings from implementation.

## ***Clause 51 – Subsection (10) – Power to prescribe format of communications authorised or required under clause 51***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

383. Some communications sent under these obligations may be easier to understand if set out in a particular way and so clause 51(10) grants a power to require this. Requiring the use of a particular format also ensures consistency and for members to have the same experience irrespective of the scheme they are in.

#### **Justification for the power**

384. The power concerns an administrative feature of the communications to be sent, and it is appropriate to deal with this level of detail under secondary legislation as opposed to primary legislation. The power allows for adaption of the law based on learnings from implementation and to reflect changes in communication methods.

#### **Justification for procedure**

385. The negative resolution procedure is appropriate for this power because it is limited to specifying the format in which information must be provided to members. The principle that schemes must communicate with members about their pension options will be debated and agreed during the passage of the Bill. The regulations will only set out technical detail—such as layout, wording standards, or accessibility requirements—rather than introducing new policy. These matters are operational and unlikely to be controversial.

386. The negative procedure provides proportionate parliamentary oversight for such detail while allowing flexibility to update formats in response to consumer testing, digital standards, or industry practice following implementation.

387. Paragraph 360 also applies here.

### ***Clause 52 – Subsections (1) and (2) – Power to require trustees and managers to provide information about the selection of pension benefit solutions and decisions that may need to be made in respect of them***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

388. Clause 52(1) grants the Secretary of State the power to require trustees or managers to send or make available information to members which would or may assist them in the selection of a pension benefit solution, or any decision that may need to be made in respect of a pension benefit solution.

389. The power will allow the Secretary of State to require schemes to provide general information to members to support them in making informed decisions regarding their retirement. The information provided should so far as possible be based on an understanding of the members' circumstances. This allows the general information provided to be tailored to what is relevant to the member.

### **Justification for the power**

390. The duty contemplated by the power is novel, particularly in relation to requiring trustees and managers to have regard so far as possible to the member's circumstances in determining what information to provide. Setting it out in secondary legislation allows for further consultation with industry and consumer groups, and for detailed provision to be made which can then be flexibly amended based on learnings from implementation.

### **Justification for the procedure**

391. The duty imposed will require trustees and managers to play a more active role in guiding members into retirement through supporting their decision making. This will be a significant addition to their existing duties and so justifies a higher level of scrutiny.

## ***Clause 52 – Subsection (3) – Power to require trustees or managers to monitor and notify members about decumulation rates***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

392. Clause 52(3) provides that the Secretary of State may require trustees/managers to monitor the rate of decumulation and notify members if they think the member should review this rate. This duty will require trustees/manager to notify members when their rate of withdrawal appears unsustainable, or if investment returns otherwise justify a change in the rate of withdrawal.

#### **Justification for taking the power**

393. Schemes are not currently under a legal duty to monitor the rate of members' withdrawals or to notify them should they be of the view this is unsustainable. Such a duty would have clear positive consequences but can be seen as a significant extension to trustees' and managers' duties. It is appropriate to provide for it in secondary legislation so that detailed provision can be made and the law can be adapted if this proves necessary based on learnings following implementation.

#### **Justification for procedure**

394. The duty that could be imposed by this power would require trustees/managers to play a more active role in supporting members make informed decisions in retirement. This will be a novel duty which can be seen as a significant change to their existing duties to members and so justifies debate in both Houses as a matter of course.

### ***Clause 53 – Subsection (3) – Powers in relation to the preparation of a pension benefit strategy***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure, except in respect of clause 53(3)(a) which follows the affirmative procedure.*

#### **Context and purpose**

395. Clause 53 provides that trustees must prepare a 'pension benefits strategy' which explains the rationale for the default solution(s) it decides to provide its membership.

The strategy will form the means by which the Pensions Regulator assesses the adequacy of the default solutions provided by schemes.

396. Clause 53(3) confers a power on the Secretary of State to:
- a) determine what objectives, principles and matters the trustee or managers must take into account when determining or revising the strategy,
  - b) determine the level of detail it must contain,
  - c) determine the format the information is to be presented in, allowing this power to be delegated to the Pensions Regulator,
  - d) impose requirements about when the strategy must be determined and reviewed, and
  - e) require schemes to have regard to guidance issued by the Pensions Regulator when preparing and reviewing the strategy.
397. The objectives, principles and matters trustees or managers could be required to take into account under the power would concern factors such as inflationary risk, longevity or whether members are homeowners or in rented accommodation.
398. Clause 53(3)(c)(ii) permits the delegation of the power to determine the format of the strategy to the Pensions Regulator. Sub-delegation is considered appropriate as the Pensions Regulator will have the most interest in the information contained in a strategy and may require it to be presented in a particular way to optimise its ability to review the detail for the purpose of assessing compliance and so may be better placed to make decisions about the format of the strategy than the Secretary of State. Delegation of the power to the Pensions Regulator would allow for it to directly make changes that will improve its ability to monitor compliance.

#### **Justification for the power**

399. Secondary legislation provides flexibility to further supplement what strategies must address if further detail proves necessary. It is also appropriate to address administrative details, such as the level of detail required, and when the strategy must be reviewed, through regulations rather than primary legislation.

#### **Justification for the procedure**

400. Except in the case of the power at clause 53(3)(a), the exercise of the power will be subject to the negative procedure.

401. The powers, other than that at clause 53(3)(a), concern administrative matters regarding the strategy and it is appropriate for this detail to be set out in secondary legislation.
402. The power at clause 53(3)(a), in requiring trustees and managers to have regard to specific points, be that objectives, principles or matters, has the potential to significantly alter the default and qualifying pension benefit solutions through guiding the analysis in a particular direction. As this power is capable of influencing a central feature of the policy it is appropriate for it to be subject to a higher degree of scrutiny.

***Clause 54 – Subsections (1), (2) and (3) – Power to make regulations for the purpose of enforcement and compliance***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

**Context and purpose**

403. Clause 54(1) grants the Secretary of State the power to make regulations to ensure compliance of any person with any provision of or under Chapter 6 of Part 2 of the Bill.
404. Clause 54(2) provides that the regulations may allow the Pensions Regulator to issue compliance notices, third party compliance notices and penalty notices; provide for the making of a reference to the First-tier or Upper Tribunal in respect of a penalty notice; and confer other functions on the Pensions Regulator.
405. Clause 54(3) enables the regulations to specify the amount or the maximum amount of the penalty for non-compliance which is capped at £10,000 in the case of an individual or £100,000 in any other case.
406. The powers will allow for a legislative compliance scheme to be set out in regulations.

407. The powers granted in this clause are consistent with those granted concerning compliance under Chapters 1 and 2 of Part 2 of the Bill, as well as section 238G of the Pensions Act 2004.

#### **Justification for taking the power**

408. The power will be used to set out a detailed compliance scheme, the particular nature of which is better suited to secondary legislation. Taking the power to develop the scheme in secondary legislation also allows it to be amended with relative ease should it become necessary to adjust the Pensions Regulator's powers.

#### **Justification for the procedure**

409. The power allows the Secretary of State to grant the Pensions Regulator enforcement powers, including compliance and penalty notices which can be enforced in the County Court. It is appropriate for a power capable of granting enforcement powers of this nature on a regulator to be subject to a higher degree of scrutiny. This is consistent with other areas of pensions legislation, such as section 238G of the Pensions Act 2004.

### ***Clause 57 – Corresponding provision in relation to FCA-regulated schemes***

*Power conferred on: The Financial Conduct Authority.*

*Power exercised by: Rules to be made in accordance with Part 9A of the Financial Services and Markets Act 2000.*

*Parliamentary procedure: None applicable.*

#### **Context and purpose**

410. This clause inserts a provision within the Financial Services and Markets Act 2000 to place a duty on the Financial Conduct Authority (the FCA) to make general rules for the purpose of ensuring that default or qualifying pension benefit solutions are made available to members of relevant FCA-regulated schemes. In doing so regard must be had to the provisions made by and under Chapter 6 of Part 2 of the Bill and the FCA must aim to ensure, so far as possible, that the rules achieve the same outcomes in relation to FCA-regulated schemes.



### **Justification for taking the power**

411. HM Treasury considers that the detail relating to the requirements to be placed on managers of FCA-regulated pension schemes in respect of default and qualifying pension benefit solutions is more appropriately contained in rules made by the FCA. As the supervisory body for contract-based pension arrangements, the FCA is best placed and has the required technical knowledge to set out in its rules what these requirements will be and how managers will be required to make these solutions available to members in practice. This is consistent with the use of FCA rules as part of the FSMA approach to regulation in the pensions market.

