HOUSE OF LORDS

Library Note

Pensions Bill (HL Bill 55 of 2013–14)

The Pensions Bill makes provision for reform of the state pension system, including the introduction of a single-tier state pension. It also contains reforms of bereavement benefits, provision for amending the timetable for increasing pensionable age and a number of measures relating to private pensions, including the provision of an automatic transfer scheme for accrued rights to pension benefits.

This Library Note provides an overview of the six parts of the Bill, and a short summary of proceedings at second reading in the House of Commons. It then examines the debates at committee and report stages in further detail, with reference to key elements within the Bill. Finally, the Note provides a brief summary of the debate at third reading.

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Table of Contents

1. Introduction

The Government published a draft Pensions Bill on 18 January 2013. The House of Commons Select Committee on Work and Pensions conducted pre-legislative scrutiny on elements of those provisions (single-tier state pensions), reporting on 4 April 2013.[1] The Pensions Bill was subsequently announced in the Queen's Speech on 8 May 2013, and introduced into the House of Commons on 9 May 2013. The Bill completed its final stages in the House of Commons on 29 October 2013. It is due to have its second reading in the House of Lords on 3 December 2013.

This Note provides an overview of the Bill, and a brief summary of proceedings at second reading. It then examines the debate at committee and report stage in the House of Commons in further detail, with reference to key provisions within the Bill. Finally, the Note provides a brief summary of the debate at third reading.

2. Overview of the Pensions Bill 2013–14

The Bill, as introduced to the House of Lords on 30 October 2013, is in six parts.

Part 1 of the Bill provides for reform of the state pension system by replacing the current two-component system (the basic state pension and additional state pension) with a single-tier state pension. Those reaching pensionable age after implementation on 6 April 2016, and entitled to a full state pension, will receive a single weekly rate, to be set out in regulations.[2] The Government has said that the single-tier will be set above the basic level of means-tested support (the Pension Credit Standard Minimum Guarantee, currently £145.40 per week for a single pensioner).[3]

Thirty-five qualifying years of National Insurance contributions or credits will be needed for individuals to receive the full amount of single-tier state pension. Those with fewer than thirty-five qualifying years will receive a pro-rata amount, subject to them having a minimum number of qualifying years. It is intended that people will qualify for the single-tier state pension on the basis of their own contributions. Thus, it will no longer be possible for individuals to derive state pension income from their (former) spouse or civil partner's contributions (subject to some transitional protection).

Those who have already reached pensionable age by the implementation date will continue to receive their state pension according to existing rules. The Bill also provides for individuals to postpone or suspend their entitlement to a state pension.

The Bill includes transitional provisions for:

- People who have paid, been treated as having paid or been credited with National Insurance contributions in respect of tax years before the introduction of the new state pension.

[1] House of Commons Select Committee on Work and Pensions, *The Single-tier State Pension: Part 1 of the Draft Pensions Bill*, 4 April 2013, HC 1000 of session 2012–13.
[2] Department for Work and Pensions, *Pensions Bill: Explanatory Notes*, 31 October 2013, para 13.
[3] Department for Work and Pensions, *The Single-tier Pension: A Simple Foundation for Saving*, January 2013, Cm 8528, p 8.

- Inheriting entitlement from a late spouse or civil partner who had made National Insurance contributions in respect of tax years before the introduction of the new state pension.

- Women who, before 1977, elected to pay a reduced rate of National Insurance contributions.

- Sharing a pension with a former spouse or civil partner upon divorce.[4]

The Bill also provides for a number of changes arising from the introduction of the new single-tier state pension. These include the abolition of contracting-out for salary-related occupational pension schemes, and the abolition of the savings credit element of state pension credit for those people who reach pensionable age on, or after, the date of the introduction of the new state pension.

Part 2 of the Bill amends the timetable for increasing pensionable age from 66 to 67 (originally set out in the Pensions Act 2007), bringing it forward by eight years to begin in 2026, and end in 2028. The Bill also provides for periodic reviews of pensionable age, and for this review to be informed by reports in relation to life expectancy from the Government Actuary's Department, and from an appointed panel on other factors specified by the Secretary of State.

Part 3 of the Bill makes provision with regard to the assessed income period (AIP) in state pension credit claims. The AIP removes the requirement for certain individuals to notify the Department of Work and Pensions of changes to retirement provision for a defined period, for the purposes of assessing their entitlement to state pension credit. The Bill introduces measures for the phasing out of the assessed income period in state pension credit cases from April 2016. It also repeals existing provision in the Pensions Act 2008 to ensure that indefinite AIPs set before 6 April 2014 will continue beyond that date.

Part 4 of the Bill provides for the introduction of a new benefit, the Bereavement Support Payment. This new payment will replace the existing range of benefits for those whose spouse or civil partner dies on or after the date it is introduced. The new benefit is intended to provide support for the period immediately following bereavement.

Part 5 changes the regulatory framework for private pensions, in the context of an anticipated increase in pension saving expected to result from workplace pension reform (including 'auto-enrolment') currently being phased in between now and 2017. The Bill contains a range of measures which include, as set out in the Explanatory Notes:

- A power to provide for a system of automatic transfers of a person's accrued rights to benefits under a pension scheme, to another scheme of which that person is an active member.

- A provision for regulations to be made banning the practice of providing incentives which encourage individuals to transfer a cash equivalent value of their accrued rights from a salary-related occupational scheme to an alternative arrangement.

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[4] Explanatory Notes, para 25.

- The removal of the existing power to make refunds of contributions ('short service refunds') to members of money purchase occupational pension schemes who terminate their membership before two years have elapsed since they joined the scheme.

- A provision for regulations to be made to restrict charges in and impose governance and administration requirements on schemes specified in regulations.

- Amendments to the Pensions Act 2008 relating to automatic enrolment, including a power to specify certain groups that employers will not be required to enrol or re-enrol.

- Amendments to the Pension Schemes Act 1993 regarding the payment of a limited amount of unpaid pension contributions from the National Insurance Fund where an employer becomes insolvent so that all those who may become members of a pension scheme as a result of the workplace pension reforms are entitled to this protection.

- A power to require pension levies to be paid in respect of past periods.

- Various technical amendments to the Pensions Act 1995 and the Pensions Act 2004 designed to improve operational processes for the Pensions Regulator.

- An amendment to companies legislation to make it clear that the body preparing guidance in relation to pensions illustrations may benefit from the exemption from liability for damages.

- A new objective for the Pensions Regulator which sets out that the Regulator must consider how it can minimise any adverse impacts on an employer's sustainable growth when exercising its functions under part 3 of the Pensions Act 2004.

Finally, **part 6** of the Bill provides for consequential amendments, general provisions and territorial extent.

3. Second Reading in the House of Commons

The Bill had its second reading on 17 June 2013. Speaking to its key provisions, Iain Duncan Smith, the Secretary of State for Work and Pensions, spoke of the need to adapt the state pension system in the face of changing demographics and working patterns. Noting that the number of people over state pension age is set to increase by 26 percent between now and 2035, he said that in recognition that the need for sustainable pension provision is ever more pressing, the Bill provides for the "most important reform for a generation: the introduction of the single-tier state pension".[5] He added:

> This new pension system reflects the fact that working patterns and family life have changed over years, that people need to take personal responsibility for planning and saving for their retirement, and that people are living longer and drawing their state

[5] HC *Hansard*, 17 June 2013, cols 647–54.

> pension for longer than their ancestors would ever have done or, ironically, ever expected to do.[6]

With regard to the other elements of the Bill, Mr Duncan Smith said that it also contains provision to ensure that automatic enrolment functions effectively:

> Measures in the Bill will ensure that automatic enrolment works as intended. We need to address some technical issues, clarify the existing powers and provide for the automatic transfer of small pension pots. The last of those is vital, because a quarter of people already lose track of at least one pension, and it is estimated that some 50 million dormant pots will exist by 2050 if we do nothing about this issue.[7]

The Secretary of State also remarked that a regular review of the pension age would prevent future governments from having to take "emergency action", adding that men and women retiring at 67 in 2028 can expect to receive a pension for roughly the same amount of time as those retiring at 65 in 2013.[8] The review, he said, will work on the same principle—namely that people should spend a given proportion of their lives drawing a state pension. He added:

> By regularly considering the state pension age in light of changing life expectancy, we can ensure that our pension system remains on firm foundations. That will ensure a continuing and fair social settlement between young and old.[9]

Finally, with regard to bereavement benefits, Mr Duncan Smith said the Bill provided "long overdue reforms".[10] It was time, he said, to replace an "outmoded system of complicated payments and contributions that, at worst, can harm people's long-term job prospects by distancing them from the labour market".

Liam Byrne, former Shadow Secretary of State for Work and Pensions, said that Labour would support the Bill.[11] However, he voiced concerns over the cohort of women born between April 1951 and 1953 who would not be eligible for a single-tier pension (though a man born on the same day would be).[12] He also questioned the 35 year qualifying period included in the Bill in place of the 30 year period proposed by the April 2011 Green Paper, and expressed concern that reviewing the pension age every five years could be detrimental to stability and long-term planning.[13]

Mr Byrne agreed on the importance of reform of private sector pension provision, but expressed concern of the potential impact of the abolition of the contracted-out rebate on public service employers.[14] Later in the debate, Gregg McClymont, Shadow Minister for Work and Pensions, raised the issue of women close to retirement who had expected to be able to claim on the basis of their (former) spouse's contributions, arguing that the Government should

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6 ibid, col 647.
7 ibid, col 648.
8 ibid, col 652.
9 ibid.
10 ibid, col 647.
11 ibid, col 654.
12 ibid, cols 657–9.
13 ibid, cols 658–60.
14 ibid, col 661.

consider "something along the lines of" the 15 year period of transitional protection for this group suggested by the Select Committee on Work and Pensions.[15]

4. Key Elements of the Bill and Proceedings at Committee and Report Stages in the House of Commons

4.1 Part 1: State Pension

Introduction on 6 April 2016 (Clause 1)

Clause 1 of the Pensions Bill would provide for a person reaching pensionable age on or after 6 April 2016 to be eligible for the single-tier state pension. The current arrangements would continue for people who reach State Pension Age (SPA) before 6 April 2016.

There was debate at both committee and report stages on the cohort of around 700,000 women born between 6 April 1951 and 5 April 1953, who will not be eligible for a single-tier state pension, despite the fact that a man of the same age would be, because of the different age at which they receive their pensions entitlement.[16]

The Public Bill Committee took evidence from some of the women affected. They included Marion Rees, who said that women already disadvantaged in working life were being "discriminated against in this final hour".[17] She said that the Government's plans for women to buy the necessary contributions to make up the shortfall (so that they became eligible) was "not feasible", as was the suggestion that 85 percent of women could defer their pension until 65 in order to receive the single-tier pension as it was unlikely that the women affected would have a "convenient pot of money" available to them for such purposes. She also rejected the argument that these women could be better off over the longer term:

> We have paid our contributions and all we ask is that we are treated fairly and equitably to enable us to receive the pension that is right for us. This pension is not a benefit. It is something to which we have contributed all our working lives. To say that we will, over the course of our pensionable lifetime, be many thousands of pounds better off is spurious. Who knows how long each of us is going to live?[18]

During report stage, Gregg McClymont, Shadow Minister for Work and Pensions, moved an amendment (new clause 8)—a measure similar to that which he had already tabled in committee—which would require that the Government conduct a review to determine whether all women born on or after 6 April 1951 should be included in the scope of the single-tier pension. Caroline Lucas (Green MP for Brighton, Pavilion) also moved an amendment at report stage (new clause 6) which would provide the women in this circumstance with the option of choosing whether to receive their state pension and associated benefits under the single-tier system if they wish to do so.

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[15] ibid, col 717.
[16] The reason for this is that the State Pension Age will still be unequal in April 2016. So men born between those dates reach SPA at 65 on, or after, 6 April 2016 and are therefore eligible for the single-tier. In contrast, women born between those dates reach SPA between the ages of about 62 and 63, before 6 April 2016, and would therefore not be eligible. Source: House of Commons Library, *Pensions Bill*, 12 June 2013, RP 13/37, p 33.
[17] House of Commons Public Bill Committee, 27 June 2013, col 77.
[18] ibid.

Steve Webb, Minister of State for Pensions, did not accept the case for a review, however, stating that it would be difficult to conduct within a timescale that would enable the single-tier pension to be implemented by April 2016.[19] He also did not accept that this cohort would be "uniquely disadvantaged" in comparison with other groups, stating in committee:

> I want to compare the [women affected] with two other groups: women who reached state pension age before April 2010, and those who do so after April 2016. In other words, there is a first, middle and later group. The argument is that the group in the middle is uniquely disadvantaged and should have special provision in law.
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> Let us look at the three facets of their state pension. The first is the age at which they can get it; the second is the number of years they have to build up contributions; and the third is whether they are in the single-tier or not. Let us give each of those groups a score for how well or badly they do. For the post-April 2016 group there is good news; they get single-tier and a tick there. The bad news is that their state pension age could be anywhere between 63 and 68. Somewhere in the middle is the fact that they need 35 years for a full pension. For them, it is one good, one bad and one somewhere in the middle.
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> For the group of women we are discussing, the good news is that they need 30 years to get a basic state pension. The middling bad news is a pension age of 61 to 63, which is not as high as the ones to come, but better than the ones before. The bad news is that they are not in single-tier. For them, there is one good, one bad and one somewhere in the middle.
>
> For the pre-April 2010 women, the bad news is that they need 39 years for a state pension and they are not in single-tier. The good news is that they have a state pension age of 60.[20]

Mr McClymont pressed his amendment for a review of these women's circumstances (new clause 8) to a vote at report stage, where it was defeated by 295 votes to 231.[21]

Entitlement at Full or Reduced Rate (Clauses 2 and 3)

Clauses 2 and 3 of the Bill would mandate that a person is entitled to the single-tier state pension at the full rate if they have reached state pension age and have 35 qualifying years of National Insurance contributions. A person with fewer than 35 qualifying years would be entitled to a pro-rata amount provided they have at least the minimum number of qualifying years. This amount would be specified in regulations, but would be no more than ten years.[22]

There was broad consensus between the Government and Opposition benches during the debate in the Public Bill Committee that a 35 year qualifying period struck an appropriate balance, as did a minimum qualifying period of ten years.[23]

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[19] House of Commons Public Bill Committee, 2 July 2013, cols 134–5.
[20] ibid.
[21] HC *Hansard*, 29 October 2013, col 856.
[22] Explanatory Notes, para 40.
[23] House of Commons Public Bill Committee, 2 July 2013, col 143.

