Pension Schemes Bill 2014-15 – House of Commons stages

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The *Pensions Schemes Bill 2014-15* would:

- Establish a new legislative framework for private pensions, defining them on the basis of the promise they offer for members about their retirement benefits during the accumulation phase. The promise will refer to all of the benefits (defined benefits), some of the benefits (shared risk), or there will be no promise (defined contributions);

- Enable the provision of collective benefits (provided on the basis of allowing the scheme's assets to be used in a way that pools risks across membership); and

- Give force to measures connected with the announcement in Budget 2014 that people aged 55 and over would have more flexibility about how to access their defined contribution pension savings from April 2015. The changes to pension tax legislation necessary to implement these changes are in the *Taxation of Pensions Bill 2014-15*.

The Bill (HC Bill 12) had its First Reading in the House of Commons on 26 June 2014 and its Second Reading on 2 September. During Committee stage (between 21 October and 4 November), the Government made some 72 amendments, all of which were agreed to without division. The purpose of some of these amendments was to restructure the Bill into a more logical order. Others were detailed amendments to existing provisions in the Bill. New measures introduced included provision for pensions for fee-paid judges and the extension to Scotland of certain provisions about marriage of same sex couples. The government amendments on which there was most debate related to the introduction of the 'guidance guarantee' for people approaching retirement with defined contribution pension savings from April 2015. Two Opposition amendments – relating to governance and default options for people who do not make a decision at retirement – were negatived on division. The Bill had its Report stage (where the Government made further amendments) and Third Reading on 25 November 2014.

HL Bill 63 had its First Reading in the House of Lords on 26 November and will have its Second Reading on Tuesday 16 December.

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1 The Bill

The *Pension Schemes Bill 2014/15*, which was introduced to Parliament on 26 June 2014 would:

- **Establish a new legislative framework for private pensions**, defining them on the basis of the promise the offer for members about their retirement benefits during the accumulation phase. The Government hopes that opening up a new space for shared risk (or 'defined ambition' schemes) schemes will encourage innovation and act as an incentive for schemes to offer a mix of benefits. In particular, the Bill would enable the provision of collective benefits (provided on the basis of allowing the scheme's assets to be used in a way that pools risks across membership). The Government consulted on its proposals for defined ambition schemes in *Reinvigorating workplace pensions* (November 2012) and *Reshaping workplace pensions for future generations* (November 2013).

- **Give force to measures connected with the announcement in Budget 2014 that people aged 55 and over would have more flexibility about how to access their defined contribution pension saving from April 2015**. As presented to Parliament, the Bill included provision to enable a prohibition on transfers out of unfunded public service schemes, except to other DB schemes. Measures to introduce a guidance guarantee were the subject of government amendments at Committee stage. The

changes to pension tax legislation are to be included in the *Taxation of Pensions Bill 2014-15.*

- **Make miscellaneous other changes to pensions legislation**, for example, enabling DWP to make payments direct to the Remploy Pension Scheme and removing the statutory requirement on TPR to compile and maintain a register of independent trustees.

The background to and provisions in the Bill are discussed in more detail in Library Research Paper RP Pension Schemes Bill (21 August 2014).

The Bill, Explanatory Notes and an Impact Assessment can be found on the *Pension Schemes Bill 2014/15* page of the Parliament website. The Bill contains a number of regulation-making powers. The Government has produced a Delegated Powers Memorandum explaining these provisions.[1] It also published information notes to inform Commons Committee stage and a Keeling version of the Bill.

2 Second Reading debate

The Bill had its Second Reading debate in the House of Commons on 2 September 2014. Opening the debate, Pensions Minister, Steve Webb explained the Government's 'defined ambition' proposals:

> First, what is defined ambition? Essentially, it is a radical reshaping of pensions legislation to ensure that it remains relevant for future generations, and to reflect, recognise and, to quote the coalition agreement, "reinvigorate" innovation in consumer-focused product design in either shared-risk or, as we are calling them, defined-ambition pensions.
>
> The Bill will introduce three categories of pension scheme based on the type of promise that they provide to savers during the saving phase about the benefits that will be available to people on retirement, including a new defined-ambition or shared-risk category of pension scheme. The Bill will enable collective benefits to operate in the UK, as they do successfully in many other countries. We have very much tried to focus on pension members' experience of what their scheme offers. The new Bill will apply and refocus existing legislation in relation to the new terms.
>
> The first category is for salary-related pension schemes—for example, traditional final or average-salary schemes—where the pension is specified in relation to the person's salary. They have been in decline since the 1970s, and the majority of them are now closed to new members. They are often known as defined-benefit pension schemes, in which the employer bears the risks of longevity, investment returns and inflation.
>
> The switch has been to the other extreme—schemes commonly known as defined-contribution or, more technically, money purchase schemes. The number of defined-contribution schemes established per year has generally increased since 2007, with 1,060 new schemes in 2013. Membership of such schemes increased by 15% to 2.7 million in 2013.
>
> As you can clearly see, Mr Deputy Speaker, we have a binary model: people get either a money purchase or a non-money purchase benefit. Although both types of pension will be the right product for many people, is it right that the only future for pensions that is encouraged by our legislation is one in which either the individual consumer or the