### **Justification for the procedure**

412. There is no parliamentary procedure. The FCA's general rule-making powers in Part 9A of FSMA 2000 do not have formal parliamentary oversight. These powers are specific rule-making powers, which replicate the procedures that apply to the FCA's general rule-making powers, and as such HM Treasury does not consider it appropriate to provide for formal parliamentary oversight. Instead, safeguards provided in Part 9A of FSMA 2000 will apply, in particular, sections 138C (evidential provisions), 138F (notification of rules) and 138I (consultation by the FCA), FSMA.

## **Part 3 - Superfunds**

### ***Clause 62 – Subsections (3) and (4) - Authorisation of superfunds***

*Power conferred on:*

*Subsection (3) – The Pensions Regulator.*

*Subsection (4) – The Secretary of State.*

*Power exercised by:*

*Subsection (3) – Specification by the Pensions Regulator.*

*Subsection (4) – Regulations made by Statutory Instrument.*

*Parliamentary procedure:*

*Subsection (3) – None applicable.*

*Subsection (4) – Negative resolution procedure.*

## **Context and purpose**

413. Part 3 sets out the framework for the authorisation and supervision of defined benefit pension scheme consolidator arrangements called superfunds. A superfund uses a defined benefit occupational pension scheme to receive a transfer of assets and liabilities from closed defined benefit occupational pension schemes. Instead of being supported by an employer covenant, the liabilities within the superfund scheme are supported by a buffer arrangement using capital provided by investors. The superfund scheme and the capital buffer, together with the arrangements for their administration and management comprise the superfund. These key concepts are defined in clause 59.
414. Clause 62 deals with the application to the Pensions Regulator for superfund authorisation.
415. Subsection (3) delegates to the Regulator power to specify the form and manner of application.
416. Subsection (4) delegates to the Secretary of State power to make provision about applications, such as specifying the information to be included and the appropriate fee payable to the Pensions Regulator.

## **Justification for taking the power**

417. The requirement in subsection (3) that applications are made in the form and manner as specified by the Pensions Regulator enables the Regulator to control how an application is made, in light of their experience of the practical issues around the making of authorisation applications in other regimes.
418. The purpose of subsection (4) is to ensure relevant matters are prescribed in regulations to enable the Pensions Regulator to scrutinise prospective market entrants to determine approval. The relevant matters are likely to vary as new models emerge and on occasions more often than Parliament can be expected to legislate for by primary legislation. Agility is required in respect of provisions relating to the fee payable in subsection (4)(b).
419. The use of delegated powers to prescribe the technical details of the information required in an application and the level of any application fee, follows section 4 of the Pension Schemes Act 2017 and section 8 of the Pension Schemes Act 2021, which gave the Secretary of State similar regulation-making powers in relation to an

application for authorisation made in relation to a master trust and Collective Money Purchase Schemes respectively.

### **Justification for procedure**

420. It is possible that changes to the relevant matters may be needed quickly to adapt the legislation to accommodate new and innovative superfund models as and when they arise. The subject matter of the regulations covers the administrative details regarding an application and as such is not expected to be controversial. It is therefore considered that the appropriate level of scrutiny is the negative resolution procedure. This approach also mirrors the use of the negative procedure for regulations made under section 4 of the Pension Schemes Act 2017 and section 8 of the Pension Schemes Act 2021.

### ***Clause 65 – Subsection (2)(d) – Approval of superfund transfers - technical provisions condition***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

421. Clause 65 deals with the circumstances in which the Pensions Regulator may approve or block a proposed transfer of defined-benefit liabilities from an occupational pension scheme to a superfund and includes the requirement that the onboarding conditions in subsection (2) are met. The onboarding conditions are designed to ensure that trustees can transfer to a superfund only if the financial position of the scheme is insufficiently funded for the trustees to arrange a buy-out with an insurance company and only if the trustees believe that the transfer will make it more likely that the transferred liabilities will be satisfied in full. The responsible body will also need to evidence that the capital adequacy and technical provision requirements for a superfund are met as described in (c) and (d). The detailed work as to whether the onboarding conditions in subsections (2)(a) to (d) are met will be done by the trustees and receiving superfund, but the Regulator will play a supervisory role in considering the evidence presented and deciding whether to approve the transfer.

422. The purpose of the power specified at sub-section (2)(d) is to ensure that the superfund is sufficiently capitalised for a specified period following a transfer of liabilities. Its objective is to safeguard the security of member benefits.

#### **Justification for taking the power**

423. Industry feedback has indicated that the period over which the condition in sub-section (2)(d) is assessed is an area where a level of agility is required so that the legislative framework for superfunds can respond to economic and other market changes. A change to a superfund's capital requirements may have a material impact on superfunds' entry price and thus their ability to provide improved outcomes for members for schemes which cannot access the buyout market.

#### **Justification for procedure**

424. Given the need for agility on this point and that subsection 2(d) relates to a matter of technical detail, regulations made under the powers in subsections 2(d) will be subject to the negative resolution procedure.

### ***Clause 65 – Subsections (4) and (5) – Approval of superfund transfers***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

425. The onboarding condition contained at subsection (4) enables the Secretary of State to substitute a different condition relating to the financial position of the ceding scheme (for example, if it was unable to arrange an insurer buy-out not just at the date of the application but also at a future date).

426. Subsection (5) delegates to the Secretary of State a power to make provision about the onboarding conditions including the information and evidence the Regulator must be provided with (and by whom) for the purpose of deciding whether to

approve, how the Regulator is to assess whether the onboarding conditions are met and the conditions that the Regulator may or must impose in relation to a transfer.

### **Justification for taking the power**

427. The power in subsection (4) is needed to ensure that the appropriate balance is reached between risk and security for superfund transfers. The buyout market will change in line with economic conditions, and we need to be able to adapt – for example, if it became appropriate to adopt an additional or more stringent test.
428. The purpose of the power in subsection (5) is to ensure the provision about the onboarding conditions is made in regulations, including the type of information and evidence to be provided to the Pensions Regulator to enable it to assess whether a superfund transfer should be approved and prescribe how that assessment is to be undertaken.
429. The financial metrics around the capital adequacy test and the appropriate conditions attaching to a superfund transfer are likely to change in the light of economic and other market-condition changes and on occasions more often than Parliament can be expected to legislate for by primary legislation. Setting the details in regulations will allow for greater specificity and detail than is usual in primary legislation.

### **Justification for procedure**

430. Regulations made under the powers in subsections (4) and (5) will be subject to the affirmative resolution procedure. The financial metrics around which the Regulator must form its assessment and the precise requirements around the evidence that must accompany an application and the conditions attaching to a transfer, will determine whether a transfer should or should not be made to a superfund. Consequently, the requirements should be subject to a higher degree of scrutiny, which will help to ensure they are fit for purpose.

## ***Clause 65 – Subsection (6) – Approval of superfund transfers – section mergers***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

431. Clause 65(6) allows for regulations to make special provision about how the onboarding conditions apply (or do not apply) in relation to a superfund transfer within clause 60(3) (under which a restructuring of sections within a superfund can itself be treated as a superfund transfer).

### **Justification for taking the power**

432. The merger of sections within a superfund is expected to be a rare occurrence. However, if the situation should arise in the future, the onboarding conditions will require modification to cover these specific circumstances. The power in clause 65(6) allows for the onboarding conditions to be modified in this situation.

### **Justification for procedure**

433. A proposed merger of sections within a superfund will be a transfer that must be approved by the Pensions Regulator under clause 65. It will also be an event of concern triggering the need for a response plan under the provisions of Chapter 5. The Bill framework will therefore require considerable regulatory scrutiny to ensure that any transfer between sections was in the interests of members. If the Regulator approves the transfer, any amendments to the onboarding conditions in clause 65 will ensure that the transfer can be made as intended. Given the level of regulatory scrutiny that will arise from a proposal to merge sections within a superfund, regulations made under the power at clause 65(6) will be subject to the negative procedure.

## ***Clause 67 – Subsections (2) and (4) – Applications for approval***

*Power conferred on:*

*Subsection (2) – The Pensions Regulator.*

*Subsection (4) – The Secretary of State (subsection (4)).*

*Power exercised by:*

*Subsection (2) – Specification by the Pensions Regulator.*

*Subsection (4) – Regulations made by Statutory Instrument.*

*Parliamentary procedure:*

*Subsection (2) – None applicable.*

*Subsection (4) – Negative resolution procedure.*

### **Context and purpose**

434. Clause 67 deals with how to and who may make an application for a superfund transfer, what the Regulator must decide and how the applicant is to be notified of its decision.

435. Subsection (2) allows the Regulator to specify the form and manner of application.

436. Subsection (4) allows the Secretary of State to make regulations making provision for approval applications including what information and documentation must be included in the application.

### **Justification for taking the power**

437. The requirement that applications are made in the form and manner as specified by the Pensions Regulator enables the Regulator to control how an application is made, ensuring that the process aligns with the Regulator's systems and processes and experience with other authorisation and supervisory regimes and can adapt to meet changing circumstances.