Level and Rate of Single-tier Pension (Clause 3)

Clause 3 would provide for the full rate of the new state pension to be set in regulations, which would be subject to affirmative resolution. Schedule 12 (14 and 15) would provide for uprating arrangements for the single-tier pension to reflect those for the current basic state pension (ie that it must be increased by a percentage not less than the annual percentage increase in the general level of earnings). In committee, Steve Webb, Minister of State for Pensions, said that for the single state pension in April 2016 the initial rate would be set by autumn 2015.[24]

Entitlement at Transitional Rate (Clauses 4 to 6, and Schedules 1 and 2)

These clauses would make transitional provision for pension entitlement for those who reach pensionable age on or after the date the new state pension would be introduced and who have qualifying years attributable to tax years prior to introduction.[25]

As the Explanatory Notes detail:

> The provision is transitional because at some point in the future people will only have qualifying years attributable to the period after the new state pension is introduced and their entitlement will be calculated according to the rules set out in Clauses 1 to 3. The persons unaffected by these transitional provisions will be those who:
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> - Are under the age of 16 when the new state pension is introduced, so they will not have yet entered the National Insurance scheme.
> - Arrive in the UK for the first time after the new scheme is introduced.
> - For some reason have not paid, or received credit, into the National Insurance scheme or have not made enough contributions to achieve a 'qualifying year' before the new scheme is introduced.[26]

The calculation of the rate of state pension for those who have qualifying years attributable to tax years prior to introduction is set out in schedule 1. The calculation takes into account the National Insurance history of the person before the new state pension scheme starts when determining any future pension entitlement.[27]

Steve Webb, Minister of State for Pensions, explained in committee that such transitional arrangements were necessary to protect the retirement provision of those who had already accrued more than the amount of the single-tier state pension in April 2016.[28] According to the provisions in the Bill, those to whom this applies would receive the difference in between the single-tier provision and the amount they have accrued in a "protected payment". Mr Webb illustrated how this might work:

> Let us say that someone has built up £160. The single-tier is £144 and there will be an extra £16 of what is called a protected payment. The indexation rules are that the £144

[24] ibid, col 144.
[25] Explanatory Notes, para 46.
[26] ibid, para 47.
[27] ibid, para 48.
[28] House of Commons Public Bill Committee, 2 July 2013, cols 144–6.

> gets earnings-linked—at least—or triple-locked, and the £16 gets CPI-ied, which is what would happen anyway to a SERPS pensions; it is analogous to the current indexation in-payment for a SERPS pension.[29]

The transitional protections in the Bill would also provide for those who have been contracted out in the past. Mr Webb explained:

> We have said that in 2016 we will make a one-off adjustment for past contracting out. We will take away what we call the rebate-derived amount, which is sort of like the existing contracted-out deduction with a tweak. The basic idea is that we work out someone's 2016 foundation amount and we make a one-off deduction for the periods of their life when they paid less National Insurance than their neighbour. That seems to us the only fair way to do it.
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> If we adjusted that and said that that deduction—the rebate-derived amount—was like a stain on their record for the rest of their life, no one would get £144, because almost everyone has been contracted out for at least one year. Although contracting out these days is mainly a public sector phenomenon, historically it was not—more people were contracted out in the private sector than in the public sector. If someone worked for a big corporate, they were in a contracted-out pension scheme. As pensions have such a long history, even though now most contracted-out employees are in the public sector, historically most contracted-out employees were in the private sector [...]
>
> If someone has been contracted out in the past, and they get less than the full amount in 2016, if they continue to work post-2016, they will build up towards the full £144. They will not get the full £144 without additional years post-2016, but they can build up towards it. That seems like the right balance. We could not ignore contracting out, but nor could we keep it in the system for another half a century, so we have allowed it to be worked out of the system. That strikes us as the right balance.[30]

Gregg McClymont, Shadow Minister for Work and Pensions, called for a review to determine the potential costs and benefits of phasing the transition to a 35 year full pension requirement via an interim requirement of 30 years.[31] He provided the example of someone who had planned for retirement on the basis that they would require 30 rather than 35 years, and now would find it highly difficult to make up the difference.[32]

Steve Webb responded:

> To clarify, we are moving from a situation where someone needs 30 years for a £110 pension, having accrued an earnings-related pension on top, to needing 35 years for a £144 pension. People talk about a full state pension as though we have moved the goalposts, but that is simply not the case [...] If the old system gives them more than the new system does, they get what the old system would have given them—almost without exception. As long as they have the ten years, they get the higher of the two numbers.[33]

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[29] ibid, col 145.
[30] ibid, col 146.
[31] ibid, col 144.
[32] ibid, cols 148–9.
[33] ibid, col 168.

One of the requirements of the reform, as set out in the April 2011 Green Paper, was that any option for reform "must be cost neutral in each and every year to avoid placing an unsustainable burden on future taxpayers".[34] Mr Webb said that requiring 35 years rather than 30 for a full-tier state pension would save £0.7 billion by 2030. The costs to go back 30 years would also rise over time, and reach approximately £2.9 billion by 2060.[35]

Clause 6 of the Bill would provide for the recalculation and backdating of the transitional rate in special cases.[36]

Transitional Entitlement Based on Contributions of Others (Clauses 7 to 12, and Schedules 6 and 7)

The Government intends that people should qualify for the single-tier state pension on the basis of their own contributions. Thus, under the reforms, apart from certain transitional arrangements and exceptions, after 6 April 2016 people would no longer be able to derive state pension income based on the National Insurance record of their spouse or civil partner.[37] Where both dependant and contributor reach state pension age before the implementation of the reforms, however, the current rules would continue to apply.[38]

Schedule 12 would provide for the restriction of the right to claim a state pension on the basis of the contribution record of a former spouse or civil partner (depending on when the dependent and contributor reach SPA in relation to the implementation of the single-tier state pension in April 2016).[39]

With regard to those with existing entitlements, clause 7 and schedules 3 and 4 would provide that after implementation individuals would remain entitled to an amount based on the additional pension that his or her late spouse or civil partner was, or would have been, entitled to in the current retirement pension scheme. Schedule 3 would provide for the conditions of entitlement of this inherited state pension. Clauses 8 to 10 and schedule 5 would provide for the inheritance of state pension rights where the late spouse or civil partner had deferred their state pension. Clauses 11 and 12, and schedules 6 and 7, would provide for the transitional protection arrangements for a married women with a "reduced rate election" in force at the start of the final 35 tax years before she reached pensionable age.[40]

Speaking to those transitional entitlements which resulted from reduced rate elections/the 'married women's stamp' in particular—whereby until 1977 married women and widows could elect to pay a reduced rate of Class 1 National Insurance contributions when an employee, and not to pay Class 2 National Insurance contributions when self-employed—Steve Webb, Minister of State for Pensions, explained in committee:

> We [...] felt that, although in a sense the option to pay the married woman's stamp for new people ended in the late 1970s, there was one heck of a legacy of all this. Lots of

[34] Department for Work and Pensions, *A State Pension for the 21st Century*, April 2011, Cm 8053, Executive Summary, p 8.
[35] House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, p 17.
[36] Further detail is provided in the Explanatory Notes (paras 46–57), including the nature of these exceptions, and the calculation employed.
[37] Explanatory Notes, para 58.
[38] House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, p 17.
[39] Explanatory Notes, paras 60–6.
[40] ibid, paras 72–3.

> people even now are coming up to pension age who, at some point, have paid the married woman's stamp.
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> Clause 11 relates to the people who have got something in their own right; clause 12 relates to the married women who paid the married woman's stamp who have got nothing at all. What these clauses and schedules do is essentially to try to replicate what those people would have got. In a sense, it is cleaner, because if they have got nothing at all we just pay them what they would have got—the 60 percent, or the 100 percent in due course. If they have got something, we have to mesh together the something that they have got with the extra amount that we will give them, which is why we have done them separately. However, as I think the Committee would consider was proper, what we have basically said is, "If, at your state pension age, you had a live election to pay the married woman's stamp at any point in the preceding 35 years [...] you're in this concessionary basis and essentially you will get the pension you would have got when your husband reached state pension age, because you are on his record as a married woman, and in due course if he predeceases you, you get the basic widow's pension that you would have got".[41]

In response, Gregg McClymont, Shadow Minister for Work and Pensions, argued that further transitional protections were needed. Citing a recommendation made by the Select Committee on Work and Pensions, Mr McClymont contended that the Government should conduct a review of the situation of women who did not build up their own National Insurance record because of the expectation that they would be able to rely on their husband's contributions (to give them entitlement to a basic state pension), which would include an analysis of the cost and benefits of permitting those within 15 years of state pension age (at 6 April 2016) to retain the right to derive state pension entitlement on the basis of their (former) spouse's contribution record.[42]

This issue was discussed again at report stage. An amendment (new clause 5) calling for similar provision was moved by Sheila Gilmore (Labour MP for Edinburgh East), a member of the Select Committee on Work and Pensions, who said:

> One of the issues that has come up in the course of all the debate about the single-tier pension is the decision that the Government have taken to bring an abrupt end to the provisions that previously existed for women in particular [...] to be able to derive a pension or years toward a pension from the contributions of their spouse [...]
>
> If the right to obtain these so-called derived benefits is taken away, there will be a group of people, primarily women, who, post-2016 when the new arrangements come in, will have less than they would have expected to get before that date. They will be in a worse position than they would have been previously, and that will have all sorts of consequences.[43]

Responding, Steve Webb said:

> The spirit of [new clause 5] implies transitional protection, but we have included comprehensive transitional protections in the system [...] In particular, those who paid

[41] House of Commons Public Bill Committee, 2 July 2013, cols 191–2.
[42] ibid, cols 175–6.
[43] HC *Hansard*, 29 October 2013, cols 840–1.

> the married woman's stamp and as a result have a poor contribution record will, notwithstanding the fact that we are ending derived rights, continue to be able to receive a 60 percent spouse's pension or a 100 percent widow's pension, because that was the basis of the deal they did with the state [...] We took the view that because that was the basis of the deal, we could not change the rules. We have made sure that the limited number of women in that position are protected.
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> The issue is whether we should go further [...] [The Honourable Lady] is asking us to keep, for another 15 years, an extraordinarily complex bit of the system rolling into the new system. We are trying to deliver a simple and effective new system and we have already introduced transitional protection for the most obvious group, the married woman's stamp pensioners, which we think needs to be protected [...] Were we to follow new clause 5 and the Select Committee's recommendation and choose 15 years as a cut off, we could be as sure as anything that we would be under judicial review for someone who was 16 years shy of the line [...] We can find no objective basis for choosing 15 years [...]
>
> What we are trying to do is recognise where we need transitional protection, but we want to avoid such great complexity that we recreate the complex old system for well over a decade with the new one.[44]

New clause 5 was not moved to a vote.

Shared State Pension on Divorce (Clauses 13 to 15, and Schedules 8 to11)

Clauses 13 to 15 would make provision with regard to pension sharing on divorce, including of the new state pension in certain limited cases.[45]

State Pension Deferral (Clauses 16 to 18)

Clauses 16 to 18 would provide for arrangements to defer the payment of a state pension under the new state pension scheme. Individuals currently have the option of deferring claiming their state pension beyond SPA in return for a higher state pension or a lump sum.[46] Whilst deferment would still be an option under the new scheme, the option to take a lump sum would no longer be possible.[47] The increments gained by deferral would also be around half the value of those gained under current rules.[48]

During committee stage, Gregg McClymont, Shadow Minister for Work and Pensions, said that Labour supported the removal of a possibility of a lump sum.[49] He also moved an unsuccessful amendment to ensure that the regulations setting the rate of deferral increments would be subject to the affirmative procedure in Parliament.[50] Steve Webb, Minister of State for Pensions,

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[44] ibid, cols 853–4.
[45] Explanatory Notes, paras 75–81.
[46] Under current rules, to get extra state pension, an individual has to defer for at least five weeks. For each five weeks of deferral, their state pension can be increased by one per cent (10.4 percent a year). There is also the option of a lump sum where an individual has deferred for at least a year. Source: House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, p 20.
[47] Explanatory Notes, para 88.
[48] House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, p 20.
[49] House of Commons Public Bill Committee, 4 July 2013, col 202.
[50] ibid.

said that he would be willing to publish advice from the Government Actuary on the level at which the increment had been set, and that he expected to publish further details at the time of Royal Assent.[51] As noted in the House of Commons Library Standard Note, *Pensions Bill 2013–14*, the Government estimated that continuing with the current system of increments—that is for 10 percent a year rather than 5 percent—would cost an additional £200 million a year in 2020 and £300 million in 2030.[52]

Despite a declared intention to do so, Mr McClymont did not push his amendment to a vote at the later stages of consideration of the Bill.

