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Pension Schemes Bill 2019-21

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Summary

The *Pension Schemes Bill* 2019-21 was published in the House of Lords on 7 January 2020, where it went through all stages ending with Third Reading on 15 July. Its aims include establishing a new form of pension scheme, improving protections for pension savings and helping people plan for their retirement.

It was introduced into the House of Commons on 16 July 2020 and had its Second Reading on 7 October 2020 and four sessions in Public Bill Committee on 3 and 5 November. Report Stage and Third Reading were on 16 November.

The Bill was then sent back to the Lords for it to consider Commons amendments (which removed the four opposition amendments made in the Lords). On 19 January 2021, the Lords agreed to the Commons amendments. The Government gave assurances regarding the approach to the funding defined benefit schemes, saying it agreed "open schemes that are not maturing and have a strong employer covenant should not be forced into an inappropriate de-risking journey " (HL Deb 19 January 2021 c1110).

Parts 1 and 2 – Collective Money Purchase Schemes

Parts 1 and 2 of the Bill would provide for a framework for the operation and regulation of Collective Money Purchase Schemes in the UK. These are also commonly referred to as Collective Defined Contribution (CDC) Schemes.

The existing UK workplace pensions framework enables employers to offer only either:

- Defined Benefit (DB) pension schemes, which provide pension benefits based on salary and length of service; or
- Defined Contribution (DC) schemes, where individuals build up a pot of money to provide an income at retirement. Unlike DB schemes, which promise a specific income, DC incomes depend on factors such as the amount paid in, investment returns and decisions made at retirement.

These two models place all the risks and associated costs – economic, financial, and longevity - with either the sponsoring employer (DB) or the individual member (DC). The Government believes creating a third option called Collective Money Purchase Schemes (CMPS) – where risks would be entirely with the members but shared between them collectively – could be beneficial to sponsoring businesses and individuals in certain cases.

Under a CMPS both the employer and employee would contribute to a collective fund from which the employee would then draw an income at retirement. The funding risk would be borne collectively by the individuals in the scheme, whose investments make up the fund. A CMPS would offer members a target pensions level that it would be aiming to pay based, on their contributions. The scheme must have rules under which the rate or amount of the benefit is subject to periodic adjustments designed to achieve a balance between the available assets of the scheme and the amount expected to be required to provide benefits under the scheme to members collectively.

Critics of CMPS often claim that they are inherently unfair towards younger generations as older people may have first call on the pooled fund to pay their pensions and workers may have to make up any shortfall with increased contributions. The Government believes it is possible to design a model to mitigate these risks, like that proposed by Royal Mail.

At Report stage in the Lords, Peers agreed to an amendment in the name of Liberal Democrat Peer, Lord Sharkey, that would require trustees to assess whether their scheme operated fairly between different groups of members. The amendment was removed from

the Bill at Commons Committee stage. The Government said it would use regulations – following consultation - to set out clear principles and processes that schemes must follow to ensure that different types of members are treated the same, where justified (PBC Deb 3 November 2020 c12 and 22).

Part 3 – The Pensions Regulator (TPR)

Part 3 would introduce measures intended to strengthen TPR's powers and improve the information available to it, to better enable it to protect DB scheme members' savings. They would do this by:

- Strengthening the existing **criminal and civil sanctions** regime by introducing three new criminal offences and a new power to issue civil penalties of up to £1 million;
- Strengthening the regime for **Contribution Notices** (one of the powers available to TPR to 'recover any losses caused to a DB pension scheme as a result of avoidance behaviours');
- Enhancing **corporate transaction oversight by** requiring 'persons involved in a corporate transaction to make a statement setting out information about the event and how any detriment to a DB pension scheme, as a result of this event, is to be mitigated;' and
- Extending information gathering powers to enable the Regulator to enter a wider range of premises and require individuals to attend an interview**.**

When the Bill was in the Lords, Peers expressed concern that the scope of clause 107 (sanctions for avoidance of employer debt) was too wide in terms of the people potentially caught by it. The Government responded that it was concerned not to create loopholes. The issue was debated again at Commons Committee stage (PBC Deb 3 November 2020 c27-31).

Part 4 – Pensions dashboards

The Bill would create a legislative framework for pensions dashboards – digital interfaces that enable people to see all their pension savings in one place so that individuals can make better decisions about their retirement plans.

One area of debate has been whether there should be a single dashboard provided by the Money and Pensions Service (MaPS) - a statutory arms-length body - or multiple dashboards provided by industry. The Work and Pensions Committee recommended the former, on the basis that consumers wanted "simple, impartial, and trustworthy information" and that multiple dashboards, hosted by "self-interested providers" would add complexity. However, the Government said that multiple dashboards would improve consumer choice and decided that they should exist alongside a non-commercial dashboard, which would offer an "impartial service to those who prefer it, or who may not be targeted by the market."

At Report stage, Peers agreed to amendments in the name of Labour Peer, Baroness Drake, that she argued would protect consumers from detriment. These were to i) require the MaPS dashboard to be up and running for a year, and the Secretary of State have reported to Parliament on its operation, before other commercial dashboards could be launched; and ii) exclude facilities for engaging in financial transactions, such as transfers, from pensions dashboards (a decision to allow which should require further primary legislation). The Government opposed both amendments, arguing that having commercial dashboards from the start would maximise the possible reach of the policy and help meet the differing needs consumers; enabling financial transactions via dashboards was part of a possible solution to the proliferation of small pension pots. Both amendments were removed from the Bill on division at Commons Committee stage, with Government members voting for this and the opposition against (PBC Deb 3 Nov 2020 c56 and 73-4).

Part 5 – Further provisions relating to pension schemes

The Bill contains a number of other provisions:

- **Clause 123** introduces Schedule 10, which would provide for amendments to the scheme funding provisions of Part 3 of the *Pensions Act 2004*. It introduces a new requirement for schemes to have a 'funding and investment strategy' for providing pension benefits over the longer term and to report on its implementation to the Pensions Regulator in a new 'statement of strategy'. A Lords amendment to require a different approach to the regulation of funding for open defined benefit schemes (i.e. those with actively contributing members) was removed at Commons Committee stage, with Government Members voting for this and the opposition against (HL Deb 30 June 2020 c689; PBC Deb 5 November 2020 c87). When the Bill returned to the Lords on 19 January 2021, the Government gave assurances regarding its intended approach to regulating the funding of open schemes (HL Deb 19 January 2021, c1110).
- **Clause 124** would require occupational pension schemes to manage the effects of climate change as a financial risk and to report on how they have done so.
- **Clause 125** would allow regulations to be made to stipulate the conditions which persons, including a pension scheme member, will need to meet to have a statutory right to transfer their pension savings to another scheme. The aim is to protect members from scams by helping trustees of occupational pension schemes ensure transfers are made to safe, not fraudulent, schemes.
- **Clause 126** would ensure that the **Pension Protection Fund (PPF)** can continue to administer the compensation regime as intended following court rulings.

The aim of this briefing paper is to provide background on the provisions in the Bill and debates in Parliament.

1. Introduction

The *Pension Schemes Bill 2019-21* has a number of aims, including; to establish a new form of pension scheme; to improve protections for pension savings; and to help people to plan for their retirement.

Parts 1 and 2 – Collective Money Purchase Schemes

Parts 1 and 2 of the Bill would provide for a framework for the operation and regulation of Collective Money Purchase Schemes in the UK. These are also commonly referred to as Collective Defined Contribution (CDC) Schemes.

The existing UK workplace pensions framework enables employers to offer only either:

- Defined Benefit (DB) pension schemes, which provide pension benefits based on salary and length of service; or
- Defined Contribution (DC) schemes, where individuals build up a pot of money to provide an income at retirement, the amount of which will depend on factors such as the amount paid in, investment returns and decisions made at retirement.

These two models place all the risks and associated costs – economic, financial, and longevity - with either the sponsoring employer (DB) or the individual member (DC). The Government believes creating a third option called Collective Money Purchase Schemes (CMPS) – where risks would be entirely with the members but shared between them collectively – could be beneficial to sponsoring businesses and individuals in certain cases.

Under a CMPS both the employer and employee would contribute to a collective fund from which the employee would then draw an income at retirement. The funding risk would be borne collectively by the individuals in the scheme, whose investments make up the fund. A CMPS would offer members a target pensions level that it would be aiming to pay based on their contributions. The scheme must have rules under which the rate or amount of the benefit is subject to periodic adjustments designed to achieve a balance between the available assets of the scheme and the amount expected to be required to provide benefits under the scheme to members collectively.

Critics of CMPS often claim that they are inherently unfair towards younger generations as older people may have first call on the pooled fund to pay their pensions and workers may have to make up any shortfall with increased contributions. The Government believes it is possible to design a CMPS model to mitigate these risks, as in a model proposed by Royal Mail.

Part 3 – The Pensions Regulator (TPR)

Part 3 would introduce measures intended to strengthen TPR's powers and improve the information available to it, to better enable it to protect DB scheme members' savings. They would do this by:

- Strengthening the existing **criminal and civil sanctions** regime by introducing three new criminal offences and a new power to issue civil penalties of up to £1 million;
- Strengthening the regime for **Contribution Notices** (one of the powers available to TPR to 'recover any losses caused to a DB pension scheme as a result of avoidance behaviours');
- Enhancing **corporate transaction oversight by** requiring 'persons involved in a corporate transaction to make a statement setting out information about the event and how any detriment to a DB pension scheme, as a result of this event, is to be mitigated;' and
- Extended information gathering powers' to enable the Regulator to enter a wider range of premises and require individuals to attend an interview**.**

Part 4 – Pensions dashboards

The Bill would create a legislative framework for pensions dashboards – digital interfaces that enable people to see all their pension savings in one place so that individuals can make better decisions about their retirement plans. It sets out the requirements that a qualifying pensions dashboard must meet, enables regulations to require pension schemes to provide pensions information to them, and would require the Money and Pensions Service to provide a pensions dashboard service (a non-commercial service that would exist alongside qualifying commercial dashboards).

Part 5 – Further provisions relating to pension schemes

The Bill contains a number of other provisions, including:

- **Clause 123** introduces Schedule 10 which provides for amendments to the scheme funding provisions of Part 3 of the Pensions Act 2004. It introduces a new requirement for schemes to have a 'funding and investment strategy' for providing pension benefits over the longer term and to report on its implementation to the Pensions Regulator in a new 'statement of strategy'.
- **Clause 124** would require occupational pension schemes to manage the effects of climate change as a financial risk and to report on how they have done so.
- **Clause 125** would allow regulations to be made to stipulate the conditions which persons, including a pension scheme member will need to meet to have a statutory right to transfer their pension savings to another scheme. The aim is to protect members from scams by helping trustees of occupational pension schemes ensure transfers are made to safe, not fraudulent, schemes.
- **Clause 126** would ensure that the **Pension Protection Fund (PPF)** can continue to administer the compensation regime as intended following court rulings.

1.1 The pensions landscape

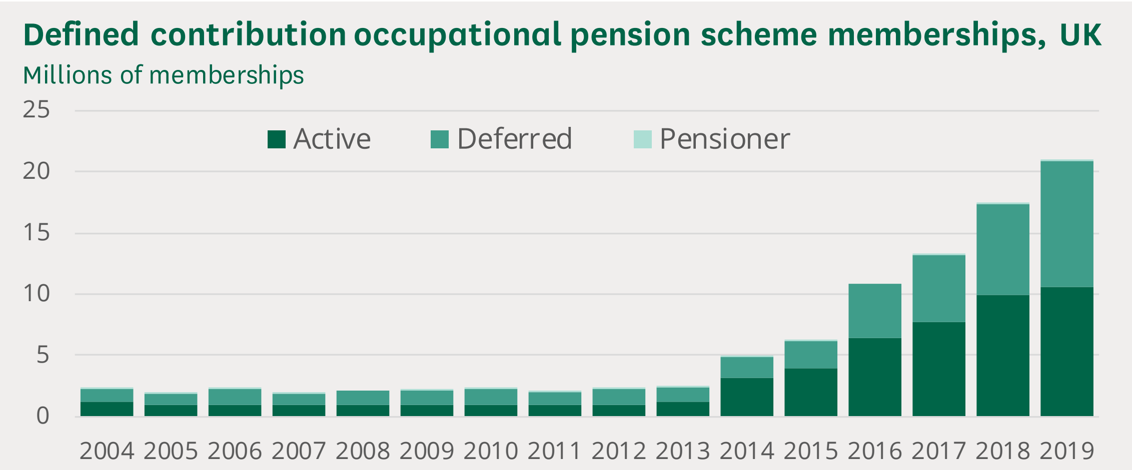
Two major trends have shaped the workplace pension scheme landscape in the private sector:

- The closure of **defined benefit (DB)** schemes to new entrants and accruals, which over the last two decades has led to a big fall in the number of employees contributing to such schemes. In 2020, only 1.0 million employees were active members of private-sector DB schemes, down from 3.6 million in 2006;
- By contrast, membership of **defined contribution (DC)** schemes has surged in recent years due to the rollout of automatic enrolment. Coverage of private sector employees by DC schemes has risen from 22% in 2012 to 64% in 2019.

DB remains a major mode of pension provision in the public sector. The number of active memberships in public service DB schemes rose gradually from 5.0 million in 2004 to 6.6 million in 2019.[1]

Defined contribution schemes

The rollout of automatic enrolment from 2012 onwards has led to a tenfold increase in total membership of DC occupational schemes, from 2.1 million in 2011 to 21 million in 2019. Actively contributing membership rose from a low point of 0.9 million active members in 2011 to 10.6 million members in 2019. Note that an individual can have more than one pension scheme membership – as people move from job to job, they may accumulate several pension pots in different occupational schemes.



Note: Includes occupational money purchase DC schemes but not group personal pensions.

Source: ONS Occupational Pension Scheme Survey 2019, table 3.

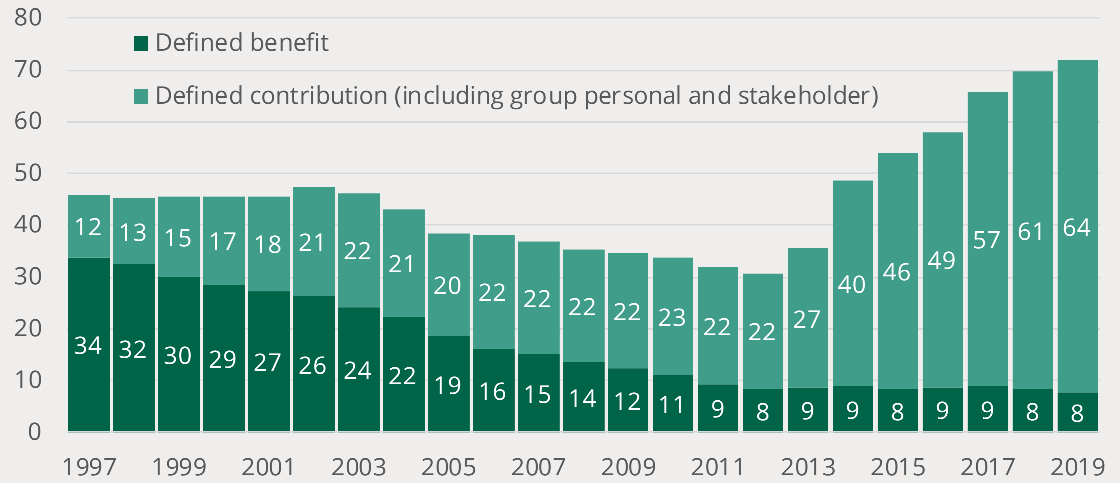
Expressed as a share of the total private-sector employee workforce, the proportion of employee jobs covered by a DC pension arrangement (including group personal and stakeholder pensions as well as occupational schemes) was stable at just a fifth during the decade to 2012 but then started to rise in 2013 due to automatic enrolment and

[1] ONS Occupational Pension Scheme Survey 2019, table 3

reached 64% in 2019. Conversely just 8% of private-sector employee jobs were covered by a DB arrangement in 2019.