438. The power in subsection (4) has been given to make delegated legislation as it will be used to set out specific details of the approval application at greater levels of specificity and detail than is usual in primary legislation. Delegated legislation would also provide the flexibility to respond to developments in the superfunds market so that the approval application process can adapt as the market evolves, for example, to take into account features in new superfund models that may emerge.

### **Justification for procedure**

439. Regulations made under subsection (4) will be subject to the negative procedure. Regulations made using this procedure would relate to operational detail. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on operational details as a matter of course.

## **Clause 68 – Subsections (3) and (5) – Governance and structure**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

440. Clause 68(1) sets out the core policies and procedures designed to protect superfund scheme members' interests and ensure legislative compliance, which policies and procedures the responsible body of an operating superfund should have in place.
441. Power is provided to the Secretary of State to make regulations by –
- a) Subsection (3) to specify conditions the superfund responsible body must ensure the superfund meets in respect of the superfund group structure (including the makeup of the capital buffer) and tax compliance matters, and
  - b) Subsection (5) to modify the list of relevant policies and procedures by amending subsection (1) to add additional areas to be covered by policies and procedures.

### **Justification for taking the power**

442. The superfund market is a new and developing market. It is anticipated once the superfunds regime is established, it will develop resulting in the emergence of new and innovative models of superfunds. As the market evolves there may be new structures within a superfund that will require modified processes that we will require a superfund to reflect in its internal policies and procedures and compliance requirements. This is a detail in the overall legislative scheme that is considered appropriate to consign to regulations.
443. The power to make regulations is considered the appropriate form of delegation to ensure that buffer arrangements (1) are appropriately structured from a tax perspective and (2) appropriately achieve their objective of safeguarding the security of member benefits. Setting the details in regulations will allow for greater specificity and detail than is usual in primary legislation. This is an area where agility



is required as new models and structures emerge and risk is assessed in conjunction with the Pensions Regulator and HMRC.

### **Justification for procedure**

444. Effective systems, processes, and structures concerning the operation and administration of superfunds will be vital if they are to be successful and the interests of members safeguarded. It is therefore considered that it is appropriate for regulations made under subsections (3) and (5) to be subject to the affirmative procedure and subject to a higher degree of scrutiny.

## **Clause 69 – Subsections (1)(b) and (6) – Management documents**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure (subsection (1)(b) and affirmative procedure (subsection (6))).*

### **Context and purpose**

445. Clause 69(2) provides that the superfund should be managed and administered in accordance with the management documents listed in subsection (3) and defined in subsection (4). These documents reflect the core suite of documentation that a superfund must prepare and revise as part of ongoing governance requirements.

446. Subsection 1(b) provides that the superfund responsible body must comply with management document form and content requirements specified in regulations made by the Secretary of State.

447. Subsection (6) provides the Secretary of State power to make regulations modifying the list of documents set out in subsection (3).

### **Justification for taking the power**

448. Delegation to the Secretary of State to specify the form and content requirements of the relevant management documents (subsection (1b)) is an operational and technical detail that can be consigned to regulations.

449. As the market evolves and new models emerge there may be additional documents that we want a superfund to prepare and keep under review in order to safeguard the security of benefits within the superfund (subsection (6)). The power to modify the list of relevant documents provides the flexibility to respond to developments in the superfunds market, for example new superfunds models, relevant trends and risks that may emerge in the future. Exercise of this power will enable relevant additional documentation necessary for the authorisation process in Chapter 2, as well as ongoing compliance under Chapter 4, to be prepared and revised as appropriate.

### **Justification for procedure**

450. The form and content of management documents is a relatively minor operational detail in relation to the legislative scheme that is being created for the authorisation and supervision of superfunds therefore the negative procedure is appropriate.

451. Given the role that these documents play in protecting the security of member benefits, a higher level of scrutiny should apply if the list of required management documents is altered or varied and regulations made under subsection (6) will therefore be subject to the affirmative procedure.

## ***Clause 71 – Subsections (4) and (7) - Financial thresholds***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

452. Clause 71 defines the various ‘financial thresholds’ the breach of which will lead to regulatory intervention under the supervisory framework. The financial thresholds are a key regulatory tool in the supervision of superfunds, and a breach of a relevant threshold will play into the ‘event of concern’ intervention process covered in Chapter 5. Similar thresholds are already a feature of the Pensions Regulator’s interim regime under which superfunds are already operating.

453. Subsection (4) provides a definition of the ‘protected liabilities threshold’ as a percentage specified above the scheme’s protected liabilities.
454. Subsection (7) provides the Secretary of State power to make regulations determining how and by whom the specific thresholds are determined and assessed, including for example how the value of assets or liabilities will be determined.

#### **Justification for taking the power**

455. Delegation to the Secretary of State to specify how and by whom the relevant thresholds are determined and assessed will provide the flexibility that is needed to ensure that the regime can respond to changing economic and other market conditions and best protect the security of member benefits.
456. The ‘percentage specified’ above a scheme’s protected liabilities for the purpose of the ‘protected liabilities threshold’ will be defined in regulations and assessed as market conditions change. This will ensure that the relevant regulatory intervention process commences at the appropriate time as circumstances change.

#### **Justification for procedure**

457. Regulations made under subsections (4) and (7) will be subject to the affirmative procedure. A higher level of Parliamentary scrutiny is appropriate because of the consequences of a financial threshold being breached (i.e. the release of buffer assets to the scheme in the event of the technical provisions threshold or the triggering of Pension Protection Fund assessment period for the scheme or section in the event of a breach of the protected liabilities threshold).

### ***Clause 73 – Subsection (4) – Capital buffer: permitted release to other parties***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

#### **Context and purpose**

458. In a superfund structure, the liabilities within the pension scheme are supported by a buffer arrangement using capital provided by investors. Clause 73 provides that a party to a superfund capital buffer arrangement must ensure that the arrangement permits the release of the capital buffer to persons other than the trustees in the circumstances set out in subsections (2) and (3). This includes the release of 'permitted profit extraction' from the capital buffer. Profit extraction from the buffer is the mechanism through which investors will expect to gain from their capital investment.
459. Subsection (4) sets out the circumstances when profit can be extracted from the capital buffer, in particular:
- a) it can only take place at a time when a specific funding threshold is exceeded to (i) an extent and (ii) for a period as specified in regulations,
  - b) it must be made to a description of person specified in regulations, and
  - c) it must satisfy any other requirements specified in regulations, including requirements relating to the prior consent of the Regulator in certain circumstances.

#### **Justification for taking the power**

460. Flexibility is needed to set the parameters within which profit extraction will be permitted from the capital buffer, including the timeframe and extent by which the relevant threshold test must be exceeded before profit can be extracted. This is because funding levels will fluctuate and will be impacted by market changes and wider economic conditions. As new models emerge, flexibility is also needed to prescribe how and to whom profit may be released, taking into account, among other things, the tax position.

#### **Justification for procedure**

461. Regulations made under subsection (4) will be subject to the affirmative procedure. A higher level of Parliamentary scrutiny is appropriate because of the importance of ensuring that the release of profit from the capital buffer maintains the security of member benefits within the superfund as a whole.

### ***Clause 74 – Subsection (3) - Capital buffer: investment***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

462. Clause 74 requires the superfund responsible authority to prepare a strategy for investment of the capital buffer. Subsection (3) provides the Secretary of State power to specify requirements the strategy must comply with, and subsection (6) enables regulations to prescribe more particularly what is meant by a material alteration.

### **Justification for taking the power**

463. The investment strategy underpinning assets within the capital buffer will depend on prevailing economic and market conditions and the level of risk that is considered acceptable within a superfund structure as a matter of Government policy. As such, the legislative framework will need to be able to adapt and respond to change. There is also a potential interface here with the investment strategy within the pension scheme – for example, if there is less risk within the pension scheme, more risk may be acceptable within the capital buffer. All of this will be considered as part of the assessment of capital adequacy when a scheme transfers into a superfund. In common with the investment framework for the pension scheme, dynamism is therefore needed, and the detailed requirements will be left to regulations. The approach is consistent with the wider investment framework for pension funds where much of the detail is left to secondary legislation – for example, the requirement for trustees to prepare a statement of investment principles under section 35 of the Pensions Act 1995.

464. In subsection (6), the assessment of materiality is a matter of detail that is better consigned to regulations.

### **Justification for procedure**

465. Regulations made under clause 74(3) will be subject to the affirmative procedure. A higher level of Parliament scrutiny is appropriate because of the importance that the capital buffer plays in protecting the security of member benefits within a superfund model.