Prisoners (Clause 19)

Clause 19 would provide for the policy that (except where regulations dictate otherwise) individuals would not be paid a state pension while they were imprisoned, detained in legal custody or were unlawfully at large.[53]

Overseas Residents (Clause 20)

The UK state pension is payable overseas, but is currently only uprated annually to UK pensioners living in European Economic Area (EEA) countries, or in countries where there is a relevant reciprocal agreement.[54] A policy of not awarding increases has been followed by successive governments. Clause 20 would provide for these arrangements to continue under the new system.

In its scrutiny of the single-tier state pension, the Select Committee on Work and Pensions described this situation as an "anomaly", which the reforms presented an opportunity to address.[55] During debate on the Bill in the Public Bill Committee, Gregg McClymont, Shadow Minister for Work and Pensions, called for the Government to conduct a review of overseas residents' uprating entitlement. He stated that Labour was "not hostile" to the Government's position of not uprating overseas residents' pension entitlements where there are no reciprocal agreements, but that the case for changing existing arrangements should be explored.[56]

Both Sir Peter Bottomley (Conservative MP for Worthing West) and Sir Roger Gale (Conservative MP for North Thanet) strongly advocated during the report stage of the Bill that there was an inherent unfairness within the existing arrangements which the Government should address.[57] Sir Peter said:

> It cannot be right for a British expat living on one side of the Niagara Falls to have a frozen pension while, just across the water on the other side of the falls in the United States, another pensioner is receiving an increase every year [...] No one is seeking back payment because that would be financially unrealistic, but I believe that the time has come where we must right this wrong.[58]

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[51] ibid, col 208.
[52] House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, p 21.
[53] Explanatory Notes, paras 89–90.
[54] ibid, para 91.
[55] House of Commons Select Committee on Work and Pensions, *The Single-tier State Pension: Part 1 of the Draft Pensions Bill*, 4 April 2013, HC 1000 of session 2012–13, p 40.
[56] House of Commons Public Bill Committee, 4 July 2013, col 211.
[57] HC *Hansard*, 29 October 2013, cols 842–4 and 847–8.
[58] ibid, col 847.

Dame Anne Begg (Labour MP for Aberdeen South), Chair of the Select Committee on Work and Pensions, added with regard to those with "frozen pensions":

> [The Select Committee] did not recommend that the Government should roll back the clock for those who have frozen pensions, but we should not import into a brand-new system the anomaly that those in Canada have their pensions frozen whereas those in the United States do not. That did not seem fair to us as a Committee, and we hoped that the Government would act.[59]

Responding at the report stage, Steve Webb, Minister of State for Pensions, said that the Government was not persuaded by the argument that the existing arrangements should not continue.[60] He said that removing those arrangements from the Bill would only have the effect of creating a "new anomaly":

> [Removing the provision] would do nothing for any of the overseas pensioners who have [already] contacted us [...] it would only remove the freezing for single-tier pensioners [...] If we voted for the amendment, all we would be doing is creating a new anomaly.
>
> In a sense, the Chair of the Select Committee urged us to create that new anomaly. She said that we cannot defend the old one and that we should at least not carry on with it, but by doing that we would create a new anomaly. It is not just about which side of Niagara Falls one happens to live on, because single-tier pensioners would get indexation but nobody else would.

He added that the Government had estimated that indexing the pensions of those affected would cost around £700 million per year (not including any backdating).

Removal of Savings Credit (Clause 23 and Schedule 12)

Clause 23 and schedule 12 would provide for a number of amendments to other legislation relating to the introduction of the new state pension. These would include the removal of several aspects of the current retirement pension scheme for those reaching pensionable age after the state pension start date, including the Category C pension, the Category D pension, and the age addition for those aged 80 or over.[61]

Savings Credit

Pension credit was introduced in 2003 and currently has two elements: the guarantee credit and savings credit.[62] Guarantee credit provides financial help for those at the qualifying age for pension credit and whose income is below the threshold amount. Savings credit is intended to reward those over 65 with modest levels of 'qualifying income' (including state, occupational and personal pensions) above the savings credit threshold, up to a maximum.[63]

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[59] ibid, col 851.
[60] ibid, col 854.
[61] Explanatory Notes, paras 92–100. The Christmas Bonus in contrast is set to continue for recipients of both current and new state pension schemes.
[62] GOV.UK, 'Pension Credit', accessed 14 November 2013.
[63] House of Commons Library, *Pensions Bill*, 12 June 2013, RP 13/37, p 59.

Part 3 of schedule 12 would provide that the savings credit element of the state pension credit would only be payable (from the savings credit qualifying age) to those who had reached pensionable age before the start date of the new state pension scheme.[64]

Sheila Gilmore (Labour MP for Edinburgh East), a member of the Select Committee on Work and Pensions, raised the issue of savings credit in the Public Bill Committee, outlining concerns from pensioner advocacy groups about the impact on pensioners of its abolition.[65] She cited the evidence given by Age UK for example:

> Age UK said that in its view, some people could lose a substantial amount in the initial period following the introduction of the single-tier pension. Some people who reach pension age in the early period after the reform could lose as much as £18 a week in savings credit. That is a fairly substantial sum for people who are, by definition, not on a high income.
>
> The concern is that the way the provision operates will create losers, however much it is simplified. Simplification, while a desirable goal, has to be set against the need for fairness and the potential for creating losers. In debates such as this, we are inclined to think that if something is going to be simpler, it is inherently better and always advantageous to everyone. However, Age UK felt that this group of people could lose out as a result of the change.

Sheila Gilmore also requested further detail on the transitional arrangements for housing benefit in the wake of these changes.

Responding, Steve Webb, Minister of State for Pensions, said:

> What we are doing is reducing the need for [savings credit]. By paying a single, simple, decent state pension at £144 a week, fewer people will need means-tested benefits. It is true that we have stripped out a bit of the system for which there is no long-term rationale, which reinforces the trend towards the balance of expenditure being on the pension, rather than on the means test.
>
> I was asked for numbers on the scale. The Age UK figure, which was quoted, is the maximum possible savings credit—there is a maximum—and from memory I think the figure is £18 a week, which is of the right order for the maximum savings credit. The typical notional loss—I stress that it is notional—in 2020 will be about £11 a week, but that will be partly offset elsewhere in the system. The median notional reduction in net income will be about £8 a week for the savings credit losers, who will be about 1 percent of the pensioner population at that point. There is a set of people who will get about a tenner a week less.
>
> It is worth stressing that they are notional losers. We are not taking cash away from anybody. Nobody who is getting savings credit will have it reduced by a tenner a week, or extinguished. A set of people who hypothetically will fall within the scope of the savings credit—which they pretty certainly do not know they are going to get—will not

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[64] Explanatory Notes, p17. The Explanatory Notes also state that an individual who does not meet these criteria could still qualify if he or she is a member of a mixed age couple where the other member reached pensionable age before the start date of the new state pension scheme. However, a power is given to the Secretary of State to specify the circumstances in which entitlement is restricted for these mixed age couples.

[65] House of Commons Public Bill Committee, 4 July 2013, cols 231–2.

> get it. It is still less money than they would have had, but I suspect that the number of angry letters that I and my multiple successors will get about the amount of savings credit someone thought they were going to get and did not get will be countable on the fingers of one hand. It is so complicated. Most people will say, "You have told me what I'm going to get. I'm going to get a single, simple, decent state pension and my own savings on top" . There will be minimal means-testing in many cases; it is just a cleaner system. The rationale for the savings credit was understandable when it was introduced, although it was complex. In a single-tier world, it has no lasting purpose.[66]

He also said that savings credit had not proved an effective incentive to save, due to a lack of awareness that it exists and low take up rate.[67] Mr Webb also confirmed that transitional arrangements for housing benefit were still being worked out "in a universal credit world".[68] He added that the Government had to "think carefully about the housing benefit world for pensioners, which is why we have not set it out in detail". However, he pointed out that for five years after implementation of the single-tier pension, housing benefit protection would be retained, which would "give plenty of time to draw up a new system".[69]

Abolition of Contracting Out (Clause 24 and Schedules 13 and 14)

As detailed in the Explanatory Notes to the Bill, since 1961 sponsoring employers of salary-related occupational pension schemes have been able to contract their employees out of the additional pension on the condition that they provide an occupational pension meeting certain statutory requirements.[70] In return, the employee and employer pay reduced rates of National Insurance—what is known as the "contracted-out rebate".[71] As the additional state pension will no longer be available under the single-tier state pension system, it will no longer be possible to contract out of it.

Clause 24 would provide for the abolition of such contracting out schemes (for Defined Benefit pensions), and schedules 13 and 14 would ensure that all contracted-out rights accrued by employees through salary-related contracted-out schemes before the abolition of contracting out are fully protected.[72] The measures in the Bill would also provide for sponsoring employers of contracted-out schemes to change the rules of their pension schemes (where they are prevented from doing so) to adjust members' future pension accruals or pension contributions to take into account the loss of the employer's rebated National Insurance contributions.

As explained in the White Paper, employees who are members of contracted-out schemes face an increase in their National Insurance contributions rate as a result of the changes.[73] However, contributions after the reforms are implemented will count towards the single-tier state pension in the same way as those paid by other employees.[74] Similarly, employers will also face an increase in the National Insurance contributions, as they will be required to start paying the standard rate for any of their employees previously contracted out.[75]

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[66] ibid, col 235.
[67] ibid, col 234.
[68] ibid, col 235.
[69] ibid, cols 235–6.
[70] Explanatory Notes, para 101.
[71] ibid, para 102.
[72] ibid, paras 104–7.
[73] Department for Work and Pensions, *The Single-tier Pension: A Simple Foundation for Saving*, January 2013, Cm 8528, p 42.
[74] ibid.
[75] House of Commons Library, *Pensions Bill*, 12 June 2013, RP 13/37, p 64.

During the debate in the Public Bill Committee, Gregg McClymont, Shadow Minister for Work and Pensions, called for changes to scheme rules only to be made with the consent of employee trustees.[76] In response, Steve Webb, Minister of State for Pensions, outlined why the Opposition believed the statutory override provided for in the Bill was required:

> Among other things, the Bill allows the employers to change their schemes so that they recoup exactly that money. For example, if they have a scheme that accrues benefits at a 60th of a final salary for each year and they lose the rebates, they might change that 60th to a 70th, or whatever the actuary says is the right number. The provision is not intended to allow firms to go further [...] I draw attention to the fact that schedule 14 specifically precludes the use of the power to go beyond recouping the lost rebate. The power can be used only for the lost rebate.
>
> We have built in flexibility so that the power can be used more than once. A firm could, for example, not go the whole hog in the first instance if it did not consider that it needed to, but with the confidence that, if it did need to, it could come back for the balance. We considered making firms take such action all in one go, but the worry was about firms that would take the whole lot out of the scheme, although some might not choose to do so.[77]

Mr Webb added that it would not be fair on any employees who were not members of a contracted out scheme if employers recovered the deficit lost when such schemes ended through "lower pay rises and pay cuts".[78]

The Government moved a number of amendments with regard to employer override provisions at the report stage. They are listed below, as set out in the Government's briefing paper published in advance of the report stage debate:

> Amendments 2, 19 and 20 are technical amendments to ensure that the override power can be exercised to allow for scheme changes to apply to all active scheme members.
>
> Amendments 3 and 4 will ensure that employers can enrol new scheme members into the pension scheme as amended under the override provisions. This will place new members and those who were members of the scheme before the end of contracting out in the same position and help to avoid a situation in which employers close their scheme to new members.
>
> Amendments 18 and 24 allow for regulations to prescribe how an actuary determines the value of the increase in the employer's National Insurance contributions and scheme amendments, such that only the value of the lost rebate is recouped.
>
> Amendments 21 and 22 allow regulations to prescribe specific circumstances in which employers and actuaries can exercise discretion when using the override power (for instance, whether they consider remuneration data over a 1 or 3 year period).

[76] House of Commons Public Bill Committee, 4 July 2013, cols 236–8.
[77] ibid, col 244.
[78] ibid, cols 245–6.

> Amendment 23 provides a regulation-making power to ensure that trustees and scheme managers provide information to the employer in connection with the statutory override power (for instance, detailed membership data and the assumptions used to calculate the NI rebate and the value of proposed scheme amendments), and to apply standard penalties under the Pensions Act 1995 to persons who fail to comply.[79]

There was debate of the override powers provided by the Bill at the report stage, particularly with regard to those private sector employees in formerly nationalised industries which include employees with "protected person status".[80] John McDonnell (Labour MP for Hayes and Harlington) said:

> [...] Clause [24] will allow employers who sponsor the railway pension scheme and the Transport for London pension fund to amend the rules to increase member contributions, reduce member benefits or both, and those who will be affected are the people whom we have described as protected persons. Employers will be able to do that without the consent of trustees or scheme members, and without taking any cognisance of the views of the House. That is unacceptable.[81]

Gregg McClymont moved amendment 37 which would provide that the power in the Bill to amend existing schemes would not apply to specified protected schemes.[82] Mr McClymont said:

> Specific undertakings were given to the members of those [protected] schemes to encourage them to accept, if not actively support, the privatisation of the industries in which they worked. I urge the Minister to tell us this evening, if he can do so, whether he intends to use the power he is giving himself in the Bill to honour the promises made to the members of those schemes. If he will not do so, we will force a Division to test the opinion of this House on amendment 37, which would mean that the promises made to the 50,000 or so men and women in those protected schemes were met.

Steve Webb, did not address this issue in his remarks during the debate. Mr McClymont subsequently pressed amendment 37 to a vote and it was defeated by 290 votes to 230.[83]

The Government's amendments were passed without division.