Private-sector employee jobs with pension plans, by scheme type

Percentage of employee jobs, UK, as of April of each year



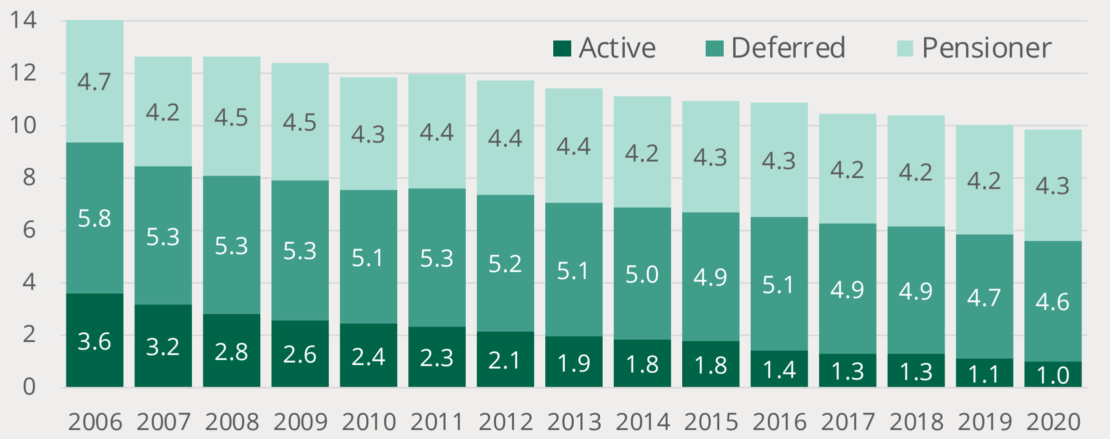
Source: ONS Employee workplace pensions in the UK (formerly Annual Survey of Hours and Earnings pension tables), table P2 pension type by industry and gross weekly earnings bands, various editions

Defined benefit schemes

The 1.0 million actively contributing members of private-sector DB schemes account for only 10% of the total 9.9 million private-sector DB memberships in 2020.

Private-sector defined benefit pension scheme memberships, UK

Millions of memberships, by membership type



Source: Pension Protection Fund (PPF) Purple Book, various editions

The Pension Protection Fund (PPF) estimated in 2020 that there were 5,327 DB schemes eligible for PPF protection (down from 7,751 such schemes in 2006). The decline in active membership of such schemes means that they are increasingly focused on the task of managing and sustaining their ongoing financial liabilities to deferred and retired scheme members.

1.2 The Bill

The main provisions of the Bill are:

- Parts 1 and 2 would provide the legislative framework to establish and operate **Collective Money Purchase Schemes (CMPS)**;
- Part 3 would build on **The Pensions Regulator's** powers to enable it to: intervene earlier when sponsoring employers make changes that could impact a scheme; obtain the right information about a scheme and its sponsoring employer in a timely manner; gain redress for scheme members when things go wrong and deter reckless behaviour;[2]
- Part 4 would provide a legal framework for **Pensions Dashboards**, which would bring together an individual's savings from multiple pensions, including the State Pension, in a single place online; and
- Part 5 would make **further provisions relating to pension schemes** which would: make changes to the funding regime for Defined Benefit pension schemes; specify the destinations and circumstances under which a pension scheme member would have a right to transfer their pension rights to another scheme; and enable the Pension Protection Fund (PPF) to continue to administer the compensation scheme as intended.

Territorial extent

Under clause 130, the provisions of this Bill extend to England and Wales and Scotland only, except some clauses which extend provisions being made for England and Wales and Scotland to Northern Ireland:

- Part 2 would provide for Collective Money Purchase Schemes in Northern Ireland;
- Clause 117 and Schedule 8 (The Pensions Regulator: Northern Ireland) contain provision for Northern Ireland corresponding to that made by clauses 103 to 115, and minor and consequential amendments.
- Clause 120 and Schedule 9 contain provision for Pensions dashboards in Northern Ireland, corresponding to that made by Part 4, clauses 118 and 119.
- Clause 129 and Schedule 11 (Further provision relating to pensions scheme: Northern Ireland) would make provision for Northern Ireland corresponding to those for England, Wales and Scotland in Part 5 of the Bill (clauses 124 to clause 128 and Schedule 10).

Part 6 (extent, commencement and short title) and clause 126 (2) (PPF) extend UK-wide.

The Bill contains provisions that engage the legislative consent process in the Northern Ireland Assembly. At Report stage in the Lords the Work and Pensions Minister, Baroness Stedman-Scott, explained that:

2 Bill 165 EN, para 9

> Although pensions are a devolved matter, this is an area where Northern Ireland has long maintained parity with Great Britain. There is in effect a single system of pensions across the UK with many pension schemes and, indeed, the regulator, the Pensions Ombudsman, the Pension Protection Fund et cetera operating on a UK-wide basis. Devolved government in Northern Ireland has now been restored. On 1 June, the Northern Ireland Assembly approved the legislative consent Motion on the Bill as introduced. A further legislative consent Motion will be necessary to cover amendments to the Bill which the Northern Ireland Minister for Communities has agreed should extend to Northern Ireland. The process for an additional legislative consent Motion is a shortened procedure and we look forward to receiving the Assembly's further consent in due course.[3]

The Northern Ireland Assembly has agreed a legislative consent motion.[4]

Commencement

The main provisions of the Bill would come into force on the day appointed in regulations made by the Secretary of State (or the day that the Department for Communities in Northern Ireland appoints by order).[5]

Supporting information

The Delegated Powers Committee and the Lords Constitution Committee reported on the regulation-making powers.[6]

Impact assessments and letters from the Minister to Peers participating in the debates can be found on the Bill page on the Parliament website.

1.3 Debates in the Lords

The Bill was published in the House of Lords on 7 January 2020 and went through its House of Lords stages between 28 January and 15 July 2020. A list of speakers and the main areas of debate can been seen in the minutes of proceedings for each debate.

Second Reading debate was on 28 January 2020. The Grand Committee then considered the Bill over four days: 24 February; 26 February; 2 March; and 4 March. As well as debating the provisions in the Bill, on the final day, the Committee debated wider pensions issues: the PPF compensation cap (c311); the establishment of a Pension Schemes Commission (c315); the tapered annual allowance (c319); reducing the minimum age for auto enrolment (c328); the suitability of auto-enrolment pension schemes for low earners (c340); the application of section 75 employer debt provisions to multi-employer pension schemes, such as the Plumbing Pension Scheme (c346).[7]

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3 HL Deb 30 July 2020 c628
4 See letter to the Clerk of the House of 2 June 2020
5 Bill 165 EN, para 641; Clause 131
6 Delegated Powers and Regulatory Reform Committee, Pension Schemes Bill [HL], 4th Report of Session 2019–21, HL 17; Constitution Committee, Pension Schemes Bill [HL], 2nd Report of Session 2019-21 - HL 22, 13 Feb 2020, para 15-18
7 Committee: 4th sitting (Minutes of Proceedings): HL Deb 4 March 2020

At Report Stage on 30 June 2020, the House of Lords agreed to a number of Government amendments.[8] It also voted on division to accept four opposition amendments. These would:

- Require trustees of a CMPS to assess the extent to which the scheme is operating in a manner fair to all members;[9]
- Require regulations to ensure that schemes that are expected to remain open are treated differently from closed schemes, as well as to ensuring certain outcomes are achieved in exercising powers under Part 3 of the *Pensions Act 2004*;[10]
- Delay the introduction of commercial pension dashboards until a non-commercial version had been in operation for at least a year;[11] and
- Prevent pension dashboards from including a facility enabling financial transaction activities.[12]

The Government voted against these amendments.[13] In the Third Reading debate on [15 July 2020], Work and Pensions Minister, Baroness Stedman-Scott said she would consider the arguments that had been made:

> The Government listened to your Lordships' arguments and concerns as the Bill progressed and made a number of amendments both in Committee and on Report— 73 in total, which I think you will agree have strengthened the Bill. We recognised the concerns of the DPRRC and this House in respect of delegated powers; we listened to your thoughts about a public dashboard; we introduced measures in respect of climate reporting and the Paris Agreement; and we have responded to the threat of scams by tightening the rules on transfers. Your Lordships made further amendments to the Bill on Report concerning intergenerational fairness, consumer protection and scheme funding. We will look at these carefully along with the strong arguments made in support of them as the Bill progresses in the other place.[14]

1.4 Debates in the Commons

The Bill was published in the Commons on 16 July and had its Second Reading debate in the House of Commons on [7 October 2020]. Opening the debate, Work and Pensions Secretary, Therese Coffey introduced the Bill, saying it delivered on the Government's manifesto commitments to:

> […] legislate for a new style of pension scheme, establish pensions dashboards and tackle those who try to plunder the pension pots of hard-working employees. It creates a new style of pension scheme that has the potential to increase future returns for

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8 HL Deb 30 June 2020 c577
9 HL Deb 30 June 2020 c601; Division 2284
10 Ibid c679; Division 2287
11 Ibid c646; Division 2286
12 Ibid c643; Division 2285
13 Ibid
14 HL Deb 15 July 2020 c1668

> millions of working people while being more sustainable for employees and employers alike.[15]

Through the Bill, the UK would be "among the very first countries in the world to put climate change reporting for pension funds into law."[16]

Shadow Work and Pensions Secretary, Jonathan Reynolds, and the then Shadow Pensions Minister, Jack Dromey, said the Opposition broadly welcomed the Bill. It wanted to see amendments in three areas – protecting people, protecting pension schemes and protecting the planet. Regarding pensions dashboards, they called for:

- People to be able to see, in future, how exposed to climate risk their retirement portfolio was;
- Retention of the Lords' amendments to prevent the dashboards from enabling transactions for a fixed period and for a publicly-run dashboard to be in place for a year before commercial dashboards were introduced;
- Careful consideration of the role dashboards might play in helping people to consolidate small pots at low cost, while ensuring that they made informed decisions.[17]

On the regulation of DB schemes, they urged the Government to retain a requirement in the Bill for a different regulatory approach to the funding of open and closed DB schemes, working with the Opposition to address any concerns about the wording of the Lords' amendment, if necessary.[18] Turning to issues that were not in the Bill, they asked when the Government would legislate in relation to superfunds, an area which should not be left to the Pensions Regulator to rule on.[19] They also raised the issue of the adequacy of pension protection compensation to members of pension schemes that had wounded up underfunded, such as the Allied Steel and Wire pension scheme.[20]

The SNP also broadly supported the Bill.[21] Work and Pensions spokesperson, Neil Gray, welcomed the pensions dashboard and said he would oppose any attempt by the Government to remove the Lords' amendment to allow "for the public dashboard to be bedded in for a year before commercial dashboards come in."[22] He also hoped a compromise could be found, allowing a different approach to the regulation of open and closed DB schemes, while addressing any concerns the Government might have about the wording of the Lords' amendment.[23] Areas where he regretted that the Bill was silent included a solution for the Plumbing Pensions Scheme, the establishment of an independent pensions commission and faster roll-out of reforms to reduce the age threshold for auto-enrolment and remove the lower limit of earnings on which contributions are paid and superfunds. He

[15] HC Deb 7 October 2020 c909
[16] HC Deb 7 October 2020 c909
[17] Ibid c915 and 957
[18] Ibid c916 and 958
[19] Ibid c917
[20] Ibid c958
[21] Ibid c920
[22] Ibid c911
[23] Ibid c921

welcomed the measures in the Bill to protect people from scams but wanted to see more done to address some of the issues resulting from the pension freedoms, such as potential for mis-selling through transfers out of DB schemes.[24]

Chair of the Work and Pensions Committee, Stephen Timms, also hoped the Government would retain the Lords amendment requiring a public pensions dashboard to be in place before commercial dashboards were introduced. He wanted to see more to done to address scams, by enabling pension scheme trustees to refuse a transfer in the event of a major 'red flag' being raised. He said it was hard to argue that the statutory right of transfer should apply if the destination was a firm listed on the Financial Conduct Authority's warning list.[25]

For the Liberal Democrats, Wendy Chamberlain, supported the Lords' amendments to require trustees to ensure collective defined contribution schemes operated in a way that was intergenerationally fair and for a different regulatory approach to the funding of open and closed DB schemes. She asked about timescales for the introduction of pensions dashboards, the intended solution for the proliferation of 'small pots' as individuals move jobs.[26]

Winding up the debate, Pensions Minister, Guy Opperman, said:

- The Government would address the issue of superfunds.
- Regarding scams, it was "crucial that we drive through real change in clause 125 and the regulations that follow."[27]
- Regarding dashboards, the Government was keen that there should be a detailed authorisation regime and that there were suitable restraints in place to ensure that the system was not open to abuse. The end product would include something about costs and charges and, hopefully, enable much simpler statements to be provided.[28] The Government was committed to there being a public dashboard from the start but thought that a variety of dashboards would help to evolve the project for customers with different needs and existing relationships with their provider. On small pots, the Government had established a cross-industry working group to assess the problem and identify solutions.[29]
- On open DB schemes, he was happy to continue the dialogue with pension schemes and The Pensions Regulator (TPR). The measures in the Bill were designed to deliver clearer funding standards while being schemes specific and allowing flexibility.[30]

The Bill had four sessions in Public Bill Committee over two days – 3 and 5 November. During these stages, the Government amended the Bill to

[24] Ibid c923
[25] Ibid
[26] Ibid c955
[27] Ibid c929; Letter from Guy Opperman to Steven Timms, 6 October 2010
[28] Ibid c959
[29] Ibid, c962;'Government establishes cross-sector working group to help address multiple small pension pots', DWP press release, September 2020
[30] Ibid, c962

remove the four opposition amendments made in the Lords. These amendments were then sent back to the Lords for consideration.

1.5 Final stages

The Lords accepted the Commons amendments without division on 19 January 2021.[31]

Baroness Stedman-Scott explained why the Commons had removed the Lords' amendments and made commitments relating to the consultation on the regulations relating to the funding requirements for open defined benefit schemes.

These debates are covered in the following sections of this paper, relating to the relevant parts of the Bill.

Other issues debated

As well as debating the provisions in the Bill, wider issues debated on the final afternoon of Committee Stage on 5 November included: implementation the recommendations of the 2017 review of auto-enrolment; consolidating small pension pots; the application of section 75 employer debt provisions to multi-employer pension schemes, such as the Plumbing Pension Scheme; regulation of superfunds; the adequacy of Financial Assistance Scheme compensation; and requirements on pension scheme trustees to publish information about how voting and other engagement activities have been carried out and to publish their statement of investment principles.

The issues facing the plumbers with potential section 75 employer debts relating to membership of the Plumbers' Pension Scheme were returned to on 16 November at Report stage. SNP spokesperson, Neil Grey, moved an amendment intend to protect those plumbers had found themselves facing bankruptcy and poverty "through no fault of their own, but because of a lack of information from trustees regarding their potential section 75 obligations."[32] Mr Opperman responded that the "current legislation already provides a discretion for trustees not to pursue employers' debts if they decide that it would be too costly or too lengthy to seek a recovery. Trustees also have the flexibility to collect reduced employer debts without compromising their Pension Protection Fund backing if they are funded above a section 179 basis."[33] The SNP amendment was defeated on division by 349 votes to 262.[34]

The background to this is in Section 75 employer debt and multi-employer pension schemes, Commons Library Briefing Paper 7684, February 2020.

31 HL Deb 19 January 2021 c1092-1112; Minutes of proceedings, 19 January 2021
32 HC Deb 16 November 2020 c103
33 Ibid c110
34 Ibid c121

2. Parts 1 and 2 - Collective Money Purchase Schemes

For background, see Collective defined contribution schemes, Commons Library Briefing Paper CBP 8674, July 2020

Although the Bill refers to Collective Money Purchase (Schemes or Benefits), the term Collective Defined Contribution (CDC) was generally used in debates on the grounds that it is more widely understood.[35]

2.1 Background

There are currently two main types of occupational pension scheme:

- Defined Benefit (DB) – which provide pension benefits based on salary and length of service; and
- Defined Contribution (DC) - where the level of pension someone will receive depends on factors such as the level of contribution paid and investment returns. The term used in legislation is 'money purchase'.[36]

A key difference between the types of scheme is who bears the risk: in DB schemes, the risks associated with longevity, investment and inflation are borne by the sponsoring employer; in DC schemes, by the individual.[37]

The shift from DB to DC in the private sector over recent decades (see section 1.2 above) has prompted successive governments to investigate whether there are other options that might provide greater certainty for employees than a pure DC pension, without the cost volatility for employers associated with DB.