## **Clause 76 – Subsection (5) – Key functions**

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

466. Clause 76(2) specifies the key functions that the responsible body of a superfund must ensure that there is at all times an individual having responsibility for. These functions cover activities that include taking management decisions, financial decisions, and investment decisions.
467. The approach is broadly consistent with the authorisation and supervisory regimes for master trusts and Collective Money Purchase Schemes under the Pension Schemes Act 2017 and Pension Schemes Act 2021, respectively.
468. Subsection (5) grants power to the Secretary of State to add to, remove or vary the list of activities defined as a key function in subsection (2).

### **Justification for taking the power**

469. As the superfund market evolves, flexibility is needed to add to or vary the roles within a superfund structure where regulatory oversight is needed. The power to make regulations is considered the appropriate form of delegation to provide this flexibility as it will enable the Secretary of State to consider the pensions landscape at the relevant time, consult with relevant stakeholders and take appropriate action on occasions more often than Parliament can be expected to legislate for by primary legislation. For example, the requirement for a person responsible for marketing and promotion may not be needed where a superfund has reached scale and decides to close to new business. As new models emerge experience may indicate that some other function ought to be subject to the same level of regulatory scrutiny.
470. An equivalent power to add to a list of key function holders is a feature of both the Collective Money Purchase and master trust supervisory frameworks (section 11(2)(e) of the Pension Schemes Act 2021 and section 7(2)(h) of the Pension Schemes Act 2017).

### **Justification for procedure**

471. Regulations made under subsection (5) will be subject to the affirmative procedure given that the power will be altering or adding to the list of key functions that is set out in the primary legislation. The power is also mandating how a superfund must structure itself from an operational perspective. As such, appropriate scrutiny and opportunity for debate should be allowed through the affirmative procedure.

### ***Clause 77 – Subsections (3) and (5) – Approvals of individuals responsible for key functions***

*Power conferred on:*

*(Subsection (3)) The Secretary of State.*

*(Subsection (5)) The Pensions Regulator.*

*Power exercised by:*

*(Subsection (3)) Regulations made by Statutory Instrument.*

*(Subsection (5)) Specification by the Pensions Regulator.*

*Parliamentary procedure:*

*(Subsection (3)) Negative resolution procedure*

*(Subsection (5)) None applicable.*

### **Context and purpose**

472. Clause 77 provides that an individual responsible for a key function in accordance with clause 76 must seek approval as a fit and proper person to be responsible for the key function from the Pensions Regulator.
473. Subsection (3) grants the Secretary of State power to make regulations specifying matters the Regulator must take into account when determining whether an individual is a fit and proper person.
474. Subsection (5) provides that the Regulator may specify the form and manner of an approval application made to it by the individual.

### **Justification for taking the power**

475. The power in subsection (3) is an administrative function, enabling regulations to specify the information and checks that the Regulator must undertake for the purpose of the fit and proper assessment. For example, criminal record checks, skills and qualifications, accreditation etc.
476. Equivalent powers are working effectively under both the Collective Money Purchase and master trust supervisory frameworks (section 11(3) of the Pension Schemes Act 2021 and section 7(4) of the Pension Schemes Act 2017).
477. The power in subsection (5) enables the Regulator to control how an application is made, in light of their experience of the practical issues around the making of such an application. This is the sort of administrative detail that it would be appropriate for the Regulator to consider.

### **Justification for procedure**

478. Regulations made under subsection (3) will be subject to the negative procedure. Regulations made using this procedure would relate to administrative matters and experience has already been gained through the authorisation and supervisory regimes for master trusts. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on administrative details as a matter of course.

## ***Clause 78 – Subsections (3) and (4) – Certification of staff supporting individuals responsible for key functions***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

479. Clause 78 provides that the responsible body of an operating superfund must certify that an individual carrying out a key function is a fit and proper person. This relates to the internal certification process and requirements that the responsible body of a superfund must undertake in relation to individuals who are supporting a function holder in their role.



480. Subsection (4) provides the Secretary of State power to make provisions about the certificates via regulations.

#### **Justification for taking the power**

481. The powers in subsections (3) and (4) have been given to make delegated legislation as they will be used to set out an administrative matter, namely matters that a responsible body must be taken into account in the fit and proper requirements for staff and the specific details of the contents of the certificate. These relate to areas at greater levels of specificity and detail than is usual in primary legislation.

#### **Justification for procedure**

482. Regulations made under subsections (3) and (4) will deal with administrative matters and accordingly be subject to the negative procedure. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on administrative matters as a matter of course.

### ***Clause 79 – Subsection (3) and Subsection (5) – Approval of superfund scheme trustees***

#### *Power conferred on:*

*(Subsection (3)) The Secretary of State.*

*(Subsection (5)) The Pensions Regulator.*

#### *Power exercised by:*

*(Subsection (3)) Regulations made by Statutory Instrument.*

*(Subsection (5)) Specification by the Pensions Regulator.*

#### *Parliamentary procedure:*

*(Subsection (3)) Negative resolution procedure*

*(Subsection (5)) None applicable.*

#### **Context and purpose**

483. Clause 79 contains provisions relating to Pensions Regulator approval of a person as a fit and proper trustee of a superfund scheme.

484. Subsection (3) provides the Secretary of State may specify in regulations matters the Regulator must take into account in determining if a person is a fit and proper person.

485. Subsection (5) provides that the Regulator may specify the manner and form of approval application.

#### **Justification for taking the power**

486. The power in subsection (3) will allow regulations to prescribe more particularly the fit and proper assessment requirements for different trustee structures – for example, the extent of any assessment will be different for individual trustees and a professional trustee company. This is the sort of administrative detail that is appropriate for regulations.

487. The power in subsection (5) enables the Regulator to control how an application is made, in light of their experience of the practical issues around the making of such an application.

#### **Justification for procedure**

488. Regulations made under subsection (3) will be subject to the negative procedure. Regulations made using this procedure would relate to administrative matters around the fit and proper assessment of a trustee. Clause 79(3) already sets some parameters around who can be a trustee of a superfund scheme. The choice of negative procedure is considered to provide for appropriate scrutiny and opportunity for debate, if desired, without requiring a debate on such details as a matter of course. There is also experience here that can be gained from the fit and proper assessment of trustees under other occupational pension scheme authorisation and supervisory regimes.

### ***Clause 80 – Subsections (6)(a) and (b) – Events to be notified to Regulator***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

489. Clause 80 provides that the Regulator must be notified of the events specified in subsections (1) and (2), including where there is a material deterioration in investment performance of the capital buffer or a material change to arrangements specified in subsection (2). These are the sort of events that are likely to trigger closer scrutiny by the Pensions Regulator.
490. Subsection (6) gives power to the Secretary of State to make regulations –
- a) to add to, remove or vary the list of specified events in subsections (1) and (2), and
  - b) defining the term ‘material’ for the purpose of subsections (1) and (2).

### **Justification for taking the power**

491. Clause 80 already provides detailed information about the events that need to be notified to the Pensions Regulator. As such, the primary legislation provides more detail than the equivalent regimes for master trusts and Collective Money Purchase Schemes (where all of the events are delegated to secondary legislation – section 16(3) of the Pensions Schemes Act 2017 and section 28(3) of the Pension Schemes Act 2021).
492. It is anticipated that once the superfunds regime is established, however, additional themes and trends may emerge which might signal the need for closer scrutiny from the Regulator. It is not possible to accurately predict how the market will evolve and to set out a comprehensive list of risks which may emerge from models that have not yet entered the market. Accordingly, some flexibility is needed in specifying the events that trigger the notification requirement to ensure effective monitoring of superfunds as new models emerge. The power to make regulations is considered the appropriate form of delegation to provide this flexibility as it will enable the Secretary of State to consider the pensions landscape at the relevant time, consult with relevant stakeholders and take appropriate action on occasions more often than Parliament can be expected to legislate for by primary legislation.
493. Regulations will also set out the assessment of materiality for the purpose of the relevant events listed in subsections (1) and (2). It is appropriate to consign that level of detail to secondary legislation and the assessment may differ as between the various events.

### **Justification for procedure**

494. Regulations made under clause 80(6) will be subject to the affirmative procedure. A higher level of Parliamentary scrutiny is appropriate because the power seeks to amend primary legislation, and the framework affects how a superfund is regulated from an operational perspective.

### ***Clause 81 – Subsection (2) – Regular reporting***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

495. Clause 81 requires the trustees of an operating superfund to provide regular reports of the financial position of the superfund to the Pensions Regulator and scheme trustees. This will enable effective monitoring by the Regulator.
496. Subsection (2) give the Secretary of State power to make regulations specifying requirements the report must comply with in terms of form, content, and the timing of such reports' submission to the Regulator.

### **Justification for taking the power**

497. The form, content and timing of reports is an administrative detail which we would expect to be confined to regulations, and which may need to be varied according to operational need as the market develops and evolves. For current superfunds, the regulator may wish to obtain further detail with regards to a standard superfund model that is not currently sought. For example, membership numbers, proximity to drawing down a pension, beneficiaries, etc.
498. The timings of such reports are intended to align with the reporting year of the superfund scheme, both for the purposes of alignment with the superfund's internal operations, and to ensure that reporting flows consistently and in a manageable fashion to the regulator.