4.2 Part 2: Pensionable Age

Part 2 of the Bill contains two provisions relating to pensionable age. The first would amend existing legislation for increasing the State Pension Age (SPA) from 66 to 67, bringing it forward

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[79] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Report Stage)—Briefing Paper*, 22 October 2013 p 3.

[80] Some former nationalised industries, now in the private sector, are limited in their ability to change scheme rules by legislation made at the time of privatisation. The legislation is specific to a number of industries and is collectively referred to as the 'Protected Persons Regulations' (PPRs). In broad terms the PPRs require the new private sector employer to continue to provide pension benefits for employees who were employed at the time of privatisation which are at least as good as those they were receiving in the public sector, and prevents the employer or the scheme from making changes which reduce future pension accruals or increase employee contributions. Source: HM Government, *Abolition of Contracting Out—Consultation on a Statutory Override for Protected Person Regulations*, January 2013, p 7.

[81] HC *Hansard*, 29 October 2013, col 848.

[82] ibid, col 849.

[83] ibid, col 860.

by eight years to begin in 2026 and end in 2028. The second measure would establish periodic reviews of pensionable age.

Legislation to increase the SPA has been introduced in a number of stages. From the 1940s until April 2010, the SPA was 60 for women and 65 for men. The Pensions Act 1995 introduced provisions to equalise women's pensionable age with that of men between 2010 and 2020, by gradually increasing the SPA for women from 60 to 65. The Pensions Act 2007 made provision to increase the equalised pensionable age to 66 between 2024 and 2026, to 67 between 2034 and 2036 and to 68 between 2044 and 2046. The Pensions Act 2011 accelerated the equalisation of women's pensionable age with that of men so that the process would be completed by 2018. It also brought forward the period in which the SPA would increase from 65 to 66 to between 2018 and 2020.

On 29 November 2011, George Osborne, the Chancellor of the Exchequer, announced that the Government intended to introduce legislation to bring forward the increase in SPA to 67 between April 2026 and April 2028.[84] In January 2013, the Government also set out its intention to carry out a review of the SPA every five years, with the first review set to take place in the next Parliament.[85]

Increase in Pensionable Age (Clause 25)

Clause 25 of the Bill would make provision for the increase in SPA from 66 to 67 to begin eight years earlier. The increase would begin in 2026 and end in 2028.[86] Presenting the clause to the Public Bill Committee, Steve Webb, Minister of State for Pensions, stated the increase to 67 by 2028 put the UK in line with many international comparator nations, and thus disputed the suggestion that it was a "grossly aggressive state pension age schedule that is out of line with those of other countries".[87]

During the debate, Shelia Gilmore (Labour MP for Edinburgh East), a Member of the Work and Pensions Select Committee, expressed concern at the number of people who, for health reasons, were out of the work force earlier than 65.[88] She questioned whether the Government had considered that "some kind of provision might be made for them, even in the run-up to an increased pension age". In response, Mr Webb stated that the SPA was not the mechanism for dealing with this issue:

> There has to be a point at which one gets the state pension. If we think that there are differentials—different parts of the country, different social groups, different industry groups—then we have to address those issues, but if we used the state pension age to do so, it would affect so many other people in ways that make the system unsustainable.[89]

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[84] HM Treasury, *Autumn Statement 2011*, November 2011, Cm 8231, p 23.
[85] Department for Work and Pensions, *The Single-tier Pension: A Simple Foundation for Saving*, January 2013, Cm 8528, p 13.
[86] Explanatory Notes, paras 108–11.
[87] House of Commons Public Bill Committee, 4 July 2013, col 252. The Minister stated that he had seen this suggestion in a "letter-writing campaign".
[88] ibid, col 253.
[89] ibid.

Mr Webb added the Government's view was that these issues needed "tackling at source". Gregg McClymont, Shadow Minister for Work and Pensions, said that there was "much sense" in the Minister's explanation of the clause, and stated that the Opposition would support it.[90]

Review of Pensionable Age (Clause 26)

Clause 26 would make provision for periodic reviews by the Secretary of State of the pensionable age in light of changes in life expectancy and other relevant factors. The first report would have to be published before 7 May 2017, and future reports would have to be published within six years of the previous report.[91] The Government had previously announced that it intended to carry out a review every five years.[92] However, the Explanatory Notes to the Bill state that "the reference to six years allows some flexibility around the report's publication date".[93] To inform the review, the Secretary of State would have to commission reports in relation to life expectancy from the Government Actuary's department, and from an appointed panel on other factors specified by the Secretary of State at that time. The reports would have to be laid before Parliament.[94]

In committee, Gregg McClymont, Shadow Minister for Work and Pensions, moved amendments 7 and 8, which would have required the Secretary of State to ensure that the appointed panel included representatives from the Opposition party, or parties; representatives of the trade unions; and representatives of the House of Lords Crossbenchers.[95] He stated that the purpose of the amendment was to "beef up the panel". Mr McClymont expressed concern that the "goalposts on the state pension age [had] moved a number of times in this Parliament", and that people would fear the SPA age would increase every five years as a result of each report. He explained that he believed the Secretary of State was "asking for the power, unfettered, to review the state pension age every five years", and argued that to have a broader range of parties represented on the panel would reassure people.[96]

In his response, however, Steve Webb, Minister of State for Pensions, suggested that the provisions were "slightly tokenistic", and stated that the Government had made it clear that "we envisage an independently led review".[97] He explained that:

> The model we have in mind is the Hutton review of public service pensions, so someone who commands respect across the political spectrum [...] We will not have a great panel that ticks every tick box, but someone whom people respect and who can listen to views across the spectrum and find out what is going on.[98]

He also highlighted that primary legislation would be required to increase the SPA.[99]

Mr McClymont pressed both of his amendments to a vote in the Public Bill Committee, which in each case were defeated by 7 votes to 4.[100]

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[90] ibid, cols 253–4.
[91] Explanatory Notes, para 112.
[92] Department for Work and Pensions, *The Single-tier Pension: A Simple Foundation for Saving*, January 2013, Cm 8528, p 13.
[93] Explanatory Notes, para 112.
[94] ibid, paras 113–5.
[95] House of Commons Public Bill Committee, 4 July 2013, col 255.
[96] ibid, col 256.
[97] ibid, col 261.
[98] ibid, col 260.
[99] ibid.

Impact across England, Wales and Scotland (New Clause 13)

At report stage Hywel Williams (Plaid Cymru MP for Arfon) tabled new clause 13, which would have required the Secretary of State to report on the differential effects and impacts of the pensionable age in England, Wales and Scotland, before part 2 of the Bill could come into force. Speaking to the new clause, Mr Williams stated that the intention was to encourage ministers to ensure that the panel reviewing life expectancy "looks further and also considers Britain's human geography of low incomes, no incomes, long-term unemployment, sickness and disability".[101] He highlighted that Wales had the lowest gross value of the UK nations and regions, and had a life expectancy lower than in England. He maintained that broader inequality needed to be addressed, since "it [would] certainly persist".

New clause 13 was not moved to a vote.

4.3 Part 3: State Pension Credit

Part 3 of the Bill, as presented to the House of Lords on 30 October 2013, would amend the State Pension Credit Act 2002 to provide for the phasing out of assessed income periods (AIPs) in Pension Credit from April 2016. It would also repeal existing legislation in the Pensions Act 2008 to ensure that indefinite AIPs set before 6 April 2014 would continue beyond that date.[102] These measures were introduced at report stage of the Bill in the House of Commons.[103]

The State Pension Credit Act 2002 requires the Secretary of State to specify an AIP in relation to Pension Credit where the person is aged (or whose partner is aged) at least 65.[104] During that period, the customer is not required to notify the Department for Work and Pensions of changes to retirement provision—broadly defined as capital, annuities and retirement pension—for the purposes of assessing their entitlement to Pension Credit. An AIP normally applies for five years, but could end prematurely in certain circumstances. The Pensions Act 2008 also provides for claimants aged 75 or over to be given an indefinite AIP in certain circumstances.[105]

The Government announced its intention to abolish AIPs in the Spending Review on 26 June 2013.[106] It estimated that there were around one million Pension Credit cases with an AIP that had a fixed end date, and that the measures to abolish AIPs would save £15 million in 2016/17 and £45 million in 2017/18. In October 2013, the Department for Work and Pensions published a briefing paper in advance of the report stage, providing further details on the Government's amendments which had been tabled with regard to phasing out AIPs.[107] The paper explained that AIPs had been introduced on the basis that pensioners were more likely to have relatively stable incomes and capitals, so less onerous reporting requirements were

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[100] ibid, col 262.
[101] HC *Hansard*, 29 October 2013, col 852.
[102] Explanatory Notes, para 119.
[103] HC *Hansard*, 29 October 2013, col 838.
[104] House of Commons Library, *Pension Credit: Assessed Income Periods*, 23 October 2013, SN06677, p 7.
[105] The House of Commons Library Standard Note, *Pension Credit: Assessed Income Periods*, 23 October 2013, SN06677, provides further background information on AIPs.
[106] HM Treasury, *Spending Review 2013*, June 2013, Cm 8639, Table 3, p 12.
[107] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Report Stage)—Briefing Paper*, 22 October 2013.

deemed necessary. However, it stated that the provision had "caused inaccuracies to build up and led to a situation in which claimants can retain their benefit awards despite having obtained significant amounts of capital or new income streams".[108]

The Impact Assessment on the abolition of AIPs estimated that the processing of additional changes of circumstances and carrying out more frequent case reviews would cost the Exchequer around £17 million a year, and implementation would cost a further £2 million.[109] However it also estimated that applying changes in retirement provision as they occurred would reduce the Exchequer spend on Pension Credit by around £80 million a year.

Phasing Out of AIPs (New Clause 3)

New clause 3 would amend the State Pension Credit Act 2002 to provide for the assessed income period in state pension credit claims to be phased out from 2016. From 2016, any change in retirement provision would have to be reported when it occurs, triggering an immediate review and change of the benefit award where appropriate.[110] The removal of the AIP would apply to new customers and to those existing customers with a five year AIP already in place at April 2016. The Bill would also make provision for regulations to be made to gradually phase out, on or after 6 April 2016, any remaining AIP that is five years or shorter in length. According to the Bill's Explanatory Notes, the regulations could be used to provide for those AIPs to be ended either when they mature, when a change of circumstances is reported or through reviews carried out on a phased schedule. Customers with an indefinite AIP already in place on 6 April 2016 would be unaffected until they end under existing rules, for example if the claimant went into a care home permanently, or died.[111]

New clause 3 was introduced at the report stage by Steve Webb, Minister of State for Pensions. He stated that the idea of the AIP had been a "reasonable one", but had not "worked in practice and has raised a lot of issues".[112] He explained that:

> [...] if someone in retirement inherits substantial wealth from the generation above them, they can continue to get pension credit for five years or even indefinitely, despite having very substantial wealth. If someone retires, has an assessed income period and then starts to draw a new stream of pension income, they can go on getting pension credit despite the fact that their living standard is well above the level of pension credit. We have given this a good go, and it was a reasonable thing to try, but in practice it has created anomalies, with payments to people who, if they were assessed on their current circumstances, would not be entitled to benefit.[113]

New clause 3 was accepted without division and was added to the Bill.[114] New clause 3 is now clause 27 in the Bill, as introduced to the House of Lords on 30 October 2013.

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[108] ibid, p 2.
[109] Department for Work and Pensions, *Impact Assessment: Abolition of Assessed Income Periods for Pension Credit*, October 2013, p 2.
[110] *Explanatory Notes*, para 116.
[111] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Stage Report)—Briefing Paper*, 22 October 2013, p 2.
[112] HC *Hansard*, 29 October 2013, col 838.
[113] ibid.
[114] ibid, col 839.

Indefinite Status of Existing AIPs (New Clause 4)

New clause 4 would repeal existing legislation in the Pensions Act 2008 to ensure that indefinite AIPs set before 6 April 2014 would continue beyond that date. The Department for Work and Pensions states that new clause 4 is a technical amendment that would remove a "potentially defective 'sunsetting' provision in existing legislation that would otherwise terminate existing indefinite AIPs in place on 6 April 2014".[115] The Bill's Explanatory Notes also confirm that the intention of the clause is to remove the doubt that existing indefinite AIPs remain in place indefinitely.[116]

New clause 4 was introduced at report stage. It was not debated and was accepted without division.[117] New clause 4 is now clause 28 in the Bill, as introduced to the House of Lords.