The Coalition Government legislated in the *Pension Schemes Act 2015* for a third category of pensions (Defined Ambition) and to enable schemes to provide 'collective benefits', where risks are shared among members by pooling their assets. The Conservative Government elected in 2015 put these plans on hold, to focus on the implementation of reforms, such as auto-enrolment, already in the pipeline.[38]

In July 2018, the Work and Pensions Select Committee said the profile of the issue had been raised by the agreement between Royal Mail and the Communication Worker's Union in which they agreed to pursue the creation of a Collective Defined Contribution (CDC) scheme, as a way of resolving a dispute over the future of pension provision at the company.[39]

The Government consulted on proposals for CDCs in November 2018.[40] The Government published its response to the consultation in March

35 HL Deb 24 February 2020 c3GC
36 *Finance Act 2004,* s152; *Pension Schemes Act 1993*, s181; *Pensions Act 2008,* s99
37 DWP, Pension Schemes Bill Impact Assessment, June 2014, page 12, para 9
38 HLWS 238, 15 October 2015
39 Work and Pensions Committee, Collective defined contribution pensions, HC 580, July 2018; For more information, see Royal Mail Group's Campaign for CDC pensions and Communication Workers' Union – Pension Update
40 DWP, Delivering Collective Defined Contribution Pension Schemes, Nov 2018, p8

2019 and said it would legislate to implement the main proposals in the consultation:

> We set out our proposed approach for providing for CDC schemes in our consultation document *Delivering Collective Defined Contribution Pension Schemes*, including requirements for CDC schemes to operate with systems and approaches that ensure sustainability, transparency and effective communication. Intergenerational fairness must be at the heart of CDC schemes. All this will be underpinned by a requirement for CDC schemes to be authorised by the Pensions Regulator. Government is grateful for the constructive comments and broad support our proposals received. Also, many responses, from trade unions, master trusts, and other pension providers, expressed a desire to see more people benefiting from the advantages that CDC can bring. They urged us, in time, to extend CDC to other parts of the pensions market.[41]

Introducing Part One of the Bill at Commons Committee stage, Pensions Minister, Guy Opperman, explained that it had cross-party support:

> In CDC schemes, members and employers make fixed-rate contributions to the pension fund. At retirement, members receive their regular pension income paid out of the fund each year until death. The rate or amount of the pension is not guaranteed and will be adjusted annually depending on how much money is in the fund and the projected cost of providing benefits under the scheme. CDC schemes offer the security of an income in retirement, which we know many people value, without individuals having to purchase an annuity on retirement. However, CDC schemes do not require the employer to make additional financial contributions to the scheme if the scheme's financial position weakens. CDCs have been introduced under a cross-party approach, with great support from all parts of the House. The pioneers of the scheme are the Communication Workers Union and the Royal Mail, which have proposed a way forward.[42]

For the Opposition, Seema Malhotra said Labour supported "the move to create CDC schemes provided, of course, that they are not used as a means of downgrading good DB schemes." She cited modelling by Willis Towers Watson showing that the Royal Mail CDC scheme would have provided better outcomes for savers than traditional DC through the COVID19 crisis.[43]

Chair of the Work and Pensions Committee, Stephen Timms, welcomed the proposed legislation for CDC pensions and congratulated Royal Mail, the CWU and others on their joint efforts to achieve the statutory framework needed to deliver them. He stressed the importance of effective communication with scheme members, given that CDC schemes could not go back to the employer to ask for more funding and so needed to be able to vary pensions if things proved better or worse than predicted. He hoped the Government would take advantage of the power in clause 47 to allow multi-employer schemes or providers to offer CDC master trusts. Like the then Shadow Pensions Minister,

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41 HCWS 1422 18 March 2019; DWP, Government response: delivering CDC pension schemes, March 2019

42 PBC Deb 3 November 2020 c4

43 Ibid c6; Collective Defined Contribution Pensions. 2020 Pension Schemes Bill: establishing collective defined contribution pensions in the UK, RSA, July 2020

Jack Dromey, he thought this could be beneficial for the many small employers in the care sector, for example.[44]

For the SNP, Neil Gray also supported Part One of the Bill, provided CDC schemes did not become a replacement for DB schemes.[45]

Responding, Mr Opperman agreed on the importance of good communication. Endorsement of this approach from the CWU and Royal Mail would not have been possible without member engagement from the start. CDC schemes were intended as a further option, not a replacement for DB.[46] The Bill was sufficiently wide so that other organisations such as Master Trusts could be included. He agreed that there was "great eagerness to have smaller, multi-employer schemes take part on an ongoing basis, to see how they progress."[47]

The Public Bill Committee received written evidence on CDCs from organisations including the Pensions Policy Institute, the Communication Workers' Union and Royal Mail Group and the Institute and Faculty of Actuaries.

2.2 Clauses 1 to 6 - definitions

This section sets out the meaning of key terms used in Part 1. Full details are in the Explanatory Notes.

The Government's intention is to legislate for CMPS benefits to be a type of money purchase benefit, with no ongoing employer liabilities to the scheme.[48]

Clause 1 would define collective money purchase benefit (CMPB) and collective money purchase scheme (CMPS), with reference to 'qualifying benefits' and 'qualifying schemes.'

To be 'qualifying benefits' under **clause 2**, scheme rules must provide for the rate or amount of benefits to be subject to periodic adjustment so as to achieve a balance between the available assets and projected costs. This would "make it clear that qualifying benefits would not be subject to any guaranteed level, with the employer not liable for any deficit."[49]

Under **clause 3**, a 'qualifying scheme' must be a trust-based scheme set up by an employer or group of connected employers (i.e. not a Master Trust – which provides for multiple unconnected employers) and must not be a public service pension scheme.[50] If it also provides non-qualifying benefits, these must be in a separate section.

Clause 6 and **Schedule 1** would insert the term CMPB into other relevant legislation, as a subset of 'money purchase benefit.'

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44 Ibid c7-8
45 Ibid c7
46 Ibid c11
47 Ibid c11
48 DWP, Delivering CDC pension schemes – government response to consultation, March 2019 para 43-49
49 Bill 165-EN, para 61
50 *Pension Schemes Act 2017;* Commons Library Briefing Paper *Master trust regulation*, CBP 7758, October 2018

2.3 Clauses 7-10 – Authorisation

These clauses are intended to provide for a bespoke authorisation regime for CMPS which would resemble many elements of the Master Trust approach.[51]

Clause 7 would require a CMPS to be authorised by TPR, for which it must meet criteria set out in **clause 9.** A person operating a CMPS without authorisation may be liable for a civil penalty.

Clause 8 would make provision regarding applications for authorisation to TPR, including the information to be included.

Clause 9 outlines the criteria for authorisation (expanded on in clauses 11 to 17). All must be met – and continue to be met – for a scheme to be authorised and operate.[52]

Clause 10 would provide for an appeal to a tribunal in the event of authorisation being refused.

Debates

At Lords Committee stage, Labour Peer Lord McKenzie proposed an amendment to **clause 8** (application for authorisation) that would require TPR to take account the potential impact of the scheme on the DB landscape in deciding whether to authorise a scheme. Work and Pensions Minister, Baroness Stedman-Scott, responded that employers were increasingly moving away from DB arrangements in order to be able to manage cost and risk. She said that CMPS provided a new opportunity for employers and employees to choose a scheme that works for both and argued that it was not for government to encourage employers to provide schemes for which they were unable to bear the cost and risk. She said that there was provision in the Bill to prevent public service pensions and accrued DB rights from being converted into CMPBs.[53] This issue was debated again at Commons Committee stage.[54]

2.4 Clauses 11 to 17 - Authorisation criteria

Under **clause 11,** key individuals would be required to satisfy a **fit and proper persons test**, as assessed by TPR and taking into account requirements in regulations and other matters it thinks appropriate. The requirement would apply to scheme trustees, those with the power to appoint or remove them, those with the power to vary scheme rules and persons acting in a capacity specified in regulations.

Under **clause 12,** TPR must be satisfied that a **scheme's design** is sound, taking account of its viability report (see clause 13) and certificate, and other matters specified in regulations.

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51 DWP, Government response to consultation. Delivering collective defined contribution pension schemes, March 2019, para 172; Master trust regulation, Commons Library Briefing Paper 7758, October 2018
52 Bill 165-EN, para 83
53 HL Deb 24 February 2020 c1-5 GC
54 PBC Deb 3 November 2020 c6-10

Clause 13 would require trustees to produce a **viability report** explaining the scheme's design and why they consider it sound. This must be certified by the scheme actuary, who can only do this if satisfied that the rules comply with the requirements of clause 18 (calculation of benefits). Trustees would be required to review reports at least annually and submit them to TPR.

Under **clause 14**, TPR must be satisfied that a scheme meets the **financial sustainability requirement** i.e. has sufficient resources to meet set up and ongoing operational costs and, in the event of a triggering event occurring, complying with the requirements of clauses 31 to 45 and continuing to run for a period of between six months and two years.

Clause 15 would require TPR to decide whether the scheme has adequate systems and processes for **communicating** with members and others.

Clause 16 would require TPR to decide whether a scheme meets **systems and processes requirements** including, but not limited to, those relating to IT and the appointment and removal of trustees.

Under **clause 17,** schemes must have an adequate **continuity strategy**, setting out how the interests of members are to be protected if the scheme experiences a 'triggering event.' This must specify the level of administration charges applying in relation to scheme members.

In a letter dated 5 March 2020, Baroness Stedman Scott explained how this framework was intended to safeguard member benefits.

2.5 Clauses 18-23 - Valuation and benefits adjustment

Under **clause 18** scheme rules must specify how benefits are calculated and adjusted; how scheme assets are identified and valued; and how the amount expected to be required for providing benefits under the scheme is to be determined.

Regulations can make provision about the matters to be included in scheme rules, including how adjustments are to be treated, and the assumptions and methods that should underpin the benefit calculation.

Pension scheme rights built up before the regulations come into force would be adjusted in accordance with them.

Under **clause 19,** trustees would be required to take the advice of the scheme actuary before making decisions on which methods or assumptions are to be used for the calculation of benefits.

Clause 20 would require CMPS trustees to instruct the scheme actuary to prepare actuarial valuations of the scheme. These would form the basis of any calculation of scheme benefits. The Secretary of State would have the power to make regulations setting out the information and statements to be included, and when reports must be prepared and submitted to TPR.

Clause 21 would require the actuary to certify that the valuation has been prepared in accordance with scheme rules.

Clause 22 would provide that where an adjustment in the rate or amount of benefits is required in accordance with the scheme rules, and has either not been made in accordance with the most recent actuarial valuation, or has been made in a way that diverges from scheme rules, this must be reported to TPR, along with an explanation.

Clause 23 would give TPR powers to direct trustees to take actions, where the trustees have without good reason failed to (i) obtain an actuarial valuation as required by the legislation or (ii) adjust the benefits in accordance with the most recent valuation and/or the scheme rules. Subsection (5) would impose a financial civil penalty on any trustees who fail to take all reasonable steps to comply with a direction issued by TPR.

2.6 Clauses 24 and 25 - members' rights

The 'subsisting rights' provisions in section 67 of the *Pensions Act 1995* are intended to ensure members of DB schemes have a legal right to the benefits they have built up. In broad terms, they prevent changes to scheme rules which would affect accrued rights unless the changes are 'actuarially equivalent', or the member has consented. **Clause 24** would make adjustments to these provisions as they apply to CMPS. These are needed because members of CMPS have a right to a variable amount or rate of benefit, rather than a certain amount. [55]

Subsections (3) and (4) of clause 24 would prevent entitlement to non-money purchase benefits (for example, DB) being converted to, or replaced by, CMPBs.

Subsections (5) and (6) would allow for the **relevant transformation** of a subsisting right, provided individual members have consented, defined as:

a. conversion of non-money purchase benefits into any form of money purchase benefits, other than a CMPB;

b. conversion of other money purchase benefits into CMPB; or

c. conversion of CMPB into other money purchase benefits.[56]

Subsection 2 (e) would create a regulation-making power to disapply the subsisting rights provisions in prescribed cases.[57] The intention is to ensure that they do not prevent CMPS from operating in the ways intended in the Bill. The regulations would be subject to the negative resolution procedure in Parliament in order to "ensure consistency of approach across section 67 of the *Pensions Act 1995*."[58]

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55 Bill 165-EN, para 128
56 Ibid para 131
57 Ibid para 129
58 DWP, *Pension Schemes Bill* 2019/21. Delegated Powers Memorandum, para 1.101

2.7 Transfers

Clause 25 makes specific provision for the operation of CMPS members right to transfer their accrued pension rights to another pension scheme.

Clause 25 (3) would require trustees to facilitate a transfer within six months of the date of the transfer application (as with DC schemes).

Clause 25 (5) would provide that where trustees receive an application for a transfer of CMPBs, they can only facilitate this after 21 days have passed, unless they have written consent from the scheme member to do so earlier.

The Secretary of State would have power to amend these time limits, if needed in the light of experience.[59]

2.8 Ongoing supervision

Clauses 26-30 set out the requirements for ongoing supervision of CMPS, including:

- The Pensions Regulator (TPR) would publish and maintain a list of authorised CMPS;
- TPR would be able to issue a notice requiring trustees to submit a supervisory return;
- Trustees would be required to notify TPR of significant events; and
- TPR would be able to issue risk notices and withdraw authorisation from a scheme if it is no longer satisfied that it meets the authorisation criteria.

The Lords amendment

At Committee stage in the Lords, Peers questioned whether there were sufficient checks to ensure that CMPS operated in a way that would be fair between the generations.

Liberal Democrat Peer, Lord Sharkey, was concerned that the Government had chosen to press ahead without quantifying the possible disbenefits to younger members, or a clear mechanism to limit them.[60] Crossbench Peer, Lord Vaux, referred to recent experience in the Netherlands, where CDC schemes had been able to avoid temporarily making cuts in benefits by reducing the minimum funding requirement, which "clearly pushes the risk onto the younger generation."[61]

Baroness Stedman-Scott explained how the Government aimed to ensure intergenerational fairness:

59 DWP, Pension Schemes Bill - Delegated Powers Memorandum, Jan 2020, para 1.106-9
60 Ibid c5-14GC
61 Ibid c6GC

- Regulations under Clause 18 would require 'no difference in treatment' between different cohorts or age groups when calculating benefits or applying adjustments.
- Clause 12 would protect scheme members from being enrolled into poorly designed schemes that were not viable. TPR would consult on how it would assess the soundness of scheme design.
- An individual would only be entitled to a transfer value equal to their share of the present value of the assets. Communications would make clear that the further a member was from retirement, the smaller the share of assets attributable to them.
- Under clause 13, the viability of schemes would be reviewed annually and TPR notified if a report became inaccurate or incomplete.
- The measures in the Bill would ensure that both employers and trustees were alive to the potential risks and would enable TPR to undertake appropriate scrutiny before and after authorising a scheme.[62]

At Report stage, Lord Sharkey expressed concern that the Government's mechanism for ensuring intergenerational fairness relied on regulations under clause 18, which were still to be consulted on.[63] His proposed amendment to **clause 27** (requirement to submit supervisory return) would provide that, whenever TPR issued a notice requiring a scheme to submit a supervisory return, it must include a requirement that the trustees assess the extent to which the scheme is operating "in a manner fair to all members."[64] Baroness Stedman-Scott responded that the Government had learnt from experience overseas. This was why "envisaged regulations under Clause 18 will mean that the CDC's scheme rules must require that there is no difference in treatment between different cohorts or age groups of scheme members when calculating benefits and applying benefits adjustments."[65]

The House of Lords voted to accept Lord Sharkey's amendment by 270 votes to 246.[66]

In Second Reading debate in the Commons on 7 October 2020, opposition parties expressed support for the principle of safeguards to ensure intergenerational fairness.[67] At Committee stage, Mr Opperman explained that the Government did not think clause 27 (3) was appropriate and would seek to overturn it. He said that requiring trustees to make the envisaged assessment was "likely to generate confusion unless further clarity is provided" and might result in legal disputes. The Government wanted to use regulations to set out clear principles and processes that schemes must follow to ensure that different types of members are treated the same where justified:

62 Ibid c13GC
63 HL Deb 30 June 2020 c601
64 Ibid c602
65 Ibid c605
66 Ibid c612
67 HC Deb 7 October 2020, c917 [Jonathan Reynolds] and c954 [Wendy Chamberlain]

> Those requirements would form part of the authorisation process for the CDC schemes, overseen by the Pensions Regulator. Regulations under clause 18, for example, will require CDC schemes to ensure that there is no difference in treatment between different scheme member cohorts or age groups when calculating or adjusting benefits.[68]

He described this as a "clearer, better and more effective approach to delivering fairness in practice," which was supported by the Institute of Faculty of Actuaries and by the Communication Workers Union and Royal Mail.[69]

Pressed to explain how this would work, the Minister said that there would be a two-phase process. The details would be in regulations, on which there would be consultation:

> In the first phase, a company must come forward to the regulator and seek permission to go down the CDC route; that goes back to the way in which the company and the employees work. A separate set of regulations will then be the framework on which that is judged. I suggest that this is specific to individual companies, because fairness will be different for different organisations and they will be treated in different ways. There is a supervisory regime that must be gone through, and there will be a consultation on regulations regarding how it will be administered.[70]

The Government's amendment, removing Lord Sharkey's amendment (clause 27 (3)), was made to the Bill, without division.[71]

Baroness Stedman-Scott explained the reasons for this when the Bill returned to the Lords, for consideration of Commons amendments, on 19 January 2021:

> We welcome the strong interest shown in both Houses on ensuring that CDC schemes treat their members fairly and, in particular, operate in a way that is intergenerationally fair. As we explained in both Houses, requiring trustees to assess fairness is likely to generate confusion, as the concept means different things to different people, and there would be uncertainty about what was required. That is why we have intentionally avoided referencing fairness in such a way within any of the CDC provisions. Instead, following consultation, we intend to use these regulations to set out clear principles and processes that schemes must follow to ensure that different types of members are treated the same where appropriate—for example, when accruing and calculating benefits and making adjustments to benefits. These requirements will form part of the authorisation process for CDC schemes overseen by the Pensions Regulator.
>
> For example, we intend that regulations under Clause 18 will require CDC scheme rules to ensure that there is no difference in treatment when calculating and adjusting benefits between different cohorts or age groups of scheme members, or between members who are active, deferred or receiving a pension. This is a clear and effective approach to delivering fairness in practice that

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68 PBC Deb 3 November 2020 c12-13
69 Written evidence to the Public Bill Committee from the Institute and Faculty of Actuaries and Royal Mail and the Communication Workers' Union, October 2020
70 PBC Deb 3 November 2020 c14
71 Ibid c22

> is not only easy to understand, but also easy for members and trustees to apply, because it avoids a subjective interpretation of what is fair. We are all pleased that Royal Mail agrees with our approach, and it is for these reasons that we do not consider the amendment to the Bill necessary.[72]

The Lords accepted the Commons amendment without division.[73]

Financial sustainability

At Committee stage in the Lords, Lord McKenzie proposed adding employers to the list of parties that TPR could require to provide funding to meet the financial sustainability requirement. He was concerned that otherwise, the only source of funding to resolve a triggering event would be scheme assets, meaning members would fund the risk of scheme failure. Baroness Stedman-Scott explained that the financial sustainability requirement was intended to ensure schemes were able to resolve triggering events without recourse to member benefits. There would be a variety of mechanisms for financing these costs, including from employers via contingent assets or funds in an escrow account.[74]

Shadow Work and Pensions spokesperson, Baroness Sherlock, asked where the Bill would provide for employers to be required to provide funding for scheme sustainability, given that clause 14 (4) (b) referred to "requirements to be met by the scheme relating to its financing."[75] The Minister explained that regulations might specify requirements to be met by the scheme relating to its funding.[76]

Advice requirements - transfers out

At Lords Committee stage, Conservative Peers Lord Young and Baroness Altmann proposed that there should be an advice requirement for members seeking to transfer out of a CMPS. Such a requirement already applied to members of DB schemes with rights worth more than £30,000 who seek to convert or transfer these to flexible benefits.[77] Their intention was to ensure members were aware of the value of the benefits they would potentially be giving up.[78]

Baroness Stedman-Scott explained that the Government did not think this appropriate at this stage. It would take time for members' funds to grow to this level and officials would monitor the situation to see if an advice requirement was needed.[79] In the meantime, the Bill would

72 HL Deb 19 January 2021 c1093
73 Ibid c1099
74 An escrow account is a financial instrument whereby funds held by a third party on behalf of two other parties that are in the process of completing a transaction; HL Deb 24 February 2020 c16GC
75 HL Deb 24 February 2020 c19GC; Division 2284
76 DEP 2020-0165
77 HL Deb 24 February 2020 c29-31GC
78 *Pension Schemes Act 2015, c48*; Library Briefing Paper CBP 8382
79 HL Deb 24 February 2020 c32GC

require schemes to provide members with appropriate information to help them understand how their scheme worked.[80]

Ongoing supervision

Lord Hutton asked how the Government proposed to ensure that TPR was able to ensure, on an ongoing basis that trustees of CDC schemes were fit and proper persons. Baroness Stedman-Scott responded that the Bill already contained a power for TPR to withdraw authorisation if it was not satisfied that authorisation criteria were met (**clause 30**). It needed to be satisfied of this on an ongoing basis. Lord Hutton said the Bill did not appear to give TPR a continuing power to vet trustee appointments.[81] In a letter after the debate, the Minister explained that TPR would be required to consider whether the authorisation criteria were met. Authorisation could be withdrawn if it was no longer satisfied. The Government envisaged that TPR would maintain its scrutiny of this primarily through a combination of significant events notifications and the supervisory return.[82]

2.9 Clauses 31-45 - triggering events and continuity options

These clauses would require trustees to notify TPR when a CMPS experiences a 'triggering event' and pursue one of three 'continuity options'.

Under **Clause 31**, 'triggering events' would include:

- the issuing of a relevant notice by TPR in respect of a decision to withdraw authorisation;
- a relevant employer experiencing an insolvency event, or in some cases being unlikely to continue as a going concern; or
- a person who has power to do so, deciding that a scheme should be wound up or closed (or an event occurring that would result in this under the provisions of the scheme).

Clause 32 sets out the conditions under which a triggering event would start and end.

Clause 33 sets out who would be required to notify TPR of specific triggering events.

Clause 34 would provide that, following a triggering event, the scheme trustees would have to pursue one of the three continuity options:

- One: discharge of liabilities and winding up;
- Two: resolve the triggering event;
- Three: convert to a closed qualifying scheme.

Further details of these continuity options are given in **clauses 36 to 38**.

80 Ibid
81 HL Deb 24 February 2020 c34-8GC
82 DEP 2020-0165

Clauses 39 to 43 would require trustees to submit an implementation strategy to TPR for approval and to make periodic reports.

Under **clause 44**, TPR would be able to require certain activities to be paused following a triggering event, including:

- accepting new members;
- making payments towards the scheme;
- making transfers out of the scheme; and
- paying benefits (or specified benefits).

There would also be restrictions on trustees increasing or imposing administration charges during a triggering event period **(clause 45).**

2.10 Other provisions

Clause 46 would give the Secretary of State power to make regulations setting out in detail what information trustees of CMPS will be required to publish.

Diversity in trustee boards

At Commons Committee stage, Stephen Timms proposed requiring trustees of CMPS to send TPR information on the diversity of their trustee boards. He argued that it was a familiar criticism that there was insufficient diversity among directors of FTSE 100 companies. The "position among pension trustee boards is a great deal worse." His proposed amendment was intended to address this for CMPS, an approach that he hoped would subsequently be applied to other pension trustee boards. He noted TPR's comment in 2019 that pension boards benefited from "having access to a range of diverse skills, points of view and expertise as it helps to mitigate against the risk of significant knowledge gaps or the board becoming over-reliant on a particular trustee or adviser. It also supports robust discussion and effective decision making." The purpose of the amendment was to ensure the industry working group, set up by TPR to look at the issue, had data to work from.[83] The Minister responded that TPR was consulting on the issue and that it would be "premature to pre-empt the outcome of the regulator's work in this area, which, self-evidently, starts from the basis of considering not only whether the persons putting themselves forward are fit and proper persons, but the key issue of diversity." Mr Timms did not push his amendment to a vote.[84]

Clause 47 would enable CMPS to be extended to schemes established by non-employers or used by multiple employers not all of whom are connected with one another.[85]

Clause 48 and **Schedule 3** provide for minor consequential amendments. The Government amended Schedule 3 at Committee stage to ensure that it could make regulations under Schedule 18 to the *Pensions Act 2014* in relation to CMPS. This would, for example, mean

83 PBC Deb 3 November 2020 c18
84 Ibid c22; TPR, Future of trusteeship and governance consultation, Updated Feb 2020
85 Bill 165 EN, para 246

that the Government could ensure there would be a 0.75% cap on charges, as in DC schemes. Full details would be set out in regulations.[86]

Clause 128 would repeal sections of the *Pension Schemes Act 2015* which have not been commenced and would be superseded by provisions in Part 1.[87]

Extension to multi-employer schemes

At Lords Committee stage, Lord Sharkey raised concerns about the appropriateness of Ministers using regulations to allow CMPS to be extended to multi-employer schemes and Master Trusts.[88] Both the Delegated Powers and Regulatory Reform and Constitution Committees had considered this to be inappropriate.[89] He said the fact that the Bill currently prohibited multiple-employer CDC schemes suggested that they might give rise to significantly different regulatory issues. He described **Clause 47(5)** as "a naked Henry VIII power" (i.e. would allow Ministers to amend or repeal provisions in an Act of Parliament using secondary legislation, where Parliament has relatively little power of scrutiny).[90]

Baroness Stedman-Scott responded that the Government intended to consult on the content of the regulations and could not pre-judge the outcome of this. Outside bodies had been calling for the extension of CMPS to Master Trusts and to saving-only products. The underlying principles to apply would be those that were agreed during the Bill's passage through Parliament.[91]

However, the Government amended **Clause 47** at Report Stage on 30 June to make it "clearer that this power is not as wide as it may have appeared on first reading." Any changes would be consulted on thoroughly before being brought before the House. Regulations would be subject to the affirmative procedure, which requires debate and approval by both Houses of Parliament.[92]

In the Commons, the then Shadow Pensions Minister Jack Dromey and chair of the Work and Pensions Committee Stephen Timms expressed support for extending CDCs to multi-employer schemes to enable small employers to benefit.[93] The Minister responded that the Government wanted to press ahead with this.[94]

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86 HL Deb 24 February 2020 c49C
87 Bill 165 EN, para 668
88 A Master Trust is a trust-based occupational pension scheme which seeks to generate economies of scale by serving multiple employers, who may be entirely unrelated. See Master trust regulation, Commons Library Briefing Paper CBP 7758, October 2018
89 Delegated Powers and Regulatory Reform Committee, Pension Schemes Bill [HL], 4th Report of Session 2019–21, HL 17, para 29; Constitution Committee, Pension Schemes Bill [HL], 2nd Report of Session 2019-21 - HL 22, 13 Feb 2020, para 14
90 HL Deb 24 February 2020 c22GC
91 Ibid, c27GC
92 HL Deb 30 June 2020 c578; Parliament website – statutory instruments in the House of Commons
93 PBC Deb 3 November 2020 c4
94 Ibid c11

2.11 Collective Money Purchase Benefits: NI

Part 2 of the Bill (clauses 52-102) would make the same provisions for Northern Ireland as made in Clauses 1-51 for England and Wales and Scotland.

3. Part 3 – The Pensions Regulator

For more information, see The Pensions Regulator: powers to protect pension benefits, CM 4368, July 2020

The Pensions Regulator (TPR) was set up under the *Pensions Act 2004* as part of a package of measures aimed at improving the protection of pension scheme members' benefits and making provision easier for employers. Compared to its predecessor, TPR was intended to take a more risk-focused and proactive approach and would have power to act against employers' attempts to avoid meeting their pension obligations.[95] Its main 'anti-avoidance' powers are to issue:

- **Contribution Notices**: these require a target to make a lump sum payment to a scheme (or to the Pension Protection Fund);[96]
- **Financial Support Directions**: these require the target to put arrangements in place to support the scheme, the details of which are approved by TPR.[97]

For those wanting confirmation that they will not be subject to those powers when, for example, dealing with a business transaction, there is a procedure where they can get 'clearance' in advance from TPR.[98]

Following a high-profile inquiry into the BHS Pension Scheme and others in 2016, the Work and Pensions Select Committee recommended enable TPR to intervene sooner when difficulties become apparent. It also said the Government should consult on making clearance mandatory in some cases and giving TPR power to impose punitive fines that could treble the amount payable under the existing anti-avoidance powers.[99]

In its February 2017 Command Paper, the Government said that the overarching view of virtually all stakeholders was that the regulatory regime for DB pensions was satisfactory. However, there might be a case for limited changes to help employers and trustees manage liabilities more effectively in some of circumstances. It asked for views on reforms including:

- Proactive compulsory clearance of certain corporate activities in limited circumstances; and
- Levying substantial fines on companies for corporate transactions that have a detrimental impact on schemes.[100]

95 DWP, 'Simplicity, security and choice. Working and saving for retirement. Action on occupational pensions', 2003; NAO, 'The Pensions Regulator: Progress in establishing its new regulatory approach', HC 1035, Session 2006-07, 26 October 2007
96 See Pension Protection Fund, Commons Library Briefing Paper CBP 3917, August 2020
97 *Pensions Act 2004,* Part 1; TPR website/about us/how we regulate and enforce/anti-avoidance powers
98 *Pensions Act 2004,* Part 1; TPR Regulatory Guidance, Clearance, Issued March 2010
99 Nuclear deterrent to avoiding pensions responsibility needed, says Committee, Work and Pensions Committee press release, 21 December 2016; Defined Benefit Pension Schemes, HC 55, Sixth report of 2016-17
100 DWP, Security and Sustainability in Defined Benefit Pension Schemes, CM 9412, Feb 2017, para 139-40, page 73

In its March 2018 White Paper, the Government said to strengthen the regulatory framework and TPR's powers, it would:

- Give TPR powers to punish those who deliberately put their pension scheme at risk by introducing punitive fines;
- Legislate for a new criminal offence for those who have committed wilful or grossly reckless behaviour in relation to a pension scheme and build on the existing process to support the disqualification of company directors;
- Strengthen the existing framework so that employers have appropriate regard to pension considerations in any relevant corporate transactions, including improving the effectiveness and efficiency of TPR's existing anti-avoidance powers.
- Extend information-gathering powers by giving TPR powers to compel any person to submit to an interview, issue civil sanctions for non-compliance and inspect.[101]

A further consultation, Protecting DB pension schemes – a stronger Pensions Regulator, was published in June 2018, with a Government response in February 2019.

3.1 Clauses 103 to 117

Clause 103 would introduce two new tests under which TPR could issue a contribution notice (CN):

- The "**employer insolvency test**" - TPR would be able to issue a CN where:
  - immediately after an act, or failure to act, the value of a scheme's assets was less than its liabilities; and
  - if an 'employer debt' had fallen due, the act or failure to act would have materially reduced the amount that could be recovered had the employer become insolvent.
- The "**employer resources test**" – TPR would be able to issue a CN where:
  - the act or failure to act reduced the value of the resources of the employer, and
  - that reduction was a material reduction relative to the amount of the estimated employer debt.[102]

The clause also sets out the conditions for defence in each case.[103]

The table below lists the new civil and criminal offences to be introduced under the Bill:

101 DWP, Protecting defined benefit pension schemes, March 2018, Cm 9591, ch 1
102 Bill 165 EN, paras 312-57 and para 329
103 Ibid, p38-40

New Offence	**New Penalty**	**Target**	**Pension Schemes Bill 2019/21**
Avoidance of employer debt; conduct risking accrued scheme benefits	Criminal offence: up to 7 years' imprisonment and/or a fine (unlimited, except in Scotland where limited to the statutory maximum); and/or new civil penalty up to a maximum of £1m	Any person	Clause 107 and 115
Failure to comply with a Contribution Notice	Criminal offence: fine (unlimited, except in Scotland, limited to the statutory maximum); and/or new civil penalty: up to a maximum of £1m	A person to whom a CN has been issued	Clause 106 and 115
Failure to comply with the Notifiable Events Framework	New civil penalty: up to a maximum of £1m	Sponsoring employers and trustees	Clause 108 and 115
Failure to comply with requirements for a Declaration of Intent	New civil penalty: up to a maximum of £1 m	Sponsoring employers and others associated or connected	Clause 109 and 115
Knowingly or recklessly providing false information to trustees	New civil penalty: up to a maximum of £1m	Any person who is required to provide information to trustees as prescribed	Clause 114
Non-compliance with information requests (including inspections and interviews) or delays in providing information	Fixed and escalating civil fine. The Government will develop the levels of fines as part of its secondary legislation package	Any person targeted by TPR under section 72-5 of Pensions Act (PA) 04	Clause 112
Knowingly or recklessly providing false information to TPR	New civil penalty: up to a maximum of £1m	Any person who is required to provide information to TPR as prescribed	Clause 113
Non-compliance with clearer funding standards	Strengthened section 231 (powers of TPR) scheme funding powers (such as improvement notices) of PA 2004	Trustees and sponsoring employers	Clause 123 and Schedule 10
Failure to provide a Chair's Statement, failure to provide on time or providing a poor quality statement	Existing civil penalty under section 10 of the PA 1995	Trustees and sponsoring employers	Clause 123 and Schedule 10