### **Justification for procedure**

499. The contents of the report is a matter of operational detail, and it is considered appropriate therefore to subject the regulations to the negative resolution procedure.

### ***Clause 85 – Subsections (4) and (5) – ‘Event of concern’ and ‘period of concern’***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative.*

### **Context and purpose**

500. The event of concern process is a core feature of the regulatory regime for superfunds. It requires certain events (‘events of concern’) to be notified to the Pensions Regulator, triggering a period of intense scrutiny by the Regulator which will involve it approving a response plan and overseeing its implementation. There are similar triggering event processes under both the master trust and Collective Money Purchase regimes under the Pension Schemes Act 2017 and 2021, respectively.

501. Clause 85 defines what amounts to an ‘event of concern’ in subsection (1) and a ‘period of concern’ in subsection (2). An ‘event of concern’ includes circumstances where one of the financial thresholds specified in clause 64 ceases to be met and where a material transaction, as defined in subsection (3) takes place. Clause 85 requires the Pensions Regulator to be informed of an event of concern.

502. Subsection (4) provides the Secretary of State with power to make regulations in respect of subsection (1)(a) to allow grace periods before a financial threshold is breached (e.g. on account of exceptional market movements) and to provide discretion in special circumstances where a threshold is breached but it would not be in the best interests of scheme members for it to be triggered (for example, if conditions were such that the protected liabilities threshold was ever breached before the technical provisions threshold). Subsection (4)(a) enables regulations to provide that a financial threshold is not breached unless the Regulator is satisfied.

This will help to avoid automatic breach of the financial thresholds triggered as a result of error on the part of the Scheme Actuary. Subsection (4)(b) provides that consideration of the threshold's being met may be subject to conditions set out in regulations.

503. Subsection (5)(a) provides the Secretary of State with power to make regulations to add to, remove or vary the definitions of 'event of concern' in subsection (1) and 'material transaction' in subsection (3).

### **Justification for taking the power**

504. In the context of the financial thresholds and the power contained at subsection (4), a power is needed to more particularly define how the scheme actuary should determine whether a particular threshold is breached before making a notification to the Pensions Regulator under clause 85(1) – for example, the period over which a threshold must be breached or the circumstances. This will avoid inadvertent consequences as a result of exceptional market movements. Agility is needed around the circumstances when a financial threshold is breached to allow for changing economic and market conditions. Setting the details in regulations will allow for greater specificity and detail than is usual in primary legislation.
505. We anticipate that, in rare instances, a breach of a financial threshold will not have an immediate regulatory consequence. For example, where it would not be in members' interests to wind up the scheme immediately as a result of a breach of the protected liabilities threshold. The detail of such circumstances are felt to be better suited to regulations as the Regulator gains operational experience of the superfund market, giving it a discretion to act in a way that would best protect the interests of members in the circumstances that apply at the relevant time.
506. Clause 85 already provides quite a bit of information about the events of concern that need to be notified to the Pensions Regulator. However, as the market evolves additional risks may emerge which might signal the need for additional events of concern to be added to the list. It is not possible to accurately predict how the market will evolve, and the regime needs to be able to adapt to changing circumstances in order to protect the security of member benefits. The power to make regulations is considered the appropriate form of delegation to provide this flexibility as it will enable the Secretary of State to consider the pensions landscape at the relevant time, consult with relevant stakeholders and take appropriate action on occasions more often than Parliament can be expected to legislate for by primary legislation.

### **Justification for procedure**

507. Regulations made under clause 85 will be subject to the affirmative procedure. A higher level of Parliamentary scrutiny is appropriate because the power in subsection (5) to add, remove or vary relates to a list that is already contained in the primary legislation. Equally, the power at subsection (4) will determine when the financial thresholds are breached such as to trigger the event of concern process. As this is a key part of the superfund framework, the power should be subject to full debate.

### ***Clause 88 – Subsection (9) – Content of response plan***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

508. In the event a notification to the Pensions Regulator is made under clause 79 following an event of concern taking place, clause 88 obliges the Regulator to require the responsible body or trustees of a Superfund to propose a plan for responding to the event of concern ('a response plan') within a specified period.

509. Clause 88 requires the response plan to specify the matters set out in subsection (2) and meet the requirements set out in subsections (3) to (8).

510. Subsection (9) provides the Secretary of State with power to make regulations specifying additional matters the response plan must contain, including provision for how the value of the capital buffer (and assets released from the buffer) are to be determined for the purposes of fulfilling a response plan.

### **Justification for taking the power**

511. The legislative framework requires some flexibility in determining what a response plan should contain. The power to make regulations is considered the appropriate form of delegation to provide this flexibility as it will enable the Secretary of State to consider the superfunds landscape at the relevant time, consult with relevant

stakeholders and take appropriate action on occasions more often than Parliament can be expected to legislate for by primary legislation.

### **Justification for procedure**

512. The contents of the report is a matter of operational detail, and it is considered appropriate therefore to subject the regulations to the negative resolution procedure.

### ***Clause 90 – Subsection (8) – Directions to pause payments or transfers of liabilities: supplementary provision***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

513. Following notification to the Pensions Regulator that an event of concern has taken or is likely to take place under clause 86, and subsequent issue by the Regulator of a response plan under clause 87, the Regulator must issue a notice under clause 90(5) if it is satisfied the response plan has been carried out and the event has been adequately resolved. The period between the notification under clause 86 and notice under clause 90(5) (or when superfund scheme is wound up) is referred to as the 'period of concern' (clause 85(2)).

514. During the period of concern, the Regulator may direct superfund group members or scheme trustees to do any of the matters specified in clause 89(1) including ensuring that for a specific period of time, no payments are made to/in respect of members out of the superfund scheme assets or that no liabilities are transferred from the superfund scheme ('a pause direction').

515. Clause 90 makes provisions in respect of a pause direction and subsection (8) provides the Secretary of State power to make regulations modifying Part 4ZA of the Pension Schemes Act 1993 provisions in respect of a pause direction containing a provision that no liabilities are transferred from a superfund scheme.

### **Justification for taking the power**



516. Part 4ZA of the Pension Schemes Act 1993 provides members of a defined benefits occupational pension scheme with a statutory right to transfer the cash equivalent transfer value (CETV) of their scheme benefits to another pension arrangement. The power to make regulations modifying provisions in Part 4ZA is required as a consequence of the Regulator's power to issue a pause direction preventing transfer of liabilities from the superfund scheme.

### **Justification for procedure**

517. Regulations made under subsection (8) will be subject to the affirmative procedure. A higher level of Parliament scrutiny is appropriate because the power would be amending existing provisions in primary legislation and, as such, should be subject to full debate.

### ***Clause 91 – Subsection (3) – Fixed penalty notices***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative.*

### **Context and purpose**

518. Clause 91 provides the Pensions Regulator power to issue a fixed penalty notice not exceeding £100,000 where the Regulator considers a person has failed to comply with the requirements imposed by the provisions specified in clauses 86, 87 or 89.

519. Subsection (3) provides the Secretary of State a power to make regulations setting out how the penalty amount is to be determined.

### **Justification for taking the power**

520. The Secretary of State is the appropriate person to determine the penalty amount, noting the amount must not exceed the maximum specified in subsection (3)(b).

### **Justification for procedure**

521. The relevant amount of penalty is a matter of operational detail, and it is considered appropriate therefore to subject the regulations to the negative resolution procedure.

### ***Clause 92 – Subsection (3) – Escalating penalty notices***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

522. Clause 92 provides the Pensions Regulator power to issue a notice requiring a person to pay an increasing penalty not exceeding £20,000 in the event the person fails to comply with a notice requirement.

523. Subsection (3) provides the Secretary of State power to make regulations setting out how the penalty amount is to be determined.

### **Justification for taking the power**

524. The Secretary of State is the appropriate person to determine the penalty amount, noting the amount must not exceed the maximum specified in subsection (3)(b).

### **Justification for procedure**

525. The relevant amount of penalty is a matter of operational detail, and it is considered appropriate therefore to subject the regulations to the negative resolution procedure.

### ***Clause 95 – Subsection (1) – Power to extend Part to similar structures***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

526. Clause 95(1) provides the Secretary of State power to make regulations applying the provisions in Part 3 to arrangements other than a superfund scheme (as defined in clause 52).

### **Justification for taking the power**

527. As the market evolves, we need to ensure that pension models sharing similar characteristics to a superfund are captured by the relevant parts of the framework. This is important from a member protection perspective and will help to avoid a regulatory loophole. The power to make regulations is considered the appropriate form of delegation to provide this flexibility as it will enable the Secretary of State to consider the pensions landscape at the relevant time, consult with relevant stakeholders and take appropriate action on occasions more often and more quickly than Parliament can be expected to legislate for by primary legislation.