4.4 Part 4: Bereavement Support Payment

Part 4 of the Bill (formerly part 3), as introduced to the House of Lords, provides a legislative framework to reform existing bereavement benefits and would introduce a new bereavement support payment. This would replace the existing system of bereavement benefits for new claims starting from 2016–17.[118] The new benefit is intended to provide support for the period immediately following bereavement.[119]

The current system of bereavement benefits is comprised of the Bereavement Payment, the Bereavement Allowance and Widowed Parents Allowance, which, as a result of the Welfare Reform and Pensions Act 1999, replaced the former system of widows' benefits. All are non-means tested and are based on the deceased person's National Insurance contributions.[120] They are, and have always been, paid only to married partners of the deceased individual, and since the Civil Partnerships Act 2004, surviving civil partners.[121]

In December 2011, the Government launched a consultation on proposals for major changes to bereavement benefits, with the aim of simplifying the system by moving to a more uniform structure, with support focused on the period immediately following bereavement, as well as simplifying the contribution conditions.[122] The consultation closed on 5 March 2012, and the Government published its response on 11 July 2012.[123] The Government announced that the three existing bereavement benefits would be replaced with a new, single bereavement benefit known as Bereavement Support Payment. The new benefit would consist of an initial lump sum, followed by instalments, the precise amount of which, the period over which payments would be made and their frequency would be prescribed in regulations.[124] However, the Government did envisage that support would be provided by a lump sum followed by twelve monthly

[115] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Stage Report)—Briefing Paper*, 22 October 2013, p 2.
[116] Explanatory Notes, para 119.
[117] HC *Hansard*, 29 October 2013, col 839.
[118] House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, p 29.
[119] House of Commons Library, *Bereavement Benefits*, 30 August 2013, SN00431, p 11.
[120] ibid, p 5.
[121] ibid, p 3.
[122] Department for Work and Pensions, *Bereavement Benefit for the 21st Century*, December 2011, Cm 8221; and House of Commons Library, *Bereavement Benefits*, 30 August 2013, SN00431, p 11.
[123] Department for Work and Pensions, *Government Response to the Public Consultation—Bereavement Benefit for the 21st Century*, July 2012, Cm 8371.
[124] ibid, pp 2–3.

instalments.[125] The Government also proposed that the conditions for National Insurance contributions would be simplified, it would be paid irrespective of age and payment would not cease if the claimant remarried or started cohabiting with another person.[126]

Bereavement Support Payment and National Insurance Contributions (Clauses 29 and 30 and Schedule 15)

Clause 29 (formerly clause 27) sets out the entitlement criteria and supporting contribution condition for the bereavement support payment (BSP). A person would be entitled to BSP if she or he was: under pensionable age at the time of his or her spouse or civil partner's death; ordinarily resident in Great Britain or other territories specified in regulations; and the contribution condition is met.[127] Clause 29 would also provide for the amount of benefit and the period the payments would cover to be set out in regulations (subject to the affirmative procedure). The regulations may allow different rates of payments over different periods. For instance, for those who are pregnant, or entitled to child benefit, the regulations may provide for him or her to receive a higher rate or a longer payment.[128]

Clause 30 (formerly clause 28) sets out the National Insurance contribution conditions for BSP. To qualify, the deceased spouse or civil partner must have paid Class 1 or Class 2 National Insurance contributions which produce an earnings factor of at least 25 times the Lower Earning Limit in any one tax year.[129] However, the condition would also be considered to have been met if the decreased died as a result of an industrial accident or disease.[130]

Schedule 15 details the relevant consequential amendments to existing legislation to reflect the introduction of BSP.[131]

Representatives from Cruse Bereavement Care and the Childhood Bereavement Network gave evidence to the Public Bill Committee at its first sitting on 25 June 2013.[132] The witnesses welcomed a number of the provisions, including the increased lump sums, simplified rules and support regardless of age.[133] However, while they also supported greater recognition of the needs of those without children, they had concerns that this was at the expense of those with children, who would lose support after twelve months.

The provisions on BSP were considered by the Committee on 4 July 2013. During the debate on whether clause 29 (clause 27, as discussed in committee) should stand as part of the Bill, Gregg McClymont, Shadow Minister for Work and Pensions, drew attention to concerns raised by the Cruse Bereavement Care and the Childhood Bereavement Network, and in particular the suggestion that 90 percent of families with dependent children would lose out under the proposals.[134] In light of the evidence presented by the Cruse Bereavement Care and the

[125] ibid, p 17.
[126] ibid, pp 16–19; and House of Commons Library, *Bereavement Benefits*, 30 August 2013, SN00431, pp 11–12.
[127] Explanatory Notes, para 121.
[128] ibid, para 125.
[129] Further details on NI contribution conditions for BSP can be found in the House of Commons Research Paper, *Pensions Bill*, 12 June 2013, RP 13/37.
[130] Explanatory Notes, para 124.
[131] House of Commons Library, *Pensions Bill*, 12 June 2013, RP 13/37, p 85.
[132] House of Commons Public Bill Committee, 25 June 2013, cols 25–32.
[133] ibid, cols 26–9.
[134] House of Commons Public Bill Committee, 4 July 2013, col 271.

Childhood Bereavement Network, Mr McClymont urged the Government to "look again at the cause and its impact".[135]

Responding, Steve Webb, Minister of State for Pensions, disputed the figure:

> The 90 percent figure is based on a misunderstanding. It was based on the assumption that the only basis on which people flow off benefits for widowed parents is when the kids turn 18. Actually people flow off widowed parent's allowance when they remarry or when they reach state pension age, for example. In fact, the typical length of time that people spend on widowed parent's allowance is currently in the order of four years. Although there may be extreme cases of people who are on it for 18 years, or whatever, they are very much the exception.[136]

Mr Webb stated that in terms of gainers and losers, the Government estimated that the impact of the reforms was "roughly 50:50":

> With the figures that we have used, we think that 52 percent would get more and 48 percent would get less. There is a shift in the balance, however, because the reform spends extra money on childless bereaved people, who currently would not get any benefit at all in many cases. We estimate that around three quarters of bereaved families with children would get less and a quarter would get more.[137]

He also stressed that the exact figures were not set out in the Bill, and would be a matter for future governments, explaining that "if a future government felt that the balance between families with children and those without was not right, for example, they could tilt that balance".[138]

During the debate Steve Webb also moved amendments 1 to 3, which were intended to ensure that only those "ordinarily resident" in Great Britain or in a specified territory when their spouse or civil partner died, would be able to claim BSP.[139] He stated that:

> Amendment 1 would prevent persons living in a non-EEA or non-reciprocal agreement country, without a close connection to Great Britain, coming to the country to claim the benefit. Amendment 2 provides that the Secretary of State will make regulations that specify the rate and period of payment. Amendment 3 provides that regulations may specify countries other than Great Britain in which a person has to be ordinarily resident, such as elsewhere in the EU, to be entitled to the bereavement support payment.[140]

The Government amendments were agreed to without a vote.[141]

[135] ibid, col 273.
[136] ibid, cols 273–4.
[137] ibid, col 274.
[138] ibid.
[139] ibid, cols 265–6.
[140] ibid, col 266.
[141] ibid.

Prisoners (New clause 2)

New clause 2 was introduced by the Government at report stage. The intention of the clause is to bring BSP into line with other social security benefits by providing a regulation-making power to prevent payment of BSP to a person who is imprisoned, detained in legal custody or unlawfully at large.[142] Where someone is on remand, it would provide that payment is suspended but would be repaid in full if the individual is not later imprisoned. The Government amendments were passed without division.

4.5 Part 5: Private Pensions

Automatic Transfers and Pensions Scheme Governance (Clauses 32 and 41 and Schedules 16 and 17)

Clause 32 and schedule 16 would give the Secretary of State the power to make regulations to establish a system of automatic transfers of pension benefits, and sets out a number of criteria to be considered when doing so. The Explanatory Notes to the Bill summarise the proposed system as follows:

> Paragraph 1 of schedule 16 outlines this system, setting out that the regulations must provide that where an active member of an 'automatic transfer scheme' has 'transferable benefits' in another pension scheme (the 'transferable benefits scheme'), then the automatic transfer process set out in the schedule must be followed.
>
> The transfer will be from a money purchase scheme or a pension scheme of a prescribed description (sub paragraph 5) that the member is no longer contributing to (sub paragraph 4(c)), into another money purchase scheme or a pension scheme of a prescribed description (sub paragraph 2) of which the individual is an active member. This will only apply if certain criteria are met including that the benefits to be transferred have been accruing since a certain date (sub paragraph (4(e)) and are worth less than a prescribed amount (sub paragraph (4)(f)).
>
> The Government has stated its intention that this amount will initially be £10,000. The schedule provides that the regulations will require the Secretary of State to review the pot size limit at least every five years.[143]

This system is often referred to as 'pot-follows-member', and would see certain small pension pots accrued by an individual in previous jobs being transferred to the new pension scheme in their current job.[144] The regulations would also have to provide for trustees or managers of 'automatic transfer schemes' (which is defined in schedule 16) to find out whether members had transferable benefits in other schemes, and that members would have to be given information about the transfer and their right to opt out.[145] The system is intended to combat the problem of 'dormant' pension pots, as explained in the House of Commons Library Research Paper on the Bill:

[142] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Report Stage)—Briefing Paper*, 22 October 2013, p 1.
[143] Explanatory Notes, paras 130–2.
[144] Department for Work and Pensions, *Automatic Transfers: Consolidating Pension Savings*, April 2013, Cm 8605.
[145] Explanatory Notes, paras 133–4.

> Under auto-enrolment, an employee is automatically enrolled into a workplace pension scheme when starting a job with a new employer. Without a mechanism for consolidating an individual's existing pension pots from previous employments, it would lead to a proliferation of small dormant pension pots as a result of individuals moving from one job to another. The Government estimated that without action to prevent this, 'there will be around 50 million dormant workplace defined contribution pension pots within the system by 2050, and that over 12 million of these will be under £2,000 (in 2012 earnings terms)'.[146]

An alternative to the 'pot-follows-member' solution, as considered by the Government in its 2011 consultation on the subject, was that of an 'aggregator scheme'.[147] Rather than the dormant pot following the member into their new pension scheme, this would consolidate all an individual's small pots (ie those under a certain value) into one or multiple schemes provided by the market or, potentially, the National Employment Savings Trust (NEST). However, this method was rejected by the Government in its consultation response (in preference for 'pot-follows-member') due to the possibility that it could actually increase the number of pots under certain circumstances.[148]

Public Bill Committee

During the committee stage, Gregg McClymont, Shadow Minister for Work and Pensions, tabled a number of unsuccessful amendments to clause 32 (clause 29 as discussed in committee) and schedule 16. One of these amendments was intended to promote the use of an aggregator scheme rather than pot-follows-member.[149] Mr McClymont expressed concern over pots automatically being transferred to new schemes regardless of quality, and pots becoming stranded if over £10,000 or if they were accrued before Royal Assent of the Bill.[150] He also suggested that the aggregator scheme would help develop scale and lower costs.[151]

Steve Webb, Minister of State for Pensions, rejected this approach, however, stating that the aggregator scheme could result in increased fragmentation for the saver and, due to the possibility of significant sums accumulating in a single aggregator scheme, potential disruption for the industry.[152] Mr Webb also stated that it was the Government's intention to introduce a system where people moved from one good quality scheme to another, and that the regulations that would follow under the section would be subject to further parliamentary scrutiny.[153]

Gregg McClymont subsequently pressed amendment 17 to a vote, and it was defeated by 9 votes to 4.[154]

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[146] House of Commons Library, *Pensions Bill*, 12 June 2013, RP13/37, p 89.
[147] Department for Work and Pensions, *Meeting Future Workplace Pension Challenges: Improving Transfers and Dealing With Small Pension Pots*, December 2011, Cm 8184.
[148] Department for Work and Pensions, *Government Response to the Consultation Improving Transfers and Dealing with Small Pension Pots*, July 2012, Cm 8402. Further details provided in Department for Work and Pensions, *Small Pots and Automatic Transfers Impact Assessment*, 21 May 2012.
[149] House of Commons Public Bill Committee, 9 July 2013, col 287.
[150] ibid, cols 285–92.
[151] ibid, col 301.
[152] ibid, col 318.
[153] ibid, col 327.
[154] ibid, col 329.

Report Stage

The Opposition also tabled amendments relating to the use of an aggregator scheme instead of a pot-follows-member scheme at report stage.[155] Addressing these amendments, Steve Webb, Minister of State for Pensions, said:

> Amendments 38 to 52 concern what happens to small pension pots—an issue that was not addressed when the original legislation for automatic enrolment was drawn up. People change jobs perhaps 10 or 11 times in their working life, and they leave behind small pension pots. From the Australian experience, we know that can mean lots of people losing track of their pension pots and not engaging with pension saving because they have large numbers of small, silly pension pots all over the place. [156]

Mr Webb went on to state that clause 32 and schedule 16 (the pot-follows-member scheme) were the Government's solution to that problem. Citing the example of Australia, Steve Webb stated that:

> Australia is often mentioned as having one of the world's best pension systems, and the Australians say that the one thing they wish they had addressed at the start was small dormant pension pots. The Australian Government have been going at this for longer than we have, and they estimate that they have 5 million lost pension accounts containing 20 billion Australian dollars.

He added that the UK Government's proposals for a pot-follows-member scheme had been commended by Nick Sherry, the Australian Superannuation Minister, as "the only practical solution". Mr Webb said that the plans had also been welcomed by the Associations of British Insurers (ABI):

> [T]he ABI welcomes the fact that the Bill includes provisions for the automatic transfer of small pension pots, which will lead to greater engagement and help people make savings decisions that are right for them and should lead to greater income in retirement. That is a welcome level of support for the proposition. [157]

Steve Webb went on to say:

> The Opposition amendments suggest a different route and would mean that when someone changes job, the dormant pension pot is automatically transferred to a third-party pension scheme called an aggregator. As I understand it, there would not be just one aggregator but multiple aggregators, and I have multiple concerns about that. First, such a policy would clearly lead to greater fragmentation of pension saving—it must do. Let us imagine the simplest example in which someone moves from firm A to firm B, and works only for two firms in their working life. In our model, the small dormant pension pot follows them from firm A to firm B—or scheme A to scheme B—and they end up with a single pension pot.[158]

[155] HC *Hansard*, 29 October 2013, cols 768–9.
[156] ibid, col 771.
[157] ibid, cols 771–2.
[158] ibid, col 772.

Mr Webb stressed his belief that the aggregator system could lead to less saver engagement than under the pot-follows-member system, with the former seeing people's pensions being "sent to a third-party provider, perhaps one they did not choose". The latter, in contrast, would mean pension savings going to their current employer, which is "what [those individuals] are interested in and where workplace pension engagement takes place. We therefore believe that our model provides better consolidation of pension saving and better engagement".