Scope of sanctions

Peers expressed concern that the scope of **clause 107** (sanctions for avoidance of employer debt – see first line of table above) was too wide, potentially injecting "great uncertainty into pensions administration" and have the effect of deterring "ordinary pensions and business activity.". For the Government, Earl Howe, responded that the aim was to "target individuals who intentionally or knowingly mishandle pension schemes or endanger workers' pensions by behaviours such as chronic mismanagement of a business or avoiding pension liabilities." He said it was important that "where the elements of an offence are met, no matter who has committed it, the regulator should be able to respond appropriately. Any restriction of the persons potentially in scope would create a loophole for those people to act in such a way."[104]

At Commons Committee Stage, Neil Gray said that the SNP was supportive of the principles of clause 107 but concerned that, as drafted, the effect might be:

> to criminalise routine behaviour by parties involved with pension schemes and those who are not directly involved at all, such as lenders and those doing business with a pension scheme's employers. That could have damaging knock-on effects for the

104 HL Deb 30 June 2020 c634-8

> viability of the pension scheme, if those who dealt with it, or employers, deemed that that legal risk was intolerable.[105]

He said the Institute and Faculty of Actuaries which had serious misgivings that "a wide range of conduct has the potential to have a detrimental effect on the likelihood of scheme benefits being met, in which case schemes might fall foul of the proposed current wording of clause 107."[106] He moved amendments intended to protect professional advisers from criminal liability for carrying out their role:

> That could be achieved in the Bill if the duties and responsibilities of an individual were considered when determining whether a person intended to commit an offence. The amendments would clarify matters in adding the question of negligence, which we feel is the intention behind the clause, but which is not explicit. They would also make it clear that a person's role and responsibility should be considered.[107]

Stephen Timms referred to letters from a joint industry forum suggesting possible changes and discussions with officials about how these difficulties could be overcome. He asked the Minister to update the Committee.[108]

Mr Opperman responded that the burden of proof would be on The Pensions Regulator (TPR) to bring an offence and prove it:

> The new criminal offences proposed in the Bill make it clear that an offence is committed only if the person did not have a reasonable excuse for doing the act or engaging in the course of conduct. Crucially, what is reasonable will depend, obviously, on the particular circumstances of the act, but the burden will be on the regulator to prove that the excuse was not reasonable. The regulator will be publishing specific guidance on these powers after consulting industry, but ultimately it is for the courts to decide that an offence has taken place, and, if so, the appropriate punishment.[109]

The Government wanted TPR to be able to take a robust approach. He did not think the clause would hold back normal, traditional business activity (including trade union work). He objected to the SNP amendment on the grounds that it would "remove the reasonable excuse defence […] and replace it with a narrower concept of negligence."[110] Mr Gray's amendment was defeated by ten votes to two.[111]

Clauses 110 to 113 contain measures to improve TPR's information-gathering powers, enabling it to enter a wider range of premises and require individuals to attend an interview.[112]

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105 PBC Deb 3 November 2020 c27
106 Ibid
107 Ibid c28
108 Ibid
109 Ibid
110 Ibid c29
111 Ibid c31
112 Bill 165-EN, para 444-466; DWP, Government Response to the Consultation on Protecting Defined Benefit Pension Schemes – A Stronger Pensions Regulator, Feb 2019, chapter 5

4. Part 4 – Pensions dashboards

For more detail, see Pensions Dashboards, Commons Library Briefing Paper CBP 8407, November 2020

A pensions dashboard is a digital interface that enables people to see all their lifetime pension savings in one place, with the intention that this would help individuals make better decisions about their retirement plans.

This is needed because of changes in the labour market and recent pension reforms. The introduction of auto-enrolment means more are saving in a private pension. And individuals will increasingly build up multiple pots as they change jobs over working life. On 22 September 2020, the Government announced a working group to address the problem caused by small pots.[113] The Pensions Policy Institute estimates that the number of deferred 'small pots' in DC Master Trusts (in which the majority of the auto-enrolled population are saving) is likely to rise from 8 million in 2020 to around 27 million in 2035. It said pensions dashboards could facilitate consolidation of small pots, although this was not their primary aim.[114]

Information failures make it hard for individuals to get a holistic view of the pensions they are building up, even with the help of a financial adviser.[115]

In addition, the long-term shift from DB to DC workplace pensions, and the introduction of the 'pension freedoms' in April 2015 (giving people aged 55 plus more flexibility over when and how to draw their pension savings) mean individuals now bear more responsibility for risk and decision-making.[116]

In 2016, the Financial Conduct Authority (FCA) recommended the development of a dashboard to enable consumers to view all their lifetime pension savings (including their State Pension) in one place. It said the data for this should ideally be retrieved directly from providers, be updated in real time and contain projections of pension income based on different scenarios.

In Budget 2016 the Government said it would ensure that an industry-designed and -funded pensions dashboard would be launched by 2019. This deadline was not met.[117] However, a Pensions Dashboard Prototype Project, developed by a cross-industry team and launched in September 2016, showed that it would be possible to build such a dashboard in the UK.

The Department for Work and Pensions (DWP) published the findings of a feasibility study in December 2018 and launched a consultation on

113 Govt launches working group to address small pots issue, *FT adviser*, 23 September 2020
114 Pensions Policy Institute, Policy options for addressing the growing number of deferred members with small pots, September 2020, pp1, 15 and 20ff
115 DWP, Pension dashboards impact assessment, February 2019, p5; Pensions Dashboard Protoype Project website (viewed September 2020)
116 Ibid; Pension flexibilities: the freedom and choice reforms, Commons Library Briefing Paper CBP 6891, December 2019
117 HM Treasury, Budget 2016, HC 901, March 2016, para 1.114

next steps.[118] In April 2019, the Government's response to the consultation announced that:

- The industry would take forward work to design and develop dashboards. The Single Financial Guidance Body – now the Money and Pensions Service (MaPS) – would convene a delivery group to help ensure that this happened safely and securely.
- Multiple dashboards would improve consumer choice but should exist alongside a non-commercial dashboard hosted by MaPS.
- The Government would legislate to require pension schemes to provide individuals' data (with their consent) via pensions dashboards. This would follow the creation of "a robust delivery model with the appropriate governance".
- There might be merit in exempting some schemes from compulsory participation, such as Small Self-Administered Schemes and Executive Pension Plans.

The Industry Delivery Group (now called the Pensions Dashboard Programme) started operations in autumn 2019. It is responsible for putting in place the infrastructure needed to support pensions dashboards. A programme update published in April 2020, set out some of the challenges, with the expectation of providing a clearer timetable for delivery before the end of 2020. On 28 October, it published a second update, which includes an indicative phase plan, under which schemes and providers would start to be compelled to provide information to dashboards from 2023.[119].

The Pension and Lifetime Savings Association (PLSA) reported findings from a survey of pension schemes in August 2020. It found that 75% of pension schemes (DC and DB) believed they would be ready to join the Pensions Dashboards initiative provided they have two years to prepare and various challenges could be overcome.[120]

4.1 Clauses 118 to 122

Part 4 of the Bill provides a legislative framework to support pension dashboards, as the Government promised to do in its 2019 consultation response.

Clause 118 ('qualifying pensions dashboard service') would amend the *Pensions Act 2004* by inserting new sections 238A and 238B into Part 4 (financial planning for retirement) of that Act. It would provide the power to set detailed requirements for a 'qualifying pensions dashboard service.'[121] Occupational pension schemes would only be required to provide information to a dashboard that met these requirements.[122]

118 DWP, Pension dashboards: feasibility report and consultation, Cm 9719, December 2018
119 Pensions dashboard progress updated report – October 2020
120 PLSA, Pension schemes confident about Pension Dashboard readiness, but challenges remain, 28 August 2020
121 HL Deb 26 February 2020 c183GC
122 Bill 165-EN, para 527

Regulations may set out what "relevant and other information" must be provided by a qualifying dashboard service, and in what circumstances. Relevant information may relate to the State Pension, occupational or personal pensions.[123] Regulations would also provide for how the service would be set up, maintained and operated and for dashboards to be approved or authorised.[124]

A new section 238B would make further requirements regarding how requests for information must be dealt with, and requirements concerning the use of electronic communications.

Pension dashboards would be designed to prevent consumers' data from being unlawfully harvested:

> Only qualifying dashboard providers and the dashboard provided by the Money and Pensions Service will be permitted to connect to the system and have access to the pension finder service, which is the route for displaying information from pension schemes. We should remember at all times that it will be consumers who have control over who can access information, and that they will be able to revoke their consent at any time. In addition, before guiders and financial advisers can view any pensions information, they will be required to prove their identity, and that they are on the list of registered financial advisers.[125]

Regulation-making powers were needed to be able to adapt at pace to the changing requirements of users and providers of data in a "dynamic technical environment."[126] Hence, the powers at this stage are wide in scope and largely undefined.

Financial transactions

Following an Opposition amendment at Report stage in the House of Lords, regulations under clause 118 must include a requirement that a pensions dashboard service "may not include a facility for engaging in financial transaction activities."[127] Speaking to the amendment, Labour Peer, Baroness Drake, expressed concern that the introduction of commercial dashboards would make it easier for firms, possibly operating under business models involving high charges on assets - to encourage easy consolidation of pension pots via a mobile app. She argued that there was a risk of consumer detriment and that a decision to allow financial transactions via dashboards therefore needed "separate and clear consideration." It should not be "implicitly tucked into the delegated powers in this Bill."[128] Shadow Work and Pensions spokesperson, Baroness Sherlock called on the Government to clarify its position:

> …is it the Government's intention ever to allow transactions at any point on the dashboards? If not, then let us make that clear on the face of the Bill. If they do, then, as my noble friend Lady Drake said, they should have to come back to Parliament and seek further authorisation before going down that road. The reason is

123 New section 238A (4) and (5)
124 New section 238A (6)
125 HL Deb 26 February 2020 c184GC
126 HL Deb 26 Feb c184GC; HL Deb 2 Mar c203GC
127 New section 238A (3)
128 HL Deb 2 March c194-5GC

> simple: we are being asked to authorise the establishment of a service that will be based on the compulsory release of data about the assets of some 22 million people, with no clarity about what is being created.[129]

Deputy Leader of the Lords, Earl Howe, sought to reassure the Committee that any innovations in the longer-term would be consumer-focussed and would "not necessarily lead to transactions on dashboards." The three overarching design principles underpinning the dashboards were:

> […] first, to put the consumer at the heart of the process by giving people access to clear information online; secondly, to ensure that consumers' data are secure, accurate and simple to understand; and, thirdly, to ensure that the consumer is always in control over who has access to their data.[130]

Baroness Drake returned to the issue at Report Stage, again arguing that the decision to allow transactions should be in primary legislation, to enable proper Parliamentary scrutiny.[131] Earl Howe said he strongly believed this was the "wrong way to go":

> It would deny people the right to take control of their financial situation. It actively seeks to frustrate. It would mean that consumers, even when properly advised and informed, would have to follow a parallel track to execute their wishes. It may even go so far that it could stop dashboard providers developing useful modelling tools that could, for example, inform people of the potential benefits of increasing their contributions or the impact of increased earnings. This amendment risks stifling future innovations that could demonstrably benefit consumers.[132]

Peers agreed to Baroness Drake's amendment by 281 votes to 244.[133]

This was overturned at Commons Committee stage. Pensions Minister, Guy Opperman said the Government wanted to allow the service to evolve and that if financial transactions were prevented, the idea of consolidation would be hard to progress with. Dashboard providers would be subject to a robust regime, including Financial Conduct Authority authorisation and supervision.[134]

For the Opposition, Seema Malhotra raised concerns about the impact on consumers, who might make unsuitable transfers which they were then unable to reverse.[135] For the SNP, Neil Gray, argued for no transactions to be allowed, at least to begin with.[136] On the other hand, Conservative MP, Rob Roberts, said it would be empowering to the consumer to allow transactions via the dashboard. Regulations were already in place and would undoubtedly be strengthened further down the line.[137] Labour MP Angela Eagle asked how the consumer protection regime would fit in with the evolution and introduction of pensions

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129 HL Deb 2 March c199GC
130 HL Deb 2 March c206GC
131 Ibid c648
132 Ibid c654
133 Division 2285, 30 June 2020
134 PBC Deb 3 November 2020 c40
135 Ibid c44-5
136 Ibid c46
137 Ibid c49

dashboards, especially if commercial dashboards were to have a transactional capacity.[138]

Responding to the debate, the Minister said that pension pot consolidation was one solution to the problems caused by the proliferation of small pots and that:

> I passionately believe that, with the suitable guidance and protections that we all want, consolidation is appropriate, and that would be a financial transaction. It should definitely be permissible on an ongoing basis, arising out of information proceeded and obtained by a dashboard. It is absolutely that sort of empowerment that the dashboard will offer, and it is entirely the right thing.[139]

The Committee voted to remove the Lords' amendment by nine votes to seven.[140]

At Report stage on 16 November, Neil Gray said he did "not understand the Government's determination to plough on without taking stock, without analysing the risks and without ensuring that savers do not suffer detriment from shifting so quickly to commercial dashboards and financial transactions.[141] Shadow Work and Pensions Secretary, Jonathan Reynolds, said:

> […] safeguards must be built in to prevent hasty decision making and consumer exploitation. The last thing we want is for people to make bad choices, prompted, for example, by market disruptions or unscrupulous operators, until they are more accustomed to that level of access. We believe that we can tackle both those things by giving the public dashboard a protected head start and keeping commercial transactions off the dashboard until further legislation is introduced in line with our amendments.[142]

Responding the Pensions Minister said the Government would continue to resist the re-introduction of the Lords' amendments:

> I resist the amendments in respect of transactions. We have discussed at great length the likelihood of the need for individuals to have a greater say on their pensions. Why would we seek to exclude consolidation going forward? Transactions are not clearly defined in the amendments; they could prevent dashboards from providing useful modelling tools that could inform people of the potential benefits of increasing their contributions. As I made clear to colleagues making the case for the amendments, the consumer association Which? has come out comprehensively against them.[143]

When the Bill returned to the Commons on 19 January 2021, Baroness Stedman-Scott explained:

> I have said before that dashboards will launch with a simple find-and-view capability; this remains the case. However, enabling transactions through dashboards can provide an innovative way of

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138 Ibid c52
139 Ibid c54-6
140 Ibid c56
141 HC Deb 16 November 2020 c101 and 103
142 Ibid c106
143 Ibid c111

> safely giving people more effective control of their pension savings. Functionality on dashboards will be increased only as a result of user testing, after careful review and with the right level of consumer protections in place. It is important that we maintain the ability to meet the needs of the user by not prohibiting functionality that can put individuals in control. The ability to have this type of functionality in the future could bring real and significant benefits for consumers—for example, when consolidating small pots of pensions savings.[144]

The Lords accepted the Commons amendment without division.[145]

Other provisions

Clause 119 (information from occupational pension schemes) would enable the Secretary of State to make regulations requiring occupational pension schemes (other than stakeholder pension schemes) to provide pensions information to a qualifying pensions dashboard service. They would specify both the type of information to be provided and the time and manner for doing this. The Pensions Regulator is also given new powers in this clause to monitor and enforce compliance with the new requirements.[146]

Clause 120 (Pensions dashboards: Northern Ireland) would enable provision to be made for Northern Ireland corresponding to that for England and Wales and Scotland under clauses 118 and 119.

Clause 121 (information from personal and stakeholder pension schemes) would amend the *Financial Services and Markets Act 2000*, to introduce a power to require the Financial Conduct Authority to make rules relating to personal and stakeholder pensions, reflecting those for occupational schemes under clause 119.