### **Justification for procedure**

528. Regulations made under clause 95 will be subject to the affirmative procedure. A higher level of Parliamentary scrutiny is appropriate because of the power to extend Part 3 provisions to pension arrangements sharing similar characteristics.

## ***Clause 99 – Subsection (3) – Definition of ‘Superfund Group’***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

529. Clause 99(1) defines terms used in Part 3 and includes a definition of ‘superfund group’.

530. Subsection (3) provides the Secretary of State power to make regulations modifying the definition of 'superfund group' with the power to cover structures similar to superfunds so as to bring them within the Part 3 superfunds regulatory regime. This is necessary to ensure that the appropriate entities within a superfund structure are captured by the regime.

#### **Justification for taking the power**

531. The power to make regulations is considered the appropriate form of delegation to provide the flexibility to deal with future developments in the pensions market. It will enable the Secretary of State to consider the pensions landscape at the relevant time, consult with relevant stakeholders, and take appropriate action on occasions more often and more quickly than Parliament can be expected to legislate for by primary legislation.

#### **Justification for procedure**

532. Regulations made under clause 99(3) will be subject to the affirmative resolution procedure. A higher level of Parliamentary scrutiny is appropriate because of the power to extend Part 3 provisions to entities which would not currently fall within Part 3.

## **Part 4, Chapter 1 – Validity of certain alterations to salary-related contracted-out pension schemes**

### ***Clause 103 – Subsection (1) – Power to amend sections 100 to 102***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

#### **Context and purpose**

533. Due to the restrictions contained in section 37(1) of the Pension Schemes Act 1993 and regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations 1996, the rules of a salary-related contracted-out occupational pension

scheme could only be altered in relation to prescribed pension benefits if the scheme actuary provided written confirmation that they were satisfied that the scheme would continue to meet the 'statutory standard' after the change took effect. The statutory standard was the 'reference scheme test' set out in section 12B of the Pensions Schemes Act 1993 which specified the minimum level of benefits a scheme had to provide to contract-out of the additional state pension. If this written confirmation was not obtained, the alteration could be held to be void. In broad terms, the contracting-out regime allowed employers and members to pay reduced national insurance contributions, provided their occupational pension scheme guaranteed to pay a minimum level of benefits to members in place of the additional state pension. Contracting-out was abolished in 2016.

- 534. Chapter 1 of Part 4 provides a remedy for schemes to validate past alterations where written confirmation under regulation 42 cannot be located.
- 535. Clauses 100 and 101 provide that, where an alteration was made to section 9(2B) rights in the rules of a salary-related contracted-out pension scheme, the alteration will not be void for the purposes of section 37(1) if the scheme actuary now provides written confirmation that the scheme would have continued to meet the reference scheme test after the change took effect.
- 536. Clause 102 sets out limited circumstances in which a scheme will be treated as having complied with regulation 42 without needing to use the remedy in clauses 100 and 101.
- 537. Subsection (9) of clause 100 specifies circumstances in which the trustees or managers of a pension scheme cannot use the remediation provision. These circumstances relate to legal proceedings addressing the scope of the restrictions in section 37(1) and regulation 42, where a party (in particular, a pension scheme member) may have a legitimate expectation that an alteration would be held to be void under current law.
- 538. Subsection (1) of clause 103 confers a power on the Secretary of State to amend clauses 100 to 102 to expand the categories of alteration that are excluded from the remediation provision. This may include specifying types of alterations that cannot benefit from the remediation provision or specifying types of schemes that are excluded from using the provision, or a combination of both.

### **Justification for taking the power**

539. This power enables the Secretary of State to amend any of clauses 100, 101 and 102 to provide that particular alterations or particular schemes are excluded from using the remedy under those clauses – namely, obtaining written confirmation from the scheme actuary that the scheme would have continued to meet the statutory standards following the alteration.
540. The power is necessary to address circumstances that may arise where the use of the remediation provision would disproportionately interfere with existing rights. For example, this may include situations where members have a legitimate expectation – based on current principles - that an alteration would be held to be void. In such cases, allowing the use of the remediation provision would undermine those expectations and adversely affect member rights.
541. The power provides flexibility to respond to such circumstances, ensuring that the legislation can be adapted to protect scheme members and uphold legal certainty where appropriate.

#### **Justification for procedure**

542. This power is subject to the negative resolution procedure.
543. While the power may be used to make changes that protect the rights of pension scheme members, the nature of the amendments is likely to be technical and limited in scope. The negative procedure provides an appropriate level of parliamentary scrutiny while allowing the Secretary of State to respond promptly to circumstances enabling amendments to be made, as necessary.

### ***Clause 103 – Subsection (4) – Power to amend sections 100 to 102***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure if amending existing primary legislation, otherwise negative.*

#### **Context and purpose**

544. Subsection (4) enables the Secretary of State to make incidental, supplementary, consequential, or transitional amendments to clauses 100 to 102. The purpose of this power is to ensure that the remediation provision works effectively and can be adjusted to reflect practical experience once the measure is in force.
545. The remedial provision set out in Chapter 1 of Part 4 address a procedural issue which is historic and technical in nature. In addition, it requires a professional opinion to be provided by the scheme's actuary. It is important that the remediation provision is consistent with the professional standards of the actuarial profession and properly addresses the historic and technical issues without creating unforeseen issues for existing pensions legislation. Issues in this regard may only come to light once the actuarial profession has had the opportunity to utilise the remediation provision in practice, after the measure has come into force.

#### **Justification for taking the power**

546. This power ensures that minor amendments can be made to maintain the effectiveness and integrity of the remediation provision. It allows for adjustments to be made in response to practical experience and to ensure consistency with professional standards and existing pensions legislation.

#### **Justification for procedure**

547. The power to make incidental, supplementary, consequential, or transitional amendments is largely operational in nature and is therefore subject to the negative resolution procedure. However, where the power is used to amend primary legislation, the affirmative procedure is considered appropriate to ensure a higher level of Parliamentary scrutiny. This reflects the significance of amending existing provisions in primary legislation and, as such, should be subject to full debate.

### ***Clause 107 – Subsection (1) – Power to amend sections 104 to 106***

*Power conferred on: the Department for Communities.*

*Power exercised by: Regulations made by Statutory Rule.*

*Parliamentary procedure: Negative resolution procedure.*

#### **Context and purpose**

548. Due to the restrictions contained in section 33(1) of the Pension Schemes (Northern Ireland) Act 1993 and regulation 42 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996, the rules of an occupational pension scheme that was a salary-related contracted-out scheme could only be altered in relation to section 5(2B) rights if the scheme actuary provided written confirmation that they were satisfied that the scheme would continue to meet the 'statutory standard' after the change took effect. The statutory standard was the 'reference scheme test' set out in section 8A Pension Schemes (Northern Ireland) Act 1993. If this written confirmation cannot be located, the alteration could be held to be void.
549. Chapter 1 of Part 4 provides a remedy that schemes can use to validate previous alterations where written confirmation under regulation 42 cannot be located.
550. Clauses 104 and 105 provide that an alteration to section 5(2B) rights that was made to the rules of a salary-related contracted-out scheme will not be void for the purposes of section 33(1) if the scheme actuary now confirms that the scheme would have continued to meet the reference scheme test after the change took effect.
551. Clause 106 provides for limited circumstances in which a scheme will be treated as having complied with regulation 42 without needing to use the remedy in clauses 104 and 105.
552. Clause 104 (9) sets out specific circumstances in which the trustees or managers of a pension scheme will not be able to use the remediation provision. These circumstances relate to legal proceedings addressing the scope of the restrictions in section 33(1) and regulation 42 where a party (in particular, a pension scheme member) may have a legitimate expectation that an alteration would be held to be void on the basis of current law.
553. Clause 107 (1) confers a power on the Department for Communities to amend clauses 104 to 106 to expand the categories of alteration that are excluded from the remediation provision. This may include specifying types of alterations that cannot benefit from the remediation provision or specifying types of schemes that are excluded from using the provision, or a combination of both.

#### **Justification for taking the power**



554. This power enables the Department for Communities to amend any of clauses 104, 105 and 106 to provide that particular alterations or particular schemes are excluded from using the remedy under those sections – namely, obtaining written confirmation from the scheme actuary that the scheme would have continued to meet the statutory standards following the alteration.
555. The power is necessary to address circumstances that may arise where the use of the remediation provision would disproportionately interfere with existing rights. For example, this may include situations where members have a legitimate expectation – based on current principles - that an alteration would be void. In such cases, allowing the use of the remediation provision would undermine those expectations and adversely affect member rights.
556. The power provides flexibility to respond to such circumstances, ensuring that the legislation can be adapted to protect scheme members and uphold legal certainty where appropriate.