Steve Webb also stated that it was the Government's belief that the pot-follows-members system would result in lower costs than the aggregator system, though he did acknowledge the need to address concerns over savings being automatically transferred to a scheme of a lower quality:

> There is an issue of what happens if money is automatically transferred from a "good" scheme to a "bad" scheme, and I accept that point. That is why we are regulating for scheme quality. It should not just be a worry that someone's small pension pot gets auto-transferred to a bad scheme; it should be a worry that an entire work force have been auto-enrolled into a bad scheme. We should not have bad schemes and must deal with that. That is why we are tackling pension scheme quality, which includes a range of issues such as governance, investment, costs and charges.[159]

Speaking for the Opposition, however, Gregg McClymont, Shadow Minister for Work and Pensions, stated that the UK pensions market was more fragmented than that of the Australian model, and that comparisons between the two were lacking in validity:

> Australia has several hundred pension schemes; we have 200,000, and that is a fundamental problem with comparing our system. Australia is in a much better place in terms of scale.[160]

Mr McClymont also rejected the proposition that the aggregator system would result in less engagement:

> [Mr Webb] said that aggregators stop individuals engaging with their pension, or make that engagement impossible. He knows very well that the whole logic of auto-enrolment, which Labour began and which he has followed through, is that we have to use the power of inertia in pensions, because all the evidence is that many people will find it difficult to engage with pensions whatever the circumstances, given their complexity. Also, as he must be all too aware, auto-enrolment involves employers buying pensions, not the saver.[161]

Further discussion of the Opposition's arguments for alternatives to the proposed automatic transfer system can be found below.

Government New Clause and Consultation on Scheme Charges and Quality

The Government successfully moved a new clause and a new schedule to the Bill at report stage (clause 41 and schedule 17 of the Bill), which would give the Secretary of State powers to make regulations "imposing requirements relating to administration or governance" and to

[159] ibid.
[160] ibid, col 783.
[161] ibid, col 785.

restrict the imposition of charges in relation to "certain work-based pension schemes".[162] The Government also passed amendments to remove the original clause 35 from the Bill ('qualifying schemes: administration charges'), which was viewed as "unnecessary" under the new proposals.[163]

Regarding the charges component of the proposed new clause, Steve Webb, Minister of State for Pensions, introduced the measure by stating that:

> I should add that there has been a suite of activity on charges. To remind the House, we announced a ban on consultancy charges earlier in the year. Government new schedule 1 and Government new clause 1 give us the power to put a set of powers to cap and regulate charges and quality all in one place. That includes automatic enrolment schemes, qualifying schemes and closed schemes. Lots of people have lots of money tied up in closed schemes. Without those measures, we would not necessarily have the powers we need to regulate the charges they pay.[164]

Mr Webb also announced the imminent launch of a new consultation on charges in automatic enrolment schemes.[165] He said this was in response to an Office of Fair Trading report[166], published in September 2013, that described the pensions market as "one of the worst it had ever encountered—that is almost verbatim what it said".[167] The consultation includes proposals on improving disclosure of charges, and on the potential introduction of caps on charges. It states that:

> [T]he impact of the charges levied on people's pensions savings over their lifetime can be significant—seemingly small variations in charges can result in a considerable difference in people's final retirement savings.[168]

It is expected that the consultation will close on 28 November 2013. The report stated that this will then be followed by "government proposals on both charges and scheme quality".[169]

The announcement of a consultation in advance of regulations addressing the charges or quality of work-based pension schemes was welcomed by the Conservative MPs, David Mowat (MP for Warrington South) and Richard Graham (MP for Gloucester), with the latter stating:

> [The consultation] gives this Government and Members a chance to see what might be the most practical options, bearing in mind always that we do not want to limit the management of those funds to a handful of very large providers.[170]

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[162] ibid, cols 766–8.
[163] Clause 35 had prompted much discussion at committee stage. Source: House of Commons Library, *Pensions Bill 2013–14*, 25 October 2013, SN06634, pp 37–40.
[164] HC *Hansard*, 29 October 2013, col 775.
[165] Department for Work and Pensions, *Better Workplace Pensions: A Consultation on Charging*, 30 October 2013, Cm 8737.
[166] Office of Fair Trading, *Defined Contribution Workplace Pension Market Study*, September 2013.
[167] HC *Hansard*, 29 October 2013, col 774.
[168] Department for Work and Pensions, *Better Workplace Pensions: A Consultation on Charging*, 30 October 2013, Cm 8737, p 5.
[169] ibid, p 8.
[170] HC *Hansard*, 29 October 2013, col 800.

However, responding for the Opposition, Gregg McClymont, Shadow Minister for Work and Pensions, criticised the use of consultations and the lack of decisive action:

> The Minister says that pot-follows-member will be simple and effective and that we will regulate for quality, by which he means there will be minimum standards—or at least he tells us there will be minimum standards, but, guess what, that is also currently part of a consultation. There is a broader theme to which I shall return; when the Minister feels under pressure from the Labour agenda on private pensions, he calls for consultation. He says that this and that will happen but when we study the detail, we see that what he has called for is a consultation. That is not the same as decisive action.[171]

Opposition Amendments and New Clauses Relating to Scheme Charges and Management

In addition to their proposed amendments that would move the scheme to an aggregator system, the Opposition also tabled a number of amendments and new clauses in relation to scheme charges and management. In brief, these included: powers to require pension schemes to appoint a board of trustees (new clause 9); a fiduciary duty for schemes to consider whether they are of a sufficient scale to provide good value for members (new clause 10); and an amendment (amendment (a)) to the Government's new clause on the quality and charges of work-based pension schemes that would require the disclosure of all charges and transaction costs following a period of consultation.[172]

Speaking to this suite of proposals, Gregg McClymont, Shadow Minister for Work and Pensions, stated that:

> Labour's new clauses would enable the restructuring of the UK pensions market so that savers' interests would be appropriately represented. The Minister referred to our new clause 9, which deals with trustees, and he quoted the OFT's view that the trustees would have to be good ones [...] Our proposals involve having trustees in every scheme, the scaling up of the UK pensions industry to reduce the fragmentation born of 200,000 different schemes—it is the most fragmented private pension system in the world—and the reform of the annuities market. Our amendment (a) to new clause 1 proposes that all costs and charges should be disclosed. Those measures need to be taken together as a package, as a Labour Government would do, and they would provide a starting point for tackling the fundamental problem in the UK pensions industry.[173]

Mr McClymont went on to argue that the Opposition amendments would achieve a scaling up of the pensions system, and would enable schemes to get a better deal from providers:

> That is what our new clauses would achieve. They would enable the scaling up of the pensions system, so that schemes would be able to get an effective deal from providers. Let us be clear: the providers in the pensions market have scale. In that sense, it is a bit like the energy market. They are large-scale, efficient organisations. It is the people saving into pensions who do not have scale, and that is because there are 200,000 pension schemes. They do not have the necessary representation because the smaller

[171] ibid, col 783.
[172] ibid, cols 766–8.
[173] ibid, cols 786–7.

> employers, in particular, who are auto-enrolling their employees are not pension experts [...]
>
> We are clear that we need to move to an aggregator system, because otherwise pot-follows-member will not work and because if we enable the creation of aggregators, we have a chance to bring down charges in the auto-enrolment market. We know that there are millions of stranded pension pots, and the Minister rightly and repeatedly talks about them. How do we use the stranded pots issue to generate some change in the interests of pension savers, particularly the ten million new savers automatically being enrolled in pensions for the first time? [...]
>
> One way of doing that is to use the power of the stranded pots as a lure and say to providers, "If you want access to the new market and to the billions of pounds locked in stranded pots, you can do so as long as you meet quality, costs and charges standards as set down by the Government and the regulator". We could say to pension providers in the AE market, "Yes, you can be approved as an automatic transfer scheme aggregator, but only if you charge 50 basis points, and fully disclose your transaction costs", thus meeting the criteria of the Labour new clauses dealing with independent trustees and other requirements. That shows how to use the stranded pots in the interests of the ten million people who are being enrolled into these pensions for the first time.[174]

Mr McClymont added that the pot-follows-members system was not widely supported, and would leave a number of stranded pots unaccounted for:

> The Government's position on the pot-follows-member system appears to be supported only by the Government, the Minister and the Association of British Insurers. First, the only pots liable for automatic transfer will be those for less than £10,000, and secondly no pots that are stranded before the date on which the legislation takes effect will count as stranded pots.[175]

However, in response to the Opposition's proposals, Steve Webb, Minister of State for Pensions, stated that there were already signs of a decrease in small-scale pension schemes:

> To give the House a sense of scale, let us consider small and medium occupational defined-contribution schemes for between twelve and 1,000 members. The number of such schemes fell by more than a third in three years—a dramatic fall—from 3,300 to 2,110. The number of micro-schemes, with between two and eleven members, fell by a fifth over the same period, from some 45,000 to 36,000. In a sense, the Opposition amendments seek to force the pace on scale, but it is already happening quite quickly. That is a welcome development, and once we implement our measures on scheme quality—which, subject to consultation, may include tough action on charges—there will be a seismic effect on the pensions industry.
>
> If a scheme cannot be used for auto-enrolment unless it delivers seriously low charges, many small, sub-scale schemes will fall by the wayside. The trends are already in that direction, and the measures we shall implement will substantively accelerate that. Rather than presume that scale is the right answer, we have to regulate the quality. If a small

[174] ibid, cols 787–8.
[175] ibid, col 788.

> scheme can demonstrate that it is, for example, tailored to the characteristics of its membership and is delivering for them, great.[176]

This stance was backed by Richard Graham (Conservative MP for Gloucester), who welcomed the Government's focus on ensuring pension schemes were of a good standard, and their commitment to legislate for quality schemes.[177]

Steve Webb also denied that the changes would only affect pots created after the legislation took effect:

> That is not correct. We have the power to specify a prescribed date, and that date would in the first instance be likely to be the point at which auto-enrolment began. So in the first instance automatic enrolment pots from when this began, rather than when we secured Royal Assent, would be within the scope of pot-follows-member. [178]

He went on to further affirm that the pot-follows-member system would be started with auto-enrolment pots: "I am clear about that, and there is no ambiguity: we are beginning with auto-enrolment pots".

Debate then moved on to the Opposition amendment regarding the full disclosure of charges and transaction costs. Speaking to amendment (a), Gregg McClymont stressed that a statutory record of costs and charges was central to reform of the pensions market.[179] He added:

> [F]irst, I do not see any basis on which one can be against the full disclosure of everything that has an impact on pensions, including transaction costs. Secondly, if we had the disclosure of transaction costs, that would enable everyone with an interest in ensuring good pension outcomes, including the Government, to have the evidence at their fingertips to say to interested parties, stakeholders and, in particular, pension companies and fund managers.[180]

He believed this was an important factor in the auto-enrolment process:

> If we want to move to an auto-enrolment system and have in mind the ten million people who will be automatically enrolled, as a sine qua non of reform we must ensure that the transaction costs are disclosed.

Steve Webb did not accept this argument, stating:

> [W]hen we look at his amendment (a) we realise that, as my hon. Friend the Member for Leeds North West (Greg Mulholland) pointed out, in the midst of a clarion-call for action, it provides that, before action, or 'Before making regulations under subsection (2), the Secretary of State must undertake a public consultation'. When the Government do it, then, public consultation is a substitute for action, but when the Opposition call for it, it means dynamism and standing up for the consumer. I do not know whether the hon. Gentleman will be a Minister one day, but he will know that Governments are required to consult before they legislate. That is what we are doing,

[176] ibid, col 778.
[177] ibid, col 800.
[178] ibid, col 821.
[179] ibid, col 795.
[180] ibid, cols 795–6.

> and he can be assured, as my hon. Friend the Member for Leeds North West said, that consultation is a precursor to action.[181]

In addition, Richard Graham (Conservative MP for Gloucester), criticised the lack of substance provided by the Opposition on the issue of charges.[182]

Amendment (a) was moved to a vote, and was defeated by 294 votes to 232.[183]

Short Service Benefit (Clause 35)

Clause 35 would abolish the principle that, where all of the benefits provided by a scheme are money purchase benefits, members could receive a refund of their contributions if they gave up their membership within two years. The Explanatory Notes set this out in further detail:

> This clause provides that where all of the benefits to be provided by a scheme are money purchase benefits, there will be an entitlement to a 'short service benefit' immediately after a member has completed thirty days' qualifying membership of the scheme.
>
> The effect of the clause is that, in such cases, the ability to make a refund of contributions ('short service refund') to members who give up their membership within two years will no longer be available under section 101AB of the Pension Schemes Act 1993, because the member will have accrued rights to benefit under the scheme. Such a person will however still have the right to ask the occupational pension scheme to transfer the value of his pension to another pension provider under Chapter 4 of part 4 of that Act.[184]

Gregg McClymont, Shadow Minister for Work and Pensions, praised the measures during committee proceedings, suggesting the proposals were a good way to encourage pension savings.[185] Steve Webb, Minister of State for Pensions, welcomed the support that the proposals had received.[186]

The Government tabled a series of technical amendments to clause 35 at the report stage, as detailed in the briefing paper published ahead of the debate.[187] Speaking to these amendments, and to clause 35 more generally, Mr Webb, said:

> Amendments 5 to 10 are largely technical and deal with short service refunds. There is a category of money purchase pension schemes through which someone who has worked for a firm for under two years can have their money back when they leave. That is not in the spirit of what we are trying to achieve through our pension reforms. We want people, even those who put in relatively small amounts of pension savings, to accumulate that, build up what I call a big fat pot, and have a decent retirement. Short service refunds fly in the face of the view that even modest pension savings are worth

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[181] ibid, cols 817–8.
[182] ibid, col 800.
[183] ibid, col 824.
[184] Explanatory Notes, paras 140–1.
[185] House of Commons Public Bill Committee, 9 July 2013, col 350.
[186] ibid.
[187] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Report Stage)—Briefing Paper*, 22 October 2013.