Clause 122 (the Money and Pensions Service: the guidance function) would amend the *Financial Guidance and Claims Act 2018*, to create a requirement for the Money and Pensions Service (MaPS) to provide a pensions dashboard service. This was a Government amendment at Report Stage, in response to concerns that without a legal requirement, the commitment to provide a non-commercial dashboard could be abandoned before the programme was completed.[147] For the Government, Earl Howe said that:

> …the Money and Pensions Service, can provide a dashboard under its existing statutory functions, but I accept that the Government could provide further reassurance in legislation.
>
> The government amendments reflect this commitment by placing a duty on the Money and Pensions Service to provide a pensions dashboard. The dashboard must display information from private and occupational pension schemes. These amendments also enable the inclusion of state pension information.[148]

144 HL Deb 19 January 2021 c1094
145 Ibid c1099
146 HL Deb 26 Feb 2020 c216GC; HL Bill 165-EN para 546
147 HL Deb 26 Feb 2020 c175GC
148 HL Deb 30 June 2020 c668

Introduction of commercial dashboards

Following an Opposition amendment at Report stage in the Lords, new section 4A(3) of the *Financial Guidance and Claims Act 2018*, as inserted by clause 122 would require the MaPS dashboard to have been up and running for a year, and the Secretary of State to have reported to Parliament on its operation and effectiveness, before non-commercial dashboards could be introduced.[149]

In support of the amendment, Baroness Drake argued at Committee stage that leading with a non-commercial dashboard could reduce some of the risks of the project. It was important to get a level of confidence before you put "25 million people's data out into a network of commercial services."[150] Responding for the Government, Earl Howe said he did not agree. The Government's view was that "the potential to offer multiple dashboards at launch maximises the possible reach of this policy from the outset and could help to meet the differing needs of the many people using them."[151]

Returning to the issue at Report stage, Baroness Drake argued that there were "sufficient examples in the real world, public and private, where live operation reveals fault lines and unanticipated consequences." The amendment would help the Government to exercise its duty of care to millions of consumers.[152] Responding, Earl Howe said the Government believed strongly that multiple dashboards were the best way to ensure that everyone could access their pensions information in the way they desired. The proposed amendment would simply "restrict people's access to their own information through a route of their choosing." He reiterated the Government's commitment that "the Money and Pensions Service dashboard will be available from day one, alongside dashboards offered by other organisations."[153]

Baroness Drake's amendment was accepted on division by 270 votes to 238.[154]

The Government tabled an amendment to remove this amendment at Commons Committee stage.[155] SNP Spokesperson Neil Gray described this as "probably the greatest area of contention in the Bill." He said:

> It is not just the SNP, Labour or other Oppositions parties that have concerns, but a great number of stakeholders. The Pensions and Lifetime Savings Association says that "the Government should ensure the first pensions dashboard will be a single, non-commercial product hosted by the Money and Pensions Service (MAPS) and that no other dashboard should go live until a full consumer protection regime is in place.[156]

149 Clause 122 (3)
150 HL Deb 26 Feb c176-8GC
151 Ibid c183
152 HL Deb 30 June 2020
153 HL Deb 30 June 2020 c669
154 Division 2286
155 Amendments tabled as at 29 October 2020, amendment 8
156 PBC Deb 3 November 2020 c68; Amendments tabled as at 29 October 2020, amendment 3

Responding, Mr Opperman said people should have the freedom to choose to access information in the way they felt most comfortable. The pensions industry held an in-depth knowledge of its customer base and this was an opportunity for consumer-focused innovation. Allowing multiple dashboards was "the most effective way to drive consumer engagement and really begin to put people in control of their savings."[157] The Government's amendment was accepted on division by nine votes to seven.[158]

In response to opposition arguments on the same point at Report stage, Mr Opperman said:

> As to the restrictions on multiple dashboards for one year, I made the point in Committee that in creating dashboards we need to go where the consumer is rather than forcing the consumer to come to us. That surely is the essence of this issue: it will increase engagement with pensions, and we should reach people where they are. We should not seek to constrain options available but ensure that all opportunities are properly regulated, safe to use and secure.[159]

When the Bill returned to the Lords to consider the Opposition amendments on 19 January 2021, Baroness Stedman-Scott explained:

> We will not allow any qualifying dashboard to be launched before that of the Money and Pensions Service. However, we remain firmly of the belief that allowing other properly regulated dashboard providers to operate is the best way to drive engagement, reaching out to consumers where they may already interact with digital services, and unlocking innovative potential.[160]

The Lords agreed to the Commons amendment without division.[161]

Regulation-making powers

At Second Reading in the Lords, Conservative Peer, Baroness Noakes, described the provisions in Part 4 as "at best a half-baked policy".[162] The Lords Constitution Committee also noted its concerns over the regulation making powers. In its report, the Committee:

- Regretted the inclusion of "skeletal provisions" in the Bill that provide for regulation-making powers in respect of new pensions dashboards; and
- Recommended the Government specify the 'nominated persons' who would be granted powers to require the pensions dashboard service to comply with standards, specifications or technical requirements and through what mechanisms such persons would be accountable to Parliament.[163]

Baroness Drake, a member of the Constitution Committee, said that while it recognised that pensions issues could be complex, it had

157 Ibid c59
158 PBC Deb 3 November 2020 c73-4, division 8
159 HC Deb 16 November 2020 c111
160 HL Deb 19 January 2021 c1095
161 Ibid c1099
162 HL Deb 28 Jan c1383
163 Constitution Committee, Pension Schemes Bill [HL], 2nd Report of Session 2019-21 - HL 22, 13 Feb 2020, para 15-18

concluded that this was "not an excuse for taking powers in lieu of policy development."[164]

Labour's Pensions spokesperson, Baroness Sherlock, complained of a lack of detail on dashboards, listing several questions pending:

> We do not know who will run them. We do not know what information will be provided on them or in what form. We do not know what uses of the information will be permitted. We do not know how the whole system will be governed and regulated. We do not know where liability will lie for each of the links in the chain. Without that, we do not know how complaints about failure and compensation for detriment arising at each point will be handled. We do not even know who will get to make rules for the dashboards, because the regulations provide for that to be literally anyone.[165]

For the Government, Earl Howe responded to these concerns by saying that the legislation covered a "dynamic technical environment".[166] He later elaborated explaining: "Technical requirements and user needs change and the legislative framework needs to be able to adapt at pace to meet those requirements".[167]

Target date

At Lords Committee stage, Conservative Peer, Lord Young proposed a December 2023 target date by which the MaPS dashboard should be up and running. He felt this deadline was "excessively generous" for something the Government had planned to have up and running by the end of 2019.[168] Earl Howe responded that the Government shared the "desire for a dashboard to be delivered in a timely manner to help people plan for their retirement."[169] However, setting a date in legislation could be "counterproductive" as it risked "creating a situation where decisions are taken simply to meet a legislative deadline, regardless of outcomes, rather than to meet the needs of individuals." He said that "developing a service that gives consumers a single point of access to their pensions information is complex."[170] The Pensions Dashboard Programme's October 2020 update includes an indicative phase plan under which schemes and providers would start to be compelled to provide information to dashboards from 2023.[171]

Expected impact

The Government's Pensions Dashboard Impact Assessment (IA) expects the direct benefits to individuals as relating to time saved in retrieving information and an improved ability to recover lost pension pots by putting providers and administrators in contact with scheme

164 HL Deb 26 Feb c175GC
165 HL Deb 2 March c199GC
166 HL Deb 26 February c184GC
167 HL Deb 2 March c203GC
168 HL Deb 26 Feb c179GC [Amendment 71]
169 Ibid c182GC
170 Ibid c182GC
171 Pensions dashboard progress updated report – October 2020

members.[172] The primary costs to industry would fall into three categories: familiarisation, implementation and ongoing costs.[173]

Under three scenarios, with different data requirements and coverage to highlight, costs would vary widely, with one-off implementation costs of between £200m and £580m over 10 years; and ongoing costs of between £245m and £1.48bn over 10 years.[174]

Some estimated costs, such as those regarding the updating and maintenance of the data sent to the dashboard, were extremely uncertain at this stage. The Government said that the range of possibilities on the final design and implementation plan for the dashboards, meant that it would be disproportionate to provide a meaningful estimate of the equivalent annual net direct cost to business (EANDCB) at this stage.[175]

[172] DWP, Pension Dashboards Impact Assessment, IA No: DWP-001-2019, 5 Feb 2020, para 30-1
[173] Ibid, p2
[174] Ibid
[175] Ibid; Regulatory Policy Committee, Costs and benefits of new regulation, April 2016

5. Part 5 – further provisions relating to pension schemes

5.1 Clause 123 - DB scheme funding

Background

Defined benefit (DB) pension schemes make pension promises based on salary and length of service and build up a fund of assets with which to meet them. They are therefore subject to scheme funding requirements, introduced under Part 3 of the *Pensions Act 2004.* These require trustees to:

- Draw up a statement of funding principles;
- Obtain a full actuarial valuation of their scheme at least every three years; and
- Where the scheme is in deficit, prepare a recovery plan setting out the steps that will be taken to meet the funding objective over what timeframe.[176]

The aim is not to "eliminate all risk to members' benefits" but rather to "strike a reasonable balance" between the demands on the employer and the security of member benefits, recognising that "a strong, sustainable employer is the best protection for a DB scheme".[177]

When the current regime was introduced, The Pensions Regulator (TPR) issued a Code of Practice (Feb 2006) and a statement on its regulatory approach (May 2006). These explained, for example, that a trigger for TPR intervention was if a scheme in deficit had a 'recovery plan' of longer than 10 years.

This was changed following the introduction in the *Pensions Act 2014* of a new objective for TPR to minimise any adverse impact on the sustainable growth of an employer when regulating scheme funding. The context was concern about the costs of funding deficits for some employers. TPR issued new guidance, explaining that it would take a more risk-based approach, engaging more fully with fewer schemes that posed a greater risk.[178] At this time TPR began to move away from specific triggers for intervention to a wider suite of risk factors.

In its December 2016 report on DB pensions, the Work and Pensions Committee made recommendations aimed at reducing the risk of another scheme collapsing in the manner of BHS. A major concern had been the length of the recovery plan to repair the funding deficit in the scheme (23 years) and the time it had taken TPR to intervene.[179]

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176 *Pensions Act 2004* (part 3)
177 DWP, Security and sustainability in Defined Benefit pension schemes, Cm 9412, Feb 2017, Executive Summary
178 TPR, Regulating defined benefit schemes consultation, 2013; Regulating DB schemes archived webpage
179 Work and Pensions Committee, Defined benefit pension schemes, December 2016

In its February 2017 Green Paper, *Security and sustainability in Defined Benefit Pension Schemes*, the Government said that while most schemes had a funding deficit, these were not generally 'unaffordable' for employers. However, there were some employers on whom the deficits were having a significant impact and for whom the level of contributions might become unsustainable. It sought views on reform options, such as providing greater clarity over the requirements for scheme funding – perhaps with a 'comply or explain' regime.[180]

The White Paper published in March 2018 said that scheme funding outcomes were affected by poor decision making, short-term thinking and a lack of accountability.[181] To address this, there would be a revised Code of Practice to clarify the funding standards.

In March 2020, **TPR consulted a DB funding code of practice.** It proposed a twin track approach: a 'fast track' approach, for trustees who could demonstrate that their valuation met the guidelines; and for those who could not, a 'bespoke' approach. The consultation closed on 2 September.[182] In its response, the Pension and Lifetime Savings Association (PLSA) expressed concern that the code was too prescriptive. It urged the TPR to "provide greater optionality for schemes within the 'Fast track' route and ensure the 'Bespoke' approach was not anchored to its fixed assumptions." This would ensure the code reflected the variation between schemes and employers across the industry.[183] TPR expects to issue a second consultation in the second half of 2021, after the Bill has finished its passage through Parliament and DWP has consulted on draft regulations.[184]

The Bill

The Government also said in its White Paper that it would legislate to require the trustees of DB pension schemes to appoint a Chair, who would report to TPR in the form of a Chair's Statement, submitted with the scheme's triennial valuation.[185]

Clause 123 introduces **Schedule 10**, which would amend the *Pensions Act 2004* to require trustees and managers to:

- **Determine a funding and investment strategy** for the scheme to ensure pensions and other benefits can be paid over the long term. The strategy must specify the funding level the trustees or managers intend the scheme to have achieved, and the investments they intend the scheme to hold, at key milestones [new section 221A]; and
- Have a **written statement setting out that strategy and information** about it, including the trustees' assessment of whether they are on track to deliver the strategy, how they intend

[180] DWP, Security and sustainability in Defined Benefit Pension Schemes, Cm 9412, Feb 2017
[181] DWP, Protecting Defined Benefit Pension Schemes, Cm 9591, March 2018
[182] TPR, Defined benefit funding code of practice consultation, March 2020
[183] PLSA, DB Funding Code needs more work to cater for needs of every scheme, 2 September 2020
[184] TPR, Defined benefit funding code of practice, Interim response, 14 January 2021
[185] DWP, Protecting Defined Benefit Pension Schemes, Cm 9591, March 2018

> to mitigate key risks and their reflections on past decisions. This statement of strategy would be submitted to TPR with other relevant information. The statement must be signed by a Chair of trustees on behalf of the trustee board [new section 221B].[186]

The amendments would also enable the Government to make clear what an appropriate recovery plan should look like and strengthen TPR's scheme funding powers:

> The measures also amend the statutory funding objective, so it takes into account the scheme's funding and investment strategy. In addition, they ensure that Government can make clear in legislation what is an appropriate recovery plan when the trustees are not on track to deliver the strategy.
>
> Further, the measures strengthen the Regulator's scheme funding powers so that it can take action when trustees and managers fail to comply with their new duties, in particular in respect of their duty to determine a suitable funding and investment strategy in accordance with the legislative requirements.[187]

The Government intends that these provisions should help improve trustee and sponsoring employer behaviours and decision-making, and support TPR with its enforcement action where the trustees have not complied with the legislative requirements in respect of the funding and investment strategy.[188]

The Government estimates that 80% of DB schemes already have a long-term strategy in place. However, for some this may be "largely aspirational," rather than effective in driving the approach to funding and the level of contributions being made to repair any deficit in the scheme. Such schemes would still be required to change their existing Long-Term Objective (LTO) to reflect the proposed requirements for a funding and investment strategy.[189]

TPR Code of Practice consultation

TPR published its consultation on the Code of Practice on 3 March 2020, to run until September 2020. It said that trustees of defined benefit (DB) schemes should aim to reduce their reliance on the sponsoring employer as they mature:

> With most DB schemes closed to new members and / or future accruals, we can expect them to be significantly mature in 15 to 20 years' time, with the majority of their members retired. These schemes will be more vulnerable to risks associated with poor funding levels and shorter investment horizons. Therefore, trustees should aim to reduce their scheme's reliance on the sponsoring employer as they mature. We want to be confident our expectations are effective and appropriate for trustees and in turn the savers in these schemes.[190]

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[186] DWP, Pension Schemes Bill – delegated powers memorandum, January 2020, p109; Bill 165-EN, paras 607-12
[187] Ibid
[188] Ibid, para 1.430
[189] *Pension Schemes Bill 2019-21* – Impact Assessment – Annex F
[190] Major consultation on clearer DB funding standards launched by TPR, v3 March 2020

It proposed a twin-track approach for regulation, with schemes being able to opt for a 'fast-track approach' where the scheme's approach was compliant with guidance and, for those who wanted more flexibility, a 'bespoke approach' – which might mean more regulatory involvement:

> **Fast Track**
>
> • We set straightforward quantitative compliance guidelines for trustees to assess whether we would consider their valuation compliant with the legislation.
>
> • If all aspects are satisfied, trustees can expect minimum regulatory involvement on DB funding.
>
> **Bespoke**
>
> • This option provides trustees and employers with more flexibility to account for scheme and employer-specific circumstances.
>
> • Decisions in this route will need to be fully articulated and evidenced, and may mean higher regulatory involvement.