#### **Justification for procedure**

557. The negative resolution procedure is considered appropriate for this power.
558. It is possible that changes may be needed in order to protect the rights of pension scheme members, however, the nature of the amendments is likely to be technical and limited in scope. The negative resolution procedure provides a proportionate level of Assembly scrutiny while allowing timely adjustments to be made as necessary.

### ***Clause 107 – Subsection (4) – Power to amend sections 104 to 106***

*Power conferred on: Department for Communities.*

*Power exercised by: Regulations made by Statutory Rule.*

*Parliamentary procedure: Confirmatory if amending existing primary legislation, otherwise negative resolution procedure.*

#### **Context and purpose**

559. Subsection (4) of clause 107 relates to salary-related schemes that were contracted-out in Northern Ireland and corresponds to subsection (4) of clause 103 in relation to salary-related schemes that were contracted-out in Great Britain.
560. Subsection (4) gives Department for Communities the power to make regulations to make incidental, supplementary, consequential, or transitional amendments to clauses 104 to 106. The purpose of this power is to enable minor amendments to be made in order to make sure that the remediation power works properly.
561. As with clause 103, this power addresses a historic and technical issue and requires a professional opinion from the scheme actuary. It is important that the provision aligns with actuarial standards and does not create unintended consequences within Northern Ireland pensions legislation. Issues may only become apparent once the provision is applied in practice.

#### **Justification for taking the power**

562. This power ensures that minor amendments can be made to maintain the effectiveness and integrity of the remediation provision in Northern Ireland. It allows for adjustments in response to practical experience and ensures consistency with professional standards and existing legislation.

#### **Justification for procedure**

563. The power to make incidental, supplementary, consequential, or transitional amendments is largely operational in nature and is therefore subject to the negative resolution procedure. However, where the power is used to amend primary legislation, the confirmatory procedure is considered appropriate, to ensure a higher level of Assembly scrutiny.

## **Part 4, Chapter 2 – Pension Compensation: Indexation**

### ***Clause 108 – Indexation of periodic compensation for pre-1997 service: Great Britain***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and Purpose**

564. Clause 108 amends Schedule 7 to the Pensions Act 2004 and Schedule 5 to the Pensions Act 2008 to make provision for certain compensation paid by the Pension Protection Fund in respect of a person's pre-1997 pensionable service under legislation extending to England and Wales and Scotland to be increased annually. Where the scheme only provided for the indexation of a guaranteed minimum pension, the Secretary of State will prescribe in regulations how much of the compensation payment as relates to pre-1997 pensionable service is to be increased each year.

### **Justification for taking the power**

565. It is not possible to identify how much of a person's pension is attributable to the guaranteed minimum pension once a scheme transfers to the Pension Protection Fund and the Board starts paying compensation. The Secretary of State will therefore determine how much of a pension attributable to pre-1997 service to increase annually so that members who only benefitted from indexation of a guaranteed minimum pension get some increase on their compensation.

566. The Government will work with the Pension Protection Fund and the Government Actuary's Department to use their data on guaranteed minimum pensions to identify a standard percentage of compensation relating to pre-1997 pensionable service to be increased. This will apply to all affected members. The expectation is that the appropriate percentages will be considered by the Government Actuary's Department to ensure they are broadly fair and work for these purposes. Therefore, it is not possible at this stage to set this out in primary legislation.

### **Justification for the procedure**

567. Regulations made under this power will be subject to the negative resolution procedure. This is consistent with existing powers to prescribe by regulations in Schedule 7 to the 2004 Act, which are subject to the negative resolution procedure. Only the power to make an order under paragraph 24(8) of Schedule 7 (power to vary the percentage of periodic compensation that can be commuted) is subject to the affirmative resolution procedure.

## **Clause 109 – Indexation of periodic compensation for pre-1997 service: Northern Ireland**

*Power conferred on: The Department for Social Development, Northern Ireland.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and Purpose**

568. Clause 109 amends Schedule 6 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255) (N.I. 1) and Schedule 4 to the Pensions (No. 2) Act (Northern Ireland) 2008 to make provision for certain compensation paid by the Pension Protection Fund in respect of a person's pre-1997 pensionable service under legislation extending to Northern Ireland to be increased annually. Where a scheme only provided for the indexation of a guaranteed minimum pension, the Department for Social Development, Northern Ireland, will prescribe in regulations how much of an annual pension attributable to pre-1997 service is to be increased each year.

### **Justification for taking the power**

569. It is not possible to identify how much of a person's compensation is attributable to the guaranteed minimum pension once a scheme transfers to the Pension Protection Fund and the Board starts paying compensation. The Department for Social Development will therefore determine how much of the compensation so far as it relates to pre-1997 pensionable service is to increase annually. This means that members who only benefitted from indexation of a guaranteed minimum pension get some increase on their compensation in respect of their pre-1997 pensionable payment. We anticipate the Department to maintain parity with the rest of the UK so far as the percentage that is prescribed.

570. The Government and Department will work with the Pension Protection Fund to use their data on guaranteed minimum pensions to identify a standard percentage of compensation relating to pre-1997 pensionable service to be increased. This will apply to all affected members. The expectation is that the appropriate percentages will be considered by the Government Actuary's Department to ensure they are broadly fair and work for these purposes. Therefore, it is not possible at this stage to set this out in primary legislation.

### **Justification for the procedure**

571. Regulations made under this power will be subject to the negative resolution procedure. This is consistent with existing powers to prescribe by regulations in Schedule 6 to the 2005 Order, which are subject to the negative resolution procedure. Only the power to make an order under paragraph 24(8) of Schedule 6 (power to vary the percentage of periodic compensation that can be commuted) is subject to the affirmative resolution procedure.

## **Part 4, Chapter 3 – Other miscellaneous provisions**

### ***Clause 114 – Subsection (3) – Communications***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

572. Clause 114(3) amends section 203(1) of the Pensions Act 2004, which contains a power to require the Board of the Pension Protection Fund (the PPF) to send prescribed information to such persons as may be prescribed at prescribed times.

573. The amendment allows the Secretary of State to prescribe the circumstances and way in which this information is to be provided. Specific provision is made to allow information to be sent by electronic communications, for the use of prescribed facilities or services, and for it to be provided in such a way that it can subsequently be provided by way of a pensions dashboard. This is to allow for information the PPF holds to be provided to pensions dashboards for display to members.

### **Justification for taking the power**

574. It is already established under section 203 of the Pensions Act 2004 that the Secretary of State is to have the powers to determine what information the PPF is to send and to whom. It is consistent with these existing powers to grant a power to prescribe how this information is to be sent.

### **Justification for procedure**

575. The exercise of the power will be subject to the negative procedure.

576. The existing procedure for the exercise of the powers at section 203 is negative. It is appropriate for the procedure to be consistent with the existing procedure as the power concerns the same subject matter.

### ***Clause 114 – Subsection (4) – Power to require qualifying pensions dashboard services display information relating to the PPF and the FAS***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Affirmative resolution procedure.*

### **Context and purpose**

577. Section 238A(2) of the Pensions Act 2004 provides that a ‘qualifying pensions dashboard service’ is a pensions dashboard service which satisfies prescribed requirements. Section 238A(3) further provides that these requirements may relate to, among other things, what ‘relevant information’ is to be provided. Section 238A(4) then defines what constitutes relevant information.

578. Clause 114(4) amends section 238A(4) to expand the definition of what constitutes relevant information so as to include information relating to the PPF and the Financial Assistance Scheme (the FAS), including information relating to an individual. The amendment thereby allows the Secretary of State to require qualifying pensions dashboard services to display this information.

### **Justification for taking the power**

579. It is already established in the Pensions Act 2004 (via amendments inserted by the Pension Schemes Act 2021) that the requirements for qualifying pensions dashboard services are to be provided for in regulations made by the Secretary of State. Clause 114(4) amends this existing power to include an additional type of information, in a way that is consistent with existing legislation.

### **Justification for procedure**

580. The existing procedure for the exercise of the powers at section 238A is affirmative. It is appropriate for the procedure to be consistent with the existing procedure as the power relates to the same subject matter. The information displayed by qualifying pensions dashboards goes to a central aspect of the policy and so it is appropriate for changes to this to be scrutinised under the affirmative procedure.

### ***Clause 115 – Subsection (2) – Information to be given to pension schemes by employers***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

581. Clause 115(2) amends Part 1 of the Pensions Act 2008, inserting a new section 11A which, in new subsection (1), provides the Secretary of State with a power to make regulations requiring employers to provide information about jobholders and workers to the trustees or managers, or provider, of the pension scheme of which the jobholder or worker is an active member.