> having, and we therefore propose to eliminate them. The danger with the current legislation is that although someone joined to a pension scheme through a contract has 30 days to opt out, under the Bill they would be in the scheme on day one, and a day's or month's worth of pension contribution would be lodged. On purely pragmatic grounds we took that view that we ought to apply the same 30-day rule to short service refunds. Clause 32 abolishes short service refunds, and technical amendments 5 to 10 deliver a 30-day breathing space so that someone who is a member of a scheme for fewer than 30 days can receive a refund of what are essentially nominal contributions. I hope that amendments 5 to 10 will be welcomed across the House.[188]

The clause, and its amendments, were commended by Richard Graham (Conservative MP for Gloucester), who said:

> I welcome the amendment that the Minister mentioned whereby those who have been in a scheme for less than 30 days will get a refund, but it is important that the practice which has grown up over time of people being in schemes for less than two years and being bought out for a not very significant sum comes to an end. I welcome that, as will many people across the land.[189]

In addition, Gregg McClymont referred to the changes as "more or less uncontroversial".[190]

The amendments and the clause were passed without further comment or division.

Automatic Enrolment (Clauses 36 to 38)

According to the provisions of the Pensions Act 2008, employers are obliged to automatically enrol (and re-enrol) workers who satisfy age and earnings criteria into a qualifying workplace pension scheme and make joining arrangements for workers who opt in or apply to join a pension arrangement.[191]

Clauses 36 to 38 would make a number of provisions in relation to this automatic enrolment system. In particular, clause 36 would provide exceptions to an employer's automatic re-enrolment duty (which must be exercised every three years) if it fell within a period where there was legitimate reasons for enrolment having being deferred (eg in the case of a prescribed transitional period in relation to defined benefit or hybrid schemes).[192] Clause 38 relates to the transitional period for automatic enrolment with respect to hybrid pension schemes.

It was clause 37, however, which provoked the most discussion during the committee and report stages. Clause 37 is intended to give employers, in certain prescribed circumstances, the choice as to whether to proceed with automatic enrolment:

> Automatic enrolment and pension saving is not always appropriate. It may impose nugatory work on the employer and in some circumstances could cause an individual to incur a financial penalty.

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[188] HC *Hansard*, 29 October 2013, col 773.
[189] ibid, col 800.
[190] ibid, col 782.
[191] Explanatory Notes, para 148.
[192] ibid, paras 143–7.

> There are some limited exceptions to the enrolment duty but there is no general power to exclude prescribed types of workers, or workers in prescribed circumstances from the scope of automatic enrolment. However, a prescribed exclusion may carry an increased employer monitoring burden. This clause inserts a new section in to the Pensions Act 2008 to provide a general power to create exceptions to the employer duties which includes the power to prescribe that a duty is turned into a power. Where such a power was conferred on an employer, it would mean that in prescribed circumstances an employer need not automatically enrol a worker but may choose to do so.[193]

Public Bill Committee

During the committee proceedings, Gregg McClymont, Shadow Minister for Work and Pensions, moved an amendment to clause 37 (at that time clause 34) to restrict the potential application of the provisions.[194] He expressed concerns that, as currently drafted, the clause could be used to ensure entire classes of employers were exempted.[195]

However, with reference to two examples of circumstances where the Government envisages this power could be used (eg when automatic enrolment may occur during an employee's notice period or following notice of retirement), Steve Webb, Minister of State for Pensions, rejected the case for the amendment.[196] He said the Government's position was that the clause needed to be broadly drafted in order to cover such circumstances as they arose, and stated that the wording proposed by the Opposition in their amendment lacked sufficient clarity:

> On the amendment, a number of things are unclear. What is a 'technical adjustment'? One might argue that the whole Bill is a technical adjustment on one level. When is a change a technical adjustment? When is it resolving inconsistencies or both, or neither? What is a 'change in policy'? If, in another bit of the Bill, we changed the threshold for small pots from £10,000 to £50,000, is that a change in policy or a technical adjustment? Such things would end up being settled in the courts. The amendment, although I appreciate that it is probing, does not deliver the clarity that we need.[197]

Steve Webb also referred to a consultation document published in March 2013 and a Department for Work and Pensions briefing paper on the matter.[198]

Report Stage

A similar issue was raised during report stage, where the Opposition tabled an amendment (53) worded to restrict the operation of the clause to prohibit it exempting "entire classes of business or businesses, such as small and medium-sized businesses, from automatic enrolment".[199] Responding, Mr Webb, Minister of State for Pensions, again gave some examples of circumstances where the exemption might need to be applied:

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[193] ibid, paras 149–50.
[194] House of Commons Public Bill Committee, 9 July 2013, col 351.
[195] ibid, cols 351–2.
[196] ibid, col 353.
[197] ibid, col 354.
[198] Department for Work and Pensions, *Technical Changes to Automatic Enrolment*, March 2013; Department for Work and Pensions, *Clause 34 Automatic Enrolment: Powers to Create General Exemptions*, July 2013.
[199] HC *Hansard*, 29 October 2013, col 768.

> As we have learned, the rules require employers to put a certain set of people into workplace pensions who may immediately opt out. For example, people with what is called enhanced or fixed tax protection status—high net wealth individuals—could face a tax surcharge if their pension pot exceeds the lifetime allowance. In general, such individuals will want to opt straight back out of the scheme, and their employers have said, "Why are you making us put these people into pension schemes? We all know they are going to opt out, and indeed they will be cross with us if they fail to opt out and later face a tax penalty". At the moment, the Government do not have the power to enable firms not to enrol those people, so clause 34 provides the power to exempt them from enrolment.
>
> The second example concerns those who have already given notice. Someone may have given a month's notice, but in the middle of that period the Government require the employer to put them in a pension scheme. As Members will understand, that is silly, because that person will probably opt out immediately. In any case, asking firms to enrol people who have already given notice does not do much for our relations with the CBI. Those are examples of where we have given employers a comprehensive, rigid legal duty that creates perverse outcomes. Clause 34 therefore allows employers to exempt certain categories of workers, and I have mentioned the sorts of examples it would cover.[200]

Specifically addressing the format of the Opposition's amendment, Steve Webb described it as "an unnecessary, poorly drafted amendment that does not work and should probably not be approved by the House".[201] He also stated that the Government had no intention to exclude small and medium-sized firms, and that, even if they did, the powers to do so would exist beyond the scope of the amendment anyway.

Speaking for the Opposition, however, Mr McClymont, Shadow Minister for Work and Pensions, expressed a view that there may be those in the Government that did not share this perspective, and who may want to take the opportunity to reduce the regulatory burden on small businesses.[202] He also defended the drafting of the amendment, stating that the concept of small and medium-sized business (SMEs) was defined in other legislation:

> The Minister said that amendment 53 did not even define a small and medium-sized enterprise, but he will know that the Companies Act 2006 clearly defines an SME as an enterprise with 50 or fewer employees. That is a common definition of an SME. The broader point, however, is exactly the one I have already expressed: we are trying to do him a favour by protecting him from those within the coalition Government who take a less enlightened view of the benefits of auto-enrolment. We tabled the amendment in that spirit.[203]

Amendment 53 was not pressed to a vote.

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[200] ibid, col 770.
[201] ibid, col 771.
[202] ibid, col 782.
[203] ibid, col 783.

Pensions Regulator's Objectives (Clause 45)

Clause 45 would provide for a new objective for the Pension's Regulator to consider when carrying out its functions in relation to scheme funding. The wording of the objective proposed by the clause is to "minimise any adverse impact on the sustainable growth of an employer".[204] This is, in addition to the existing statutory objectives contained under section 5(1) of the Pensions Act 2004, summarised on the Pension Regulator's website as follows:

- To protect the benefits of members of occupational pension schemes.
- To protect the benefits of members of personal pension schemes (where there is a direct payment arrangement).
- To promote, and to improve understanding of the good administration of work-based pension schemes.
- To reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF).
- To maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008.[205]

During the committee proceedings, Steve Webb, Minister of State for Pensions, outlined the intention of the clause:

> Clause 42 [now clause 45] relates to the Pensions Regulator, whose role includes—but not exclusively—overseeing defined benefit pension schemes. Many of them are now closed, but they still have to be properly funded to ensure that employees get their benefits, which, of course, are liabilities that can run many decades ahead, because they benefit not only the people who are in the schemes now, but their surviving spouses and in some cases dependants, so it is a long-term issue.
>
> The regulator has to strike a balance to make sure there is enough money in the pension fund to pay out all the liabilities, but not to place those duties on sponsoring employers so onerously that it is to their detriment and they are not able to continue as sponsoring employers, because the financial pressures are too severe and we therefore—to use a colloquialism—kill the goose that laid the golden egg. In other words, there is a balance to be struck. We all want company pension funds to have enough money in them to pay out pension liabilities as they fall due, but we must strike a balance between that and not placing such heavy duties on sponsoring employers that the pressure being put on them is counter-productive.[206]

Mr Webb also explained that the decision had been foreshadowed by a consultation on the issue, and that the wording of the clause was intended to reflect the wording already contained in the Pension Regulator's regulatory code of practice.[207]

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[204] Explanatory Notes, para 178.
[205] The Pensions Regulator, Our Objectives, accessed 18 November 2013.
[206] House of Commons Public Bill Committee, 11 July 2013, cols 411–12.
[207] ibid, cols 414–15.

The clause was welcomed by Gregg McClymont, Shadow Minister for Work and Pensions, who stated that the Government had managed "reasonably well" to strike a balance on the issue.[208] However, during the report stage, Caroline Lucas (Green Party MP for Brighton, Pavilion) described the clause as "pretty controversial, because it is based on the view that servicing pension deficits is hampering the ability of business to invest".[209]

The clause passed report stage without further comment or amendment.

Long Service (Clause 47 and Schedule 19)

Clause 47 and schedule 19 of the Bill relate to the Pension Protection Fund (PPF) compensation cap, and were introduced to the Bill at the committee stage. The Government briefing paper published in advance of report stage outlines the operation of this cap in further detail:

> Where the sponsoring employer of a defined benefit occupational pension scheme becomes insolvent and is unable to pay benefits of at least PPF levels, it may enter the PPF, which then pays compensation to members. Where someone is below the scheme's retirement age at the date of insolvency, this is based on 90 percent of the protected pension (the accrued pension, revalued to the date of payment), subject to a cap (currently £34,867.04). In July, the Government announced its intention to change the structure of the compensation cap by 3 percent for each full year above 20 years for individuals with more than 20 years' service with one employer. As these individuals may have had little or no opportunity to make up the shortfall from other sources, this change will mitigate the impact on their retirement income.[210]

Introducing the new clause during committee proceedings, Steve Webb, Minister of State for Pensions, stated that the provisions were directed at those entitled to compensation after the legislation comes into force.[211] He said:

> [The new clause] provides for a standard cap to apply to anyone with 20 years' service or less. I will give the Committee the figure: the standard cap applies to everyone at present and is £34,867 at the age of 65, but is reduced for earlier years. So where a person has been in a scheme for 21 years or more, the standard cap will be increased by 3 percent for each full year of service, to a maximum of double the standard cap. To clarify: we will bring forward further amendments to extend the scope of this.

Mr Webb stated that the original thinking behind the cap was as a cost-control measure, and to "prevent moral hazard".[212] He added:

> The argument there was that if the rules stated that anybody who was drawing a pension would get that in full, even after an insolvency event, and the people who had not started to draw a pension would have to make do with what was left in the fund, there might be an incentive for those in the know at the top of a firm close to insolvency to retire and draw their pension before scheme pension age.

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[208] ibid, col 416.
[209] HC *Hansard*, 29 October 2013, col 806.
[210] Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Report Stage)—Briefing Paper*, October 2013.
[211] House of Commons Public Bill Committee, 11 July 2013, col 423.
[212] ibid, col 422.

However, the Minister stated that the cap was now deemed to have a disproportionate effect on long term members of schemes, and there were concerns that those members were also unlikely to have drawn together pensions savings from elsewhere.[213]

The new clause was welcomed by Gregg McClymont, Shadow Minister for Work and Pensions, who stated that he believed the Government were "doing the right thing".[214] He added:

> If I have said that the Minister was seeking the approbation of the Committee, I think that on the new clause he has it—it is unreservedly welcomed.[215]

During the report stage, the Government moved an additional amendment to these proposals (amendment 31). This would extend the principle to apply the legislation to those already entitled to compensation under the Pension Protection Fund:

> Government amendment 31 relates to the Pension Protection Fund compensation cap. In Committee, we amended the Bill so that workers entering the PPF would have a more generous cap if they had been long-serving employees. The amendment applies the same provisions to people who are already in the PPF. We will not go back years and increase pensions retrospectively, but once the Bill and secondary legislation is passed we will increase their pensions going forward in line with the provisions we have already made for new employees going into the PPF.[216]

The amendment would also affect terminal illness lump sums, as set out in the Government briefing paper:

> Where the long service cap would be applicable, the amendment also allows for an increase to a terminal illness lump sum paid to anyone in the year up to the date the legislation comes into force. Where the member has died before this date, the terminal illness lump sum will be unchanged but their survivor will be able to benefit from the long service cap.[217]

The amendment was passed without division.

Opposition Amendments at Report Stage

Annuities

At report stage, Gregg McClymont, Shadow Minister for Work and Pensions, proposed a new clause (new clause 11) that would require that "any qualifying money purchase scheme must direct its savers to an independent annuity brokerage service or offer such a brokerage service itself".[218] Speaking to the proposed clause, Mr McClymont stated that:

> New clause 11 calls for an independent brokerage service to guide those who annuitise on retirement through the process. Its aim is to deal with the lack of competition which,

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213 ibid, col 423.
214 ibid, col 424.
215 ibid.
216 HC *Hansard*, 29 October 2013, col 781.
217 Department for Work and Pensions, *Government Amendments to the Pensions Bill 2013 (Commons Report Stage)—Briefing Paper*, 22 October 2013.
218 HC *Hansard*, 29 October 2013, col 767.