TPR anticipated that this would "introduce greater clarity for trustees and employers, so they can understand whether and why we may have concerns about their funding arrangements and what can be done to lessen those concerns."[191]

Lords amendment - open DB schemes

TPR's proposed Code of Practice on scheme funding set out the principles which should apply, one of which is that "members' accrued benefits in open schemes should have the same level of security as members' accrued benefits in closed schemes."[192] However, it acknowledged that the position was different for open schemes that continue to accept new members:

> We acknowledge that if such schemes do continue to admit new entrants and do not mature then the scheme will not actually reach significant maturity. We are content that such a scheme retains the same flexibility in its funding and investment strategies that all immature schemes have.[193]

Those schemes that wanted to take a different approach – i.e. to argue that a longer-term investment horizon is appropriate – would be able to do so if they opted for the 'bespoke approach'.[194]

In its response to the consultation in September 2020, the Pension and Lifetime Savings Association (PLSA) expressed concern that the proposals might "unintentionally hasten the closure of open DB schemes":

> The requirement to fund accrued benefits in the same way as benefits for retirees would place a significant burden on funding requirements and did not reflect the differing dynamics and time horizons of many such schemes. The proposals could mean new

[191] TPR, Quick Guide to our defined benefit funding code consultation, March 2020
[192] TPR, DB funding Code of Practice consultation, p5-6
[193] Ibid, para 475
[194] Ibid, para 481

> accruals may become prohibitively expensive, when in practice benefits would not come into payment for many decades.[195]

It argued for a different approach to the regulation of scheme funding for open and closed schemes. Its concerns were that:

> The proposed LTOs [long-term objectives] do not appear to be appropriate for open schemes where the schemes are maturing slowly or not at all. Being asked to review the LTO at every valuation, even if the scheme has not matured, may add little material benefit to scheme members in the long-run, and will have the effect of raising costs to schemes through potentially unnecessary adviser fees.
>
> Open Schemes should be allowed to set lower technical provisions than closed schemes. Making TPs [technical provisions – or the way in which liabilities are calculated] the same as closed schemes is unnecessarily cautious given the longer investment horizon and the longer time they have until they become significantly mature. The higher expected returns overtime may generate trapped surpluses. We understand TPR's intent, that by treating schemes open to new members in the same way as schemes that are open only to accrual and closed schemes, it will help trustees of open schemes to plan for the possibility of closure – thereby avoiding a "cliff-edge" in funding when the scheme closes. However, this outcome – of potential closure in the future – is no different than if a closed scheme's covenant deteriorates very rapidly. So, this intent, while good in principle, has costs that outweigh the potential benefit, which may accelerate the closing of schemes which intend to remain open.[196]

Lane, Clark Peacock also called for the treatment of open schemes to be given more thought, saying that they would lead in some cases to "unnecessary de-risking and premature closure of otherwise viable schemes."[197]

Debate in the Lords

The issue was debated when the Bill was before Parliament. An opposition amendment made in the Lords – but overturned in the Commons - would have required a different approach to the regulation of funding for open and closed schemes.

At Report stage in the Lords on 30 June 2020, Baroness Bowles explained that a "low-risk liquid investment strategy is more appropriate for closed schemes where the loss in asset values would impair a model that relies on asset consumption as it moves to its end date." The same did not apply to open schemes, where a pipeline of new and younger members meant assets did not need to be liquid and a far longer investment horizon was possible.[198] She argued that open schemes were under threat because TPR's Code suggested "treating accrued benefits the same in open and closed schemes of the same maturity, which fails to recognise the difference in the models". She said that the effect

[195] DB funding code needs more work to cater for needs of every scheme, PLSA, 2 September 2020
[196] Ibid
[197] Lane Clark Peacock, A fast track to problems? Why TPR's new code needs to be flexible, July 2020
[198] Ibid

would be to "require huge increases in contributions and, at an instant, put schemes in deficit".[199]

Former Conservative Pensions Minister Baroness Altmann supported the amendment. She said TPR's funding code seemed to want to "drive DB schemes on a path to so-called de-risking, aiming for a particular date of maturity," which she said was "simply inappropriate for an open scheme".[200]

Responding, Earl Howe said that the amendment was not needed. The factors listed were all important factors to take into account when developing secondary legislation for defined benefit pension scheme funding. The Government's aim was not to change existing flexibilities but, rather, to "seek to make best practice universal and ensure that all schemes are planning for the long term."[201]

Baroness Bowles' amendment was accepted on division by 263 votes to 227.[202] This inserted a new subsection 2 into clause 123 which would provide that:

> (2) In exercising any powers to make regulations, or otherwise to prescribe any matter or principle, under Part 3 of the Pensions Act 2004 (scheme funding) as amended by Schedule 10, the Secretary of State must ensure that—
>
> (a) schemes that are expected to remain open to new members, either indefinitely or for a significant period of time, are treated differently from schemes that are not;
>
> (b) scheme liquidity is balanced with scheme maturity;
>
> (c) there is a correlation between appropriate investment risk and scheme maturity;
>
> (d) affordability of contributions to employers is maintained;
>
> (e) affordability of contributions to members is maintained;
>
> (f) the closure of schemes that are expected to remain open to new members, either indefinitely or for a significant period of time, is not accelerated; and
>
> (g) trustees retain sufficient discretion to be able to comply with their duty to act in the best interests of their beneficiaries.[203]

Debate in the Commons

In Second Reading debate on 7 October 2020, opposition parties urged the Government to retain the principle behind the Lords amendment in the Bill and to work with opposition parties to address any concerns about the wording of the Lords' amendment, if necessary.[204]

In its written evidence to the Public Bill Committee, RPMI for the Railways Pension Scheme argued for the Lords amendment, or a proposed compromise amendment, to be retained. It argued that "

199 Ibid
200 Ibid c681
201 Ibid c687
202 Division 2287
203 Pension Schemes Bill [Bill 165 of 2019/21], as brought from the Lords
204 HC Deb 7 October 2020 c916 [Jonathan Reynolds] c921 [Neil Gray], c 955 [Wendy Chamberlain] and 958 [Jack Dromey]

> Unless made clear explicitly on the face of the Bill, there is a significant risk that The Pensions Regulator (TPR) will regulate investment strategies of OTN schemes in line with closed ones.
>
> It has been suggested that the amended Clause 123 is unnecessary as TPR's proposed 'bespoke' funding option in its draft Code of Practice (COP) for DB Schemes will cater for large, open schemes, whilst its 'fast track' option is more appropriate for smaller, closed schemes. However, due to specific provisions within the COP, it is clear that 'bespoke' is little more than a variant of 'fast track', and not a genuine alternative.[205]

At Commons Committee stage, Guy Opperman, the Pensions Minister, moved an amendment to remove the Lords' amendment (i.e. clause 123 (2)).[206] He did not agree that all open schemes should be treated differently to closed schemes. Some would be mature and therefore share characteristics with closed schemes. It would open up potential for abuse. The existing framework was scheme-specific and allowed flexibility:

> We do not want good schemes to close unnecessarily, or to introduce a one-size-fits-all regime that forces immature schemes with strong sponsors into an inappropriate de-risking journey. What we do want is to build on a well-established scheme-specific funding regime that takes account of the key metrics of individual schemes in enabling trustees to assess what can reasonably be supported in terms of investment risk. To ensure that members' benefits are protected and schemes do not take inappropriate risk, it is vital that trustees look at the characteristics of each scheme and balance scheme liquidity and investment risk with maturity. Open schemes with a strong sponsoring employer that are immature and have managed their risk appropriately should not be forced into an inappropriate de-risking journey.[207]

The Government could commit to using the regulation-making powers available to ensure that:

> the secondary legislation works in a way that does not prevent appropriate open schemes from investing in riskier investments where there are potentially higher returns as long as the risks being taken can be supported and members' benefits and the Pension Protection Fund are effectively protected.[208]

TPR's proposed approach, on which consultation was ongoing, sought a "reasonable balance between the protection of member benefits, fairness between schemes, and the ability of schemes to take more investment risk, especially where an immature scheme has a strong employer and expects to remain open and in a steady status for a long time."[209]

For the Opposition, Seema Malhotra, moved amendment 18, which she said represented an alternative approach. It would have provided that in exercising regulation-making powers in relation to "an occupational pension scheme that is not near significant maturity and is open to new

205 Written evidence from RPMI to the House of Commons Public Bill Committee on the Pension Schemes Bill [House of Lords] 2019-21, 30th October 2020v
206 PBC Deb 5 November 2020 c77
207 PBC Deb 5 November 2020 c80
208 Ibid c80
209 Ibid c81

members and is reasonably expected to remain so", the objectives of the Secretary of State should include:

> (a) supporting the ability of the trustees of a relevant scheme to decide the funding and investment strategy for the scheme taking into account the current and future maturity and liquidity of the relevant scheme consistent with the trustees' duty to invest assets in the best interests of members and beneficiaries; and
>
> (b) avoiding the specification of requirements in relation to funding and investment strategies that are likely to accelerate the closure of relevant schemes.[210]

For the SNP, Neil Gray argued for this amendment as a compromise that was needed to ensure that good DB schemes were allowed to remain open.[211]

The Minister disagreed, describing amendment 18 as "unnecessary and unhelpful." It made no mention of "the ability of the sponsor to pay more in the future if investments do not perform as expected."[212]

Ms Malhotra explained the objectives behind her amendment:

> The first is to support the ability of trustees to decide the funding and investment strategy for schemes, taking into account current and future maturity and liquidity, consistent with the trustees' duty to invest assets in the best interests of members and beneficiaries. That is intended to protect schemes from any inappropriately risky or risk-averse requirements that would significantly adversely affect the affordability of schemes for employers and members. The second is to recognise that schemes are usefully and beneficially open to new entrants and should be allowed to remain so. The amendment is aimed at avoiding requirements in funding investment strategies that are likely to accelerate the closure of relevant schemes.[213]

She said it was appropriate for this to be in legislation rather than leaving it for the Pensions Regulator to resolve.[214]

The Minister said TPR would take note of the debate. If there was any doubt, not all schemes would be treated the same. This was "not a one-size-fits-all approach."[215]

The Committee voted by nine votes to six to accept the Government's amendment removing clause 123 (2) from the Bill and to defeat Opposition amendment 18.[216]

The issue was debated again at Report Stage on 16 November, Liberal Democrat spokesperson, Wendy Chamberlain said:

> There is real concern that the regulator wants open schemes to be considered as if they were on the brink of forced closure, but that means effectively crystallising their investment structure into a closed structure and preventing them from acting as they need to, as the hon. Gentleman suggested. So I ask the Minister to

210 PBC Deb 5 November 2020 c77
211 Ibid c80
212 Ibid c81
213 Ibid c83
214 Ibid
215 Ibid c86
216 Ibid c87

> recommit to the House that this will not happen, otherwise our concerns will remain, and Baroness Bowles and her colleagues in the Lords will continue to press the Government on this when amendments return to the other place.[217]

She also raised the impact on charitable organisations with DB schemes.[218]

SNP spokesperson, Neil Gray, said there was a major concern that DB schemes would need to de-risk with potentially serious implications. The CBI had expressed concern that TPR's proposals risked "moving back to one-size-fits-all regulation." To ensure this was not the case, the Government include a safeguard on the face of the Bill.[219]

Shadow Work and Pensions Secretary, Jonathan Reynolds, said there was a long list of organisations that had expressed doubt about the reliance being placed by the Government on TPR's bespoke option to provide reassurance for open schemes that they would not be required to following the funding and investment strategies of closed schemes. He believed there was a virtue in reintroducing the Lords amendment.[220]

Responding, the Pensions Minister said

> We have made it entirely clear that we will frame our secondary legislation in such a way that schemes that are and are expected to remain immature, and have a strong employer covenant, continue to be able to invest in a substantial proportion of return-seeking assets, which will help to keep costs down.[…] The Pensions Regulator is a regulator, not a legislator. It must regulate in accordance with the legislation made by Parliament, but we believe that the right way forward is a combination of primary legislation, regulations and the defined-benefit funding code, whereby we will seek to effectively balance employer affordability and member security, taking into account the circumstances of different types of schemes as is appropriate.[221]

The Liberal Democrat amendment was defeated on division by 356 votes to 257.[222]

Comment from TPR

David Fairs, Executive Director of Regulatory Policy at TPR, set out to address concerns that had been raised during the consultation period in a blog post of 8 December 2020. He said that under TPR's proposed Fast Track approach, an immature open scheme would not be expected to de-risk and would be able to take a long-term approach to investment. However, it would need to have contingency plans for getting back on track, should things not turn out as hoped. If it started to mature (with fewer new entrants), it would need to plan some de-risking. Maturing schemes should be on a pathway to limiting their risk. This was good risk management and what many schemes were doing. However, TPR needed to be able to address the challenges posed by

217 HC Deb 16 December 2020 c74
218 Ibid
219 Ibid c104
220 Ibid c106
221 Ibid c110
222 Ibid c126

trustees not thinking about this properly. By opting for the Bespoke approach, trustees of an open scheme would have the option of taking an investment approach based on the assumption that the scheme would remain open. However, they would need to provide TPR with evidence that they could (among other things) manage the risk of the scheme closing or maturing faster than expected.[223]

In an interim response to the consultation published on 14 January 2021, TPR said it expected to issue a second consultation in the second half of 2021, after the Bill had finished its passage through Parliament and DWP had consulted on draft regulations.[224]

Lords consideration of Commons amendment

When the Bill returned to the Lords to consider the Commons amendments on 19 January 2021, Baroness Bowles tabled a further amendment, the purpose of which was that regulations should support the ability of scheme trustees to decide "the specific funding, investment risk management and diversification strategy that is appropriate for the long-term time horizon, liquidity and employer covenant of the scheme." She and Baroness Altmann had written to the Minister, setting out the principles they thought should underpin this.[225]

Baroness Sherlock submitted an amendment that aimed to ensure that "regulations on DB scheme funding recognise the characteristics of sustainable open schemes, rather than setting a one size fits all policy for both closed and open DB schemes."[226]

Responding to the debate, Baroness Stedman-Scott said the Government fully intended that the DB funding regime would "remain scheme specific, and any bespoke approach should build on that foundation." The detailed provisions would be in regulations and the new Code of Practice, on which there would be consultation:

> Prior to the publication of the draft regulations, the Government can commit to an engagement programme with interested parties, including a range of schemes. These will include those remaining open and immature. They will launch a consultation document informed by this engagement. The Government will also publish a regulatory impact assessment of the draft regulations and the Pensions Regulator will publish an impact assessment alongside its revised funding code. These will include analyses of different de-risking approaches on members and sponsors of all schemes, including those that are open or immature, and those that are not targeting buyout.[227]

She concluded by saying that the Government wanted did not want to see "good and viable defined benefit schemes close unnecessarily" and agreed that there should be scope for them to take a different approach:

[223] DB Funding Code – Busting a few myths, David Fairs, 8 December 2020
[224] TPR, Defined benefit funding code of practice, Interim response, 14 January 2021
[225] HL Deb 19 January 2021 c1100-1
[226] HL Deb 19 January 2021 c1103
[227] Ibid c1101

> We completely agree that open schemes that are not maturing and have a strong employer covenant should not be forced into an inappropriate de-risking journey. We will ensure that such schemes and employers which can support a higher risk and higher expected reward investment strategy can continue to invest in this way. If they are already doing the right thing, they should not need to significantly increase contributions as a result of these new measures.
>
> The Government accept that for some schemes, depending on the circumstances, de-risking is not the best way to safeguard members' benefits. Member benefits can be best safeguarded by an appropriate integrated risk management strategy determined after careful analysis by the trustees, which takes account of time horizon, liquidity, employer covenant and appropriate diversification.[228]

Baroness Bowles said that the Minister had given the assurances that had been sought. The Lords accepted the Commons amendment to the Bill.[229]

5.2 Clause 124 - Climate change risk

For more on the background, see Pension scheme investments – climate change risk, Commons Library Briefing Paper, CBP 8950, December 2020

Trustees of occupational pension schemes with more than 100 members are required to produce a Statement of Investment Principles (SIP), setting out their strategic approach to investment.[230]

In June 2018, the Government said it would amend the regulations to make it clear that it is appropriate for trustees to consider the long-term sustainability of investments and to take responsibility for looking after their investments, through the exercise of voting rights and other engagement activities (known collectively as 'stewardship'). This followed recommendations by the Law Commission and others from 2014 onwards that the requirements of the SIP should be updated to reflect more accurately trustees' investment duties.[231]

Under the new regulations, from October 2019, a scheme's SIP must specify its policies in relation to financially material considerations (including ESG considerations) and in relation to voting rights and engagement activities. By October 2020 a SIP would need to explain how it incentivises any asset manager to align its investment policy with the trustees' priorities.[232]

In March 2020, the Pensions Climate Risk Industry Group[233] consulted on non-statutory guidance for occupational pension schemes on assessing, managing and reporting climate-related risks in line with the recommendations of the Taskforce on Climate-related Financial

228 Ibid c1110
229 Ibid c1111-2
230 *The Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378)*
231 Fiduciary duties of investment intermediaries, Law Commission, October 2014
232 *The Pension Protection Fund (Pensionable Service) and Occupational Pensions (Investment and Disclosure) (Miscellaneous Amendment Regulations) 2018 (SI 2018/988)*; TPR guidance for trustees – investment governance
233 The Pensions Climate Risk Industry Group was set up in summer 2019 by the Department for Work and Pensions, and pensions representatives (see TPR press release 12 March 2020)

Disclosures (TCFD).[234] The increased transparency is intended to lead to decision-useful information and therefore better-informed decision-making on climate-related financial risks. The Government said that it would take powers in the Bill to require climate-change risk governance and TCFD reporting.[235]

Debate in the Lords

Clause 124 of the Bill, introduced at Committee stage in the Lords, would make amendments to the *Pensions Act 1995* to introduce regulation-making powers to:

- Impose requirements on occupational pension scheme trustees and managers, with a view to securing that there is effective governance of the effects of climate change on the scheme and to publish information about the effects of climate change on the scheme;
- Set out the activities they are required to undertake as part of their governance on the effects of climate change; and[236]
- Confer functions on The Pensions Regulator to ensure compliance with any governance and reporting requirements introduced, by issuing compliance and penalty notices.