582. The purpose of this power is to improve the accuracy of member data held by pension schemes. Members may, for example, update their contact information with their employer, but not with their pension scheme; indeed, most members are not actively engaged with their pensions at all. A lack of up-to-date information harms schemes' abilities to contact members with important updates; for example, to provide information as they approach retirement, or to provide a transfer notice explaining an automatic consolidation proposal in relation to a small dormant pot (as described in clause 24(1) of this Bill).

583. Under existing provisions in Part 1 of the Pensions Act 2008 (for example, section 3(5)), regulations can be made requiring employers to provide information on jobholders and workers to a pension scheme at the point of joining the scheme, but not subsequently. The power in new section 11A(1) is intended to enable a

framework to be created whereby employers can be required to provide updated information on a continuing basis to pension schemes.

584. New section 11A(1)(a) and (b) describe the jobholders and workers that are in scope of the power, covering the various ways by which they may have become active members of pension schemes.
585. New section 11A(2) enables regulations to set out what information must be provided, how and in what format it should be provided, and the timing requirements for provision. It is envisaged that the type of information will include similar details to that defined in ‘jobholder information’ in regulation 3 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010; for example: name, postal residential address, personal e-mail address. In terms of timing, the current expectation is that this will be an annual requirement to provide updated information, though this is subject to engagement with industry.
586. New section 11A(3) provides that regulations may require employers to provide information in respect of individuals ceasing to be employed by them. For example, regulations may provide that employers are to inform the relevant pension scheme that the individual has since left their employment, which would be the last update that the employer would send in relation to that individual.

#### **Justification for taking the power**

587. The detail in these regulations (such as the timing, frequency, format, and content of information required) will be technical and administrative in nature. The precise requirements will be developed through engagement with employers, schemes, and industry bodies to ensure that they are practical and proportionate. Regulations also allow iterative refinement based on stakeholder feedback and operational experience, without requiring further primary legislation, ensuring that the framework remains effective as digital systems and market practices evolve.
588. This approach is consistent with the existing provisions in Part 1 of the Pensions Act 2008 (for example, section 3(5)), where similar employer-information-sharing duties are created using powers.

#### **Justification for procedure**

589. The power will be subject to the negative resolution procedure pursuant to section 143(2) of the Pensions Act 2008, consistent with the procedure for similar employer-



information powers in Part 1 of that Act. This is appropriate given the technical and administrative nature of the provisions. These are not matters of significant policy but rather administrative details that may need to be updated periodically to reflect changes in data standards, reporting systems, or scheme/employer administration practices.

### ***Clause 117 – Subsections (1) and (2) – Funding for the Board of the Pension Protection Fund***

Power conferred on: The Secretary of State.

Power exercised by: Regulations made by Statutory Instrument.

Parliamentary procedure: Negative resolution procedure.

#### **Context and purpose**

590. Clause 117(1) amends section 175(1) of the Pension Schemes Act 1993. Section 175(1) lists the expenditure that regulations may impose levies for in respect of prescribed occupational or personal pensions schemes. The Occupational and Personal Pension Schemes (General Levy) Regulations 2005 were made under the vires of section 175(1) Pensions Schemes Act 1993 and regulation 3 of these Regulations impose liabilities upon schemes to pay to the Secretary of State the general levy for the purpose of meeting the expenditure in section 175(1) Pension Schemes Act 1993.
591. Clause 117(1) adds to that list of expenditure in section 175(1) Pension Schemes Act 1993, sums paid by the Secretary of State out of money provided by Parliament to the Pension Protection Fund Ombudsman under section 209(6) Pensions Act 2004 and by virtue of an order made by the Secretary of State under section 209(4) Pensions Act 2004.
592. The purpose of this amendment is to allow the sums paid by the Secretary of State in respect of expenditure of the Pension Protection Fund Ombudsman in addition to the existing expenditure to be met by the general levy. This amendment has effect from 1 April 2007 as a result of clause 122(10)(e).

593. Clause 117(2) repeals section 209(7) and (8) Pensions Act 2004. Subsection (7) is power to make regulations providing for an alternative levy to the general levy to meet the sums paid by the Secretary of State in respect of expenditure of the Pension Protection Fund Ombudsman and subsection (8) applies specific provisions to regulations made under subsection (7).

#### **Justification for the power**

594. In practice the Pension Protection Fund Ombudsman and the Pensions Ombudsman are one and the same person supported by a single body and since 1 April 2007 the expenditure of both Pension Protection Fund Ombudsman and the Pensions Ombudsman have been met by the general levy. Prior to 1 April 2007, the expenditure of the Pension Protection Fund Ombudsman was met by the Pension Protection Fund Ombudsman levy until it was abolished. This power will enable the expenditure of the Pension Protection Fund Ombudsman to be met by the general levy from 1 April 2007.

#### **Justification for the procedure**

595. Regulations made under s 175(1) Pensions Schemes Act 1993 will be subject to the negative resolution procedure

## **Part 5 – General**

### ***Clause 122 – Power to make commencement regulations***

*Power conferred on: The Secretary of State and HM Treasury.*

*Power exercised by: Regulations made by Statutory Instrument.*

*Parliamentary procedure: None applicable.*

#### **Context and purpose**

596. The Secretary of State has the power to commence Part 1, Chapters 3 and 6 of Part 2, Part 3, Chapter 2 of Part 4, section 113, and the Schedule to the Bill by regulations. HM Treasury has the power to commence Chapter 5 of Part 2 by regulations.

597. The Secretary of State and HM Treasury acting jointly have the power to commence Chapter 4 of Part 2 by regulations.

**Justification for taking the power**

598. Flexibility is needed to bring the measures into force at a time which is appropriate for the market.

**Justification for procedure**

599. This follows standard practice for commencement regulations.

## **Schedule**

### ***Paragraph 17 of the Schedule – Amendment to section 222 Pensions Act 2004***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument, and determination made by the Pensions Regulator.*

*Parliamentary procedure: Negative resolution procedure.*

**Context and purpose**

600. The Pensions Regulator will require the Secretary of State to set the objectives for the level of security that is required for superfunds. In the context of those objectives and the wider suite of capital adequacy requirements, the Pensions Regulator will then exercise discretion and ensure that minimum technical provisions for superfunds are set accordingly.

601. The amendment made to section 222 of the Pensions Act 2004 contained at paragraph 16 of the Schedule will enable the Regulator to determine the methods and assumptions that are to be used in calculating a superfund pension scheme's technical provisions. Regulations will require the Regulator, in making its determination, to take into account prescribed matters and follow prescribed principles. This will provide the necessary direction to the Pensions Regulator,

enabling it to make determination in line with wider Government policy objectives for superfunds – for example, the level of security that is required within a superfund.

### **Justification for the delegation**

602. Flexibility is needed when determining superfund technical provisions (for example, discount rates) as what is considered appropriate by the Regulator may change as both circumstances and conditions change. Equally, the matters that the Regulator must consider when making its determination may need to adapt to reflect Government policy for superfunds.

603. The Pensions Regulator is best placed to determine the minimum technical provisions that a superfund will be expected to use given its statutory objective to protect the benefits under occupational pension schemes under section 5 of the Pensions Act 2004. It is well equipped to undertake that role.

### **Justification for procedure**

604. Regulations made under the power being introduced through the amendment made to section 222 of the Pensions Act 2004, will be subject to the negative procedure. This will happen automatically as the negative procedure for regulations made under section 222 is already provided by section 316 of the 2004 Act.

## ***Paragraph 18 of the Schedule – Amendment to section 224 Pensions Act 2004***

*Power conferred on: The Secretary of State.*

*Power exercised by: Regulations made by Statutory Instrument, and determination made by the Pensions Regulator.*

*Parliamentary procedure: Negative resolution procedure.*

### **Context and purpose**

605. The amendment made to section 224 of the Pensions Act 2004 will ensure that any actuarial report for a superfund must be submitted to the Pensions Regulator within the same timeframe that is required for the full actuarial valuation under section 224(7A), along with such other information that may be prescribed. This will help to

ensure the appropriate level of regulatory oversight of scheme funding within a superfund pension scheme.

### **Justification for the delegation**

606. The power to prescribe additional information that must accompany an actuarial report when submitted to the Pensions Regulator will provide the necessary flexibility that is needed to cover information which is specific to a superfund pension scheme. This covers areas at greater levels of specificity and detail than is usual in primary legislation.

607. The approach also ensures consistency with section 224(7A) which already enables regulations to prescribe other information that must accompany a full actuarial valuation when submitted to the Pensions Regulator.

### **Justification for procedure**

608. The additional information that may be required to accompany an actuarial report is a matter of operational detail, and it is considered appropriate therefore to be subject the regulations to the negative resolution procedure. This will happen automatically as the negative procedure for regulations made under section 224 is already provided by section 316 of the 2004 Act.

**Department for Work and Pensions**  
**4 December 2025**