> according to the NAPF and others, causes people to receive an average of 20 percent less in their annuities than they would have received had they shopped around. That returns me to a point with which I have been trying to persuade the Minister to engage. Buying an annuity involves a huge decision which a person will make only once in a lifetime, and which will affect the rest of that person's life. However, the process is complicated, and because they find it hard to understand what they are being told, most people currently default to the annuities that they are being offered by their existing pension providers.[219]

Gregg McClymont said that the proposed clause was a "concrete, practical proposal to improve annuity outcomes as things stand".[220] He also called on the Government to act to resolve the issue:

> The Government must take action to ensure that people are given independent advice that will enable them to secure the best possible deal. That is in all our interests, because the more retirement income our constituents have, the more decent, enjoyable and, hopefully, long retirement they will experience. New clause 11 eliminates the gap between the Minister's rhetoric about the tough action that he will take to deal with problems in the pension market and the reality.

This view was supported by Sheila Gilmore (Labour MP for Edinburgh East), who outlined the importance of advising people on annuities and ensuring they know all the options.[221] She suggested that, for many people, postponing a decision on their annuities was not an option:

> [A]nnuities are an important element in creating a retirement income that is adequate for people to live on. I urge the Minister to change his view and to accept that the arrangements that the Opposition are proposing do not fly in the face of his desire to explain other options to people and to give people those options. Many of the people who fare the worst do not have such substantial pension pots that they have a wide range of options and they cannot necessarily afford to postpone annuitisation, because they do not have much other income.[222]

However, speaking for the Government, Steve Webb, Minister of State for Pensions, criticised the amendment as being too rigid and for providing a backward-looking annuity model.[223] The Minister stated that alternative approaches needed to be considered:

> Annuities in their current form were designed for a world where people lived for tenyears with pensions and then died. We now have a world where people might annuitise in their early 60s, or want to stop contributing to their pension pot in their early 60s, and live into their 90s. There are serious questions about the suitability of annuities for everybody. For example, people with big pension pots might want to look at a mixture of draw-down. They might want to look at alternatives, deferral or a range of options. It would be a backward step to hardwire into primary legislation that the only good thing that can be done with a pension is to annuitise through this particular model. We should give people new options at decumulation, not hardwire them into the annuity model. Of course, even an annuity broker may not necessarily guarantee

[219] ibid, col 790.
[220] ibid, col 791.
[221] ibid, col 807.
[222] ibid.
[223] ibid, col 779.

> that someone will get, for example, an impaired life annuity or enhanced annuity for disability or low life expectancy.

Steve Webb explained that the Department for Work and Pensions and the Treasury were looking at the issues of annuities and decumulation, and that it was also being reviewed by the Financial Conduct Authority.[224] The Minister highlighted the potential issue of brokers' fees, and the situation of those savers who are on a pension scheme that annuitise internally being forced to receive advice rather than just benefit from the scheme that they are entitled to already.[225] As such, Mr Webb asserted that the proposed clause could be over-prescriptive.

The Minister's view was backed by Richard Graham (Conservative MP for Gloucester), who emphasised the need for getting the issue of annuities right:

> Annuities matter. We are in a new world, as the Minister said, because we are living longer and we need more options. There is more to annuities than simply a need for more competition, choice and help, although that is important and the code of conduct from the Association of British Insurers is a promising start. I agree with the Minister, though, that we should go further. At the heart of the matter is transferability—being able to trade annuities at different periods of life when different circumstances crop up and when there is different pricing in the marketplace. What we certainly do not want is a single product solution.[226]

Mr McClymont pressed new clause 11 to a vote, and was defeated by 305 votes to 218.[227]

Railways

John McDonnell (Labour MP for Hayes and Harlington) tabled a proposed new clause that would extend the protection of pensions under the Railways Act 1993 to specifically cover insolvency events affecting those employed by the service during privatisation. Introducing his clause, Mr McDonnell referred to the case of one company, Jarvis, "where Network Rail withdrew its contracts and the company collapsed".[228] This, he claimed, resulted in great hardship for the workers involved, who lost their jobs and only received pension protection under the Pension Protection Fund.[229] Mr McDonnell then briefly outlined the pension protections that were afforded to rail workers upon privatisation:

> After months of debate in the House and negotiations between the Government and the sector unions, members of the British Rail pension scheme who were already pensioners or deferred pensioners were transferred to a special pensions section and had their rights guaranteed by the Crown. Their rights have never been put at risk and are not at risk, but that is not true for members still employed in the industry who were contributing at the point of privatisation. Their accrued rights were transferred to the section of the railways pension scheme applicable to their new employer, and a matching share of the assets from the British Rail pension scheme was also transferred to the relevant section, but nothing was done in those debates and negotiations, and

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224 ibid, col 819.
225 ibid.
226 ibid, col 802.
227 ibid, col 828.
228 ibid, col 813.
229 ibid, col 814.

> eventually the orders, to protect their transferred rights in the event of their new employer becoming insolvent.[230]

Highlighting the protections generally guaranteed to these workers' pensions, and stressing the importance of the then Government's commitment to protect them in the event of privatisation, Mr McDonnell said that:

> [I]t has been demonstrated that the statutory protection that workers in the railway industry thought would guarantee their pensions has proved to be illusory in the event of an employer's insolvency. That is what the Jarvis case has demonstrated.[231]

Thus, he stated that:

> [C]lause 7 would simply restore the protection in the specific case of insolvency [...] [which would] protect only 'relevant pension rights'—namely, the rights that the member had accrued in the British Rail pension scheme and the rights that he or she had accrued as an employee of a successor employer, post-privatisation, but only to the extent that he or she had had no choice as to the section of the railways pension scheme in which they were accrued.

However, Steve Webb, Minister of State for Pensions, rejected these calls, suggesting that if the Government were to apply such provisions to the railways industry, there would inevitably be calls to apply the same measures to workers in other privatised utilities.[232] He also stated that this was the situation the Pension Protection Fund was for, and that it was no argument to claim 100 percent protection further down the line which would not be available to those in private companies:

> [M]y point is that his argument about justice—his argument that pension protection should mean not just the same terms and conditions, which was what it did mean, but protection against insolvency—should apply equally across other industries, and should not just apply to the rail industry, if that is what he believes. When John MacGregor made the promises that the hon. Gentleman quoted, he was saying that the terms and conditions of the pension scheme would be the same with the privatised employer as they were with the state employer. Subsequently, a pension protection fund was created. Jarvis paid pension protection fund levies and that is why the employees are in the pension protection fund.[233]

The proposed new clause was not pressed to a vote.

Additional Clauses in Part Five of the Bill

Part five of the Bill contains a number of additional clauses that were not discussed, or discussed only summarily, at report stage. These include:

Clauses 33 and 34—These clauses would grant the Secretary of State the power to make regulations prohibiting the offer of incentives to induce a person into transferring their rights

230 ibid, cols 813–14.
231 ibid, cols 815–16.
232 ibid, col 822.
233 ibid.

accrued in a salary-related occupation pension scheme into another scheme or arrangement. The powers would be repealed after seven years if they had not been used.[234]

Speaking during the committee proceedings, Steve Webb, Minister of State for Pensions, stated that the Government was not against the process in principle, which is commonly referred to as Enhanced Transfer Value exercises, but it was concerned about possible cases of misuse:

> We do not object to transferring one sort of pension right to another; what we object to is the use of cash bribes to get people to give up complex pension rights that they may not even understand. Clause 30 gives us the power, if we think that our code of practice is not working and we spot bad practice re-emerging, to use the force of law to stop it. As I said earlier, we do not want to use clause 30, and I would be as delighted as anyone if, under clause 31, clause 30 were to be sunset and never used. However, we thought that it was important, partly to underpin the work of the industry group, for the industry to know that if that practice continued, we would stop it.[235]

A code of good practice was published by an industry working group in June 2012 on the use of such incentive exercises.[236]

Clause 39—This clause would amend the Pensions Regulator's power to issue a penalty notice for failure to comply with requests for information, so that it would apply to all of the Regulator's employer compliance functions as set out in part 1 of the Pensions Act 2008.[237]

Clause 40—This would extend the protection available under the National Insurance Fund, which can be used by trustees or managers to claim an amount of any unpaid pension contributions in the case of an employer's insolvency, to apply also to workers and agency workers.[238]

Clause 42—This clause relates to a European Court of Justice judgment that BT should be required to pay Pension Protection Fund levies for the tax years 2005/06 to 2009/10.[239] Therefore, the clause provides a power for the Secretary of State to make regulations providing for this requirement, and would also allow the clause to be used in another comparable situation. However, speaking for the Government during committee stage, Steve Webb outlined his belief that it would be highly unlikely to be needed again:

> [T]he Commission expects the UK Government to apply the same reasoning to schemes in a comparable legal situation when the facts are the same. However, the regulations made under the clause will have limited application, as the Government are not aware of any other scheme in the same position—that is not surprising, really. We therefore believe that the clause will apply only to the BT pension scheme, and only for the period I have described. The money will go into the Pension Protection Fund and will benefit members of occupational pension schemes and their employers.[240]

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[234] Explanatory Notes, paras 138–9.
[235] House of Commons Public Bill Committee, 9 July 2013, col 347.
[236] Pensions Industry Working Group, *Incentive Exercises for Pensions: A Code of Good Practice*, June 2012.
[237] Explanatory Notes, paras 157–9.
[238] ibid, paras 160–2.
[239] ibid, paras 167–9.
[240] House of Commons Public Bill Committee, 11 July 2013, col 408.

Clause 43—This clause would prohibit companies from becoming a corporate trustee if one or more of its directors had been prohibited from acting as a trustee by the Pensions Regulator. However, the company would be able to apply to the Regulator for this prohibition to be waived, and could also become a corporate trustee if the director(s) left the board of the company.[241]

Clause 44—This measure would amend companies legislation so that relevant bodies would be exempt from liability for damages arising from the production of a statutory money purchase illustration based on the relevant body's technical memorandum.[242]

Clause 46—This clause would increase the number of years before a scheme of no more than four members (a micro scheme) was required to complete a scheme return to once every five years. All other occupational pension schemes would still be expected to complete such a return once every three years.[243]

5. Third Reading in the House of Commons

The Bill had its third reading in the House of Commons on 29 October 2013.

Opening the debate, Steve Webb, Minister of State for Pensions, thanked the Select Committee on Work and Pensions for the pre-legislative scrutiny it carried out on part 1 of the Bill, and reiterated why the Government felt the reform was needed:

> The reason for the Bill is that we have a state pension system still grounded in the models of the Second World War, a system where men went out to work and women depended on men, and a system of mind-numbing complexity that made it impossible for people to plan rationally for their retirement. Each change by successive Governments has been made with the best of intentions, but, grafted on to the previous lot of changes, they left people with a system that nobody could hope to understand. That mattered in its own right, but it matters particularly in a world of automatic enrolment if we are to expect another ten million people to save, in some cases, relatively small amounts for their retirement. They have to be able to do so confident that they will not see their hard-earned savings means-tested away. That is why the single-tier state pension, a single, simple decent state pension set above the level of the basic means test, is such a fundamental reform.[244]

Mr Webb also thanked the Opposition for its support of the single-tier pension.

Turning to the other key provisions in the Bill, Mr Webb briefly outlined the effect of the state pension age in part 2 and the reform of bereavement support payments in part 3. He also noted that part 4 of the Bill had been the subject of considerable debate during the passage of the Bill through the House of Commons:

> Part 4 of the Bill, which occupied the majority of our time in the House, deals with automatic enrolment and one the many issues not addressed until this coalition Government came to power—the issue of small stranded pension pots. We anticipate

[241] Explanatory Notes, paras 170–3.
[242] ibid, paras 174–7.
[243] ibid, paras 179–80.
[244] HC *Hansard*, 29 October 2013, cols 866–7.

> that there could be tens of millions of small stranded pension pots, which is not something any of us want. I think that the prospect of the pot-follows-member system, under which people change jobs and the small pension pots go with them and build into what I have called a big, fat pot, is a better model. It will engage people with pension saving and result in people knowing where their pensions are and getting better value for annuities. That will be of great value.[245]

Mr Webb concluded that the reforms would provide a private pension system that was "fit for purpose" before commending the Bill to the House.

Responding, Gregg McClymont, Shadow Minister for Work and Pensions, reaffirmed the Opposition's support for the Bill, but added:

> I suggested [in January when the draft Bill was published] that the devil would be in the detail and that there would be winners and losers from such a substantial reform. Inevitably that has proven to be the case [...]
>
> The Bill has thrown up a number of questions on the two essential parts of the pension system—state pension reform and the pillar of additional pension saving—and many of them have been dealt with effectively. However, questions remain about the pensions market side of the equation and about additional pension savings. Let us not forget that the new flat-rate state pension will not provide most people with the kind of income they will need and expect in retirement. The burden will therefore be on the new auto-enrolment pensions to deliver the necessary additional income. We believe that the Minister still needs to do a significant amount of work on this, either by using effectively the powers he has given himself or by bringing further proposals to the House.[246]

Mr McClymont concluded:

> We believe that the principle of a flat-rate state pension is sensible, but if the Minister really wants both parts of the pension system to interact cohesively and effectively, he will need to act fast to reform the dysfunctional private pensions market.[247]

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[245] ibid, col 868.
[246] ibid, cols 869–70.
[247] ibid, col 870.