At Committee stage, backbench and opposition Peers argued for reporting on alignment with the Paris Agreement objectives.[237] The Government's initial response was that industry was not yet quite ready for this and there was as yet little international consensus on methodologies for reporting on Paris alignment.[238]

However, at Report stage, the Government amended the clause to include regulation-making powers to enable trustees to be required to consider climate change goals, including the Paris Agreement temperature goal.[239] The Minister explained that the amendments would:

- Make it explicit that regulations may require scheme trustees and managers to take account of the different ways in which the

234 The Taskforce on Climate-related Financial Disclosures was set up by the Financial Stability Board in 2015-16, following a request from G20 Finance Ministers and Central Bank Governors for a review of how the financial sector can take account of climate-related issues. (Task-force on climate-related financial disclosures Overview). The TFCD status reports provide an overview of current disclosure practices (TFCD: 2019 status report, June 2019).
235 DWP, Aligning your pension scheme with the TCFD recommendations: consultation guidance, Updated April 2020
236 Ibid c156GC
237 HL Deb 26 February 2020 c147GC
238 HL Deb 26 February 2020 c156GC
239 HL Deb 30 June 2020 c625; The Paris Agreement aims to ensure that the increase in average temperatures above pre-industrial levels is kept to 'well below' 2°C by 2100 and to pursue efforts to limit the temperature increase to 1.5°C (DWP consultation, April 2020, para 2)

climate might change and the steps that might be taken because of those changes;

- Allow regulations to be made requiring trustees and managers to adopt prescribed assumptions about achievement of the Paris Agreement goal and other climate change goals, or the steps that may be taken to achieve them; and
- Ensure that trustees and managers could be required to publish information relating to the assessments they make by reference to the Paris Agreement goal or other climate change goals. This would include publication of the contribution of schemes' assets to climate change.

The Minister said that the FCA was considering how best to enhance climate-related disclosures by those schemes it regulates.[240]

On 26 August 2020, DWP launched a consultation on proposals to require trustees (of larger occupational schemes, authorised Master Trust schemes and authorised Collective Money Purchase Schemes) to address climate change risks and opportunities through effective governance and risk management measures in line with the TCFD recommendations. Among the activities required would be calculating the 'carbon footprint' of pension schemes' assets and assessing how the value of the schemes' assets or liabilities would be affected by different temperature rise scenarios, of which at least one must correspond to a global average temperature rise of 2 degrees or lower above pre-industrial levels. There would need to be weblinks to the published information in the scheme's annual report and accounts, the annual scheme return, and scheme members' annual benefit statements.[241]

Debate in the Commons

At Commons Committee stage, Seema Malhotra moved an amendment that would "add contract-based workplace schemes to obligations under this clause, as well as occupational pension schemes." She hoped the Minister would agree that this was a "common-sense extension of the welcome measures already contained in the Bill" that would "ensure effective governance of all relevant schemes with respect to the effects of climate change."[242]

Pensions Minister, Guy Opperman, said the Government believed that the clause and the regulations that would be made under it were a "huge step forward" in the UK's fight against climate change. They would "include powers to ensure that pensions are properly protected against the risk posed by climate change and can take full advantage of the investment opportunity it presents." There was "an opportunity to be the first in the market as we create climate change-friendly investments and an investment strategy that genuinely transforms this country, helps us to get to net zero and provides sustainable long-term

240 Ibid; See also, HM Government Green Finance Strategy July 2019; FCA, PRA, FRC and TPR, Joint statement on climate change, July 2019
241 DWP, Taking action on climate risk: improving governance and reporting by occupational pension schemes, August 2020, chapter 1
242 PBC Deb 5 November 2011 c88

pensions."[243] The Opposition amendment was not necessary because the Financial Conduct Authority was already working on the issue:

> I can assure the Committee that the FCA plans to consult on corresponding climate-related financial disclosures for personal pension schemes in the early months of next year and to finalise the rules by the end of 2021. That will mean that by 2022, subject to consultation and cost-benefit analysis, pension schemes, no matter whether they are occupational or personal, will be subject to TCFD reporting requirements.[244]

The Opposition returned to the issue at Report Stage on 16 November. Jonathan Reynolds said:

> this is not about the Government dictating to pension funds about when and who to invest their money in, and we are not seeking to compromise trustee independence. It is simply about putting a strategy in place that considers their role in meeting our climate objectives. Trustees can maintain their total discretion over what strategy they choose to achieve that goal. Furthermore, this proposal is designed to allow the Government the flexibility to guide schemes via regulations to ensure that trustees have a strategic plan to become Paris aligned over a period of time. Any measures resulting from this amendment would be subject to extensive consultation with market participants, so that their design could take into account what works best for schemes of different types and sizes.[245]

Responding, Mr Opperman said it was the wrong way forward:

> I am afraid the reality is that Labour's proposals would direct investment, breach fiduciary duties and lead to divestment and negative outcomes. We want the transformation of the United Kingdom economy and the retrofitting of the country to happen in a partnership with business, legislators, pension schemes and citizens, but I am afraid the amendment would negatively affect that. It would be entirely the wrong way forward.[246]

The Opposition amendment was defeated on division by 356 to 256 votes.[247]

5.3 Clause 125 - Right to a cash equivalent

Pension scheme members have the ability to transfer the rights they have built up (their 'cash equivalent transfer value' or CETV) to another pension scheme in exchange for giving up their rights in the scheme they are transferring out of.[248]

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243 Ibid c89
244 Ibid c90
245 HC Deb 16 November 2020 c107-8
246 Ibid c112
247 Ibid c131
248 Chapter 1 of Part 4ZA and Chapter II of Part IVA of the *Pension Schemes Act 1993* (sections 93-101P)

For more detail, see Pension scams, Commons Library Briefing Paper, CBP 8643, April 2020

Clause 125 would give the Secretary of State power to make regulations that can place new conditions on a member's statutory right to transfer their pension rights to another scheme. These conditions can include the member providing to the trustees or managers of the occupational pension scheme they want to transfer their pension savings out of, evidence or information about their employment link to the receiving pension scheme or their residency overseas.[249] For example, to demonstrate a genuine link with the employer of the receiving scheme, the scheme member may be required to provide payslips and bank statements over a three-month period. The employer may also be required to provide a statement to the effect that they employ the member and participate in the receiving scheme. The intention is to protect scheme members from scams.[250]

Debate in the Lords

The Government amended the Bill at Committee stage in the Lords to ensure the same conditions could be applied to members' statutory right to transfer out of unfunded public service schemes.[251] This was because DWP had been made aware of criminals trying to set up a scheme that could receive unfunded pension transfers.[252]

In relation to the transfer of pension benefits into a Qualifying Recognised Overseas Pension Scheme (QROPS), the potential conditions will depend on what if any Agreement the UK reaches with the European Union.[253]

To further enhance the protection of pension savings the Government introduced a further amendment of the Bill at Report stage to add to the example conditions that the regulations may prescribe, a condition that in certain circumstances people wishing to transfer must provide evidence to show that they have obtained information or guidance from a prescribed person, or evidence that shows they are exempt from these conditions. This would mean that "selected "at-risk" members will have to pause their transfer and demonstrate they have taken action to consider the risks of proceeding."[254]

Debate in the Commons

At Second Reading, Chair of the Work and Pensions Committee, Stephen Timms called on the Government to do more to address scams, by enabling pension scheme trustees to refuse a transfer in the event of a major 'red flag' being raised. He said it was hard to argue that the

249 HL Deb 2 March 2020 c242GC
250 Pension Schemes Bill. Memorandum from DWP to the Delegated Powers and Regulatory Reform Committee, January 2020, para 1.460-9; Bill 165-EN, para 649-58; DEP 2020-0170
251 All the main public service pension schemes, apart from the Local Government Pension Scheme, operate on an unfunded basis (see Public service pensions – facts and figures, Commons Library Briefing Paper CBP 8478, December 2019)
252 HL Deb 2 March 2020 c242GC
253 Pension Schemes Bill. Memorandum from DWP to the Delegated Powers and Regulatory Reform Committee, January 2020, para 1.463
254 HL Deb 30 June 2020 c645

statutory right of transfer should apply if the destination was a firm listed on the Financial Conduct Authority's warning list.[255] Pensions Minister Guy Opperman said he thought that the issues raised could be addressed by clause 125 but he was happy to continue the dialogue.[256]

At Committee stage, Mr Timms moved amendments, based on the work of the Pensions Industry Scams group, that would:

> empower trustees to refuse a transfer altogether if they had good grounds, based on the red flag analysis, for believing that a proposed transfer involved moving pension savings into a scam. It would say to the trustees, "You don't have to do this." The amendments provide for the making of regulations that prevent a transfer from taking place, depending on the results of that due diligence on the receiving scheme undertaken by the trustees or the scheme managers. That would allow a period of consultation and evidence gathering before regulations were drafted and implemented, to ensure that the detail was right.[257]

The Minister responded that transfers would not go ahead if conditions in regulations under clause 125 were not met:

> These conditions can relate to both the destination of the transfers, meaning transfers can be prevented to schemes that do not have the right authorisation, and cases where the member has not supplied the evidence of, say, employment or residency. Importantly, those conditions can also include other red flags, such as who else is involved in a transfer. If those red flags are apparent, the regulations will enable the trustees to refuse to transfer. If the red flag is significant, it will direct the member to guidance or information that they must take prior to being allowed to transfer. Trustees will need to undertake due diligence to establish whether those conditions are met or not. Clause 125 puts trustees in the driving seat in relation to permitting transfers to proceed.[258]

The conditions to be met in relation to "safe destinations, red flags and guidance before a transfer can proceed" would also apply to members of DB schemes and would be "in addition to the current advice requirements for DB members seeking to transfer over £30,000 cash-equivalent value."[259] He said Clause 125 would provide the statutory framework. Officials would work to "frame the regulations that flow from clause 125 to accord with all our stated objectives."[260]

Mr Timms asked about the application to FCA-registered schemes, such as self-invested personal pension schemes (SIPPS). The Minister responded that:

> in 2018 the FCA wrote to SIPP operators to remind of the due diligence requirements to follow when accepting customers' investments. The FCA considers—this is the instruction I have been given, but I will follow it up in more detail—that most SIPP operators adapted their due diligence procedure in line with the

255 HC Deb 7 October 2020 c928
256 Ibid c929; Letter from Guy Opperman to Steven Timms, 6 October 2010
257 PBC Deb 5 November 2020 c91-3
258 Ibid c97
259 Ibid c97
260 Ibid

> FCA's expectations, or have voluntarily left the market as a result of the FCA's scrutiny.[261]

In the case of transfers, clause 125 would provide that "where a risk is identified, the member must be notified that they will be required to prove that they have taken information or guidance before the transfer can proceed."[262]

Mr Timms returned to the issue at Report stage on 16 November 2020:

> It seems absurd that, as the law stands, trustees are compelled to make a transfer if a member demands it, even if they know that the money is going to crooks. Even if the receiving scheme is on the warning list published by the Financial Conduct Authority of firms known to be suspect, the law requires trustees to go ahead with the transfer. If they are slow about it, they can be fined.[263]

He welcomed assurances given by the Minister that he would bring will bring forward regulations under existing powers in the Bill to have that effect and that the Department would consult widely on the regulations to be drawn up in parallel with the Select Committee inquiry.[264] His amendments were supported by Shadow Work and Pensions spokesperson, Angela Eagle, and SNP spokesperson, Neil Gray.[265]

Also related to scams, Mr Timms moved amendments at Report stage on 16 November aimed at ensuring that individuals receive an impartial guidance appointment from Pension Wise before they become eligible to access their pension benefits, with an appointment booked for them each year until they take one up. He said Pension Wise was an excellent service with high satisfaction ratings. However, one in 33 of those eligible to use it did so. He felt that proposals by the Government to require trustees to provide a stronger nudge to guidance, expected to increase take-up to one in nine, did not go far enough.[266]

Responding, Mr Opperman said he could not support the amendment, which would "massively enhance the workload of Pension Wise by at least 10 times." He stood by the Government's approach which was that individuals who make an application to transfer pension rights or start receiving pension benefits should be referred to appropriate pensions guidance. It was also proposing a "stronger nudge" to guidance as had previously been proposed by the Work and Pensions Committee. Mr Timms' amendment was defeated on division by 351 votes to 262.[267]

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261 Ibid c98-9; See also letters from the Minister and FCA to Mr Timms dated 5, 6 and 22 October
262 Ibid
263 HC Deb 16 November 2020 c65
264 Ibid c66
265 Ibid c83 and c107
266 HC Deb 16 November 2020 c63
267 Ibid c114-6

5.4 Clause 126 - Pension Protection Fund

For more detail, see Pension Protection Fund, Commons Library Briefing Paper, CBP 3917, October 2020

The Pension Protection Fund (PPF) was set up under the *Pensions Act 2004* to provide compensation to people with an eligible DB pension when an employer becomes insolvent.[268] The concept of 'pensionable service' is fundamental to the calculation of the amount of compensation payable to individuals. The Government explains that the intent had always been that pension rights which arose by virtue of a fixed pension transfer, where the initial amount of the pension was determined at the time of the transfer payment, should be treated as attributable to the person's pensionable service. However, in the *Beaton* case in October 2017, the High Court determined that, when applying the compensation cap, benefits derived from a transfer-in could not be said to be attributable to pensionable service and could not be aggregated.

The DWP said that the Beaton judgement had led to the legislation being interpreted in ways that were inconsistent with the policy intent and PPF practice, with the potential for perverse and unintended outcomes for a range of individuals:

> The judgment principally considered relevant fixed pensions only in the context of the PPF compensation cap but, in government's view, it would also lead to a number of wider perverse and unintended outcomes for a range of individuals, including some in receipt of survivor benefits. The judgment could result in individuals whose PPF compensation was derived, wholly or in part, from a relevant fixed pension seeing their payments reduced, and in some cases, stop altogether.[269]

It introduced regulations to remedy this for the future, ensuring that a pension derived from a transfer-in would be treated as "attributable pensionable service for the purpose of calculating PPF compensation (except for the purposes of applying a single compensation cap)." This would ensure that the PPF had the legal basis to pay survivor benefits and to index and revalue payments.[270]

Clause 126 would ensure the PPF can continue to administer the compensation regime as intended following the Beaton case.[271] It would do this the treating the amendment made by regulations as though it had always had effect, e.g. making it retrospective.[272]

5.5 Clause 127 - Administration charges

Clause 127 would update the definition of 'administration charge' in Schedule 18 to the *Pension Act 2014* to make it clear what costs are included in it.

This was needed because a number of measures to protect employees in workplace pension schemes – such as the 0.75% cap on charges in

268 PPF – who we are
269 DWP, Changes to PPF regulations - consultation, July 2019
270 SI 2018/998
271 Anthony Beaton v the Pension Protection Fund [[2017] EWHC 2623]
272 Explanatory Memorandum to SI 2018/988; Pension Schemes Bill 2019/20 [HL] - Explanatory Notes, para 632-7

the default arrangements in auto-enrolment pension schemes – rely on how these charges are defined.

The Government says that the charge cap is working to protect members, with a 2016 survey showing charges in default arrangements were between 0.38% and 0.54%. However, despite TPR guidance, uncertainty still persists over the full range of costs controlled by the cap.[273]

The Government responded to a consultation on the Review of the default fund charge cap and standardised disclosure on 13 January 2021. It said the evidence from the Pension Charges Survey 2020 was that the Charge Cap at 0.75% remained at the right level. There would be steps to protect small pension pots from being eroded by charges. The Government remained committed to improving transparency and the standardisation of costs disclosure information. It would monitor the adoption of costs transparency initiative (CTI) templates and legislate in the future if it did not see satisfactory levels of voluntary take-up.[274]

273 Bill 165-EN, para 39 to 41 and 665 to 667; DWP, Impact Assessment, Spring/Summer 2019

274 Government response: review of the Default Fund Charge Cap and Standardised Costs Disclosure, 13 January 2021

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