[1] DWP, *Pension Schemes Bill Delegated Powers,* June 2014, DEP2014-0911

> employer takes on all the risk? We do not believe so. Many employers have found the increasing costs of longevity and investment risk too heavy to bear, but if defined-contribution schemes are the only alternative, outcomes for savers will be less certain and more volatile than for earlier generations, making it much harder for future generations of savers to plan for later life.
>
> Consumer trust in the pensions industry is low. As I have said, we can protect people against the risks of high charges or poor governance, but our research has shown time and again that many individuals want more stability and certainty. They want to know something about what their savings will give them and have some protection from the worst vagaries of the market. That is why the Bill provides new definitions for private pensions, including the new defined-ambition category of pension scheme, and for collective benefits.
>
> The new shared-risk definition describes a middle ground between the more polarised money purchase and non-money purchase definitions. It will create a distinctive space to encourage innovation in pension design, and it will provide more certainty for individuals than defined-contribution schemes by sharing risks among employers, employees and third parties.
>
> The collective benefit definition will enable a new form of risk pooling among scheme members that is able to provide greater stability in outcomes for members. Collective pension schemes are often recognised internationally as high quality, and it is only right that the United Kingdom should have access to pensions viewed as being among the world's best. We also have the advantage of providing protections at the outset that address issues to which the more mature schemes overseas are now turning their attention.
>
> We have engaged extensively with stakeholders across the pensions industry and found that there is an appetite for legislation that allows greater risk sharing and risk pooling. There are employers who will welcome the greater flexibility to create pension schemes that suit the needs of their work force. Pension providers want the flexibility to design and offer pensions that provide greater certainty. Individuals value the option to have greater certainty than that provided by DC pension schemes, as well as the greater stability that collective schemes may provide.[2]

He expected it to be mainly large employers who would offer defined ambition schemes in the first instance

> On the whole, such schemes are unlikely to be provided by SMEs. In general, we anticipate that just as with final salary and DB pensions, it is larger employers who will tend to go for shared-risk schemes – not exclusively, but largely. The reason is that, beyond the bare legal minimum of auto-enrolment, providing a workplace pension is not a legal requirement but an option. It tends to be larger employers who see pension provision as part of a package, perhaps including a company car or a workplace creche, and who offer additional benefits. […] Once the schemes get up and running, small employers may well choose to join them. We will probably need scale before we get to that stage.[3]

The process of developing the defined ambition proposals had made him more sympathetic to the view that there should be a single regulator for workplace pensions, but now was not the time to do this:

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[2] HC Deb 2 September 2014 c200

[3] Ibid c202

> It is fair to say that in drawing up the regulations and guidance for the Bill, the number of times we have had to ask ourselves which regulator it is that does which bit and to ensure that what the FCA does mirrors what the Pensions Regulator does has added to the complexity of the process. When I gave evidence to the Select Committee a little while ago, I said that this was not the time to start reforming the regulators. That remains my view. My hon. Friend will be aware that the FCA has only just been created out of the ashes of the Financial Services Authority. This precise point is not the right time for yet another regulatory reform. However, the experience of the last 12 months has made me more sympathetic to the view that the eventual destination might well be a single regulator.[4]

Regarding the other main strand of the Bill – that from April 2015, people aged 55 and over would have more flexibility about when and how to draw their defined contribution pension savings, subject to their marginal rate of income tax – he said:

> This Bill will make the required changes to pensions legislation, including a guidance guarantee. That means that everyone with a defined-contribution pension arrangement will be offered free, impartial guidance so that they are clear about the range of options available to them on retirement. There will also be a duty on providers and schemes to ensure that they make people aware of their right to guidance and signpost them to this service.
>
> The taxation of pensions Bill will legislate for the required tax regime changes. The Government will continue to allow members of private sector DB schemes the freedom to transfer to other types of scheme. In the majority of cases, it will continue to be in the best interests of the individual to remain in their DB scheme.
>
> That is why two additional safeguards will be introduced to protect individuals and schemes. First, there will be a new requirement for individuals transferring out of a DB scheme to take advice—with a capital A—from a financial adviser before a transfer can be accepted. Secondly, there will be new guidance for trustees of defined-benefit schemes on using their existing powers to delay transfer payments and taking account of scheme funding levels when deciding transfer values. To protect the Exchequer and taxpayers, however, transfers will not, other than in very limited circumstances, be allowed from unfunded public service DB schemes to schemes with DC arrangements.[5]

In response to questions about the possibility of schemes applying large exit fees to people wanting to take advantage of the new flexibilities, he said the Government was working with the industry to understand the extent of the problem:

> First, despite Opposition attempts to hype this up and overstate the case, the number of schemes with exit fees is very much in the minority. In other words, our 2013 pensions and charges landscape survey found that more than five in six trust-based schemes, and nine out of 10 employers with contract-based schemes, had no exit fees. We must therefore be clear that exit fees are exceptional.
>
> Secondly—I am generally talking about legacy schemes here—we are already considering charges, and a legacy audit is being undertaken of old and high-charging schemes. That is due to report by December and will provide additional information about existing fees. At the moment, we do not have full information with which to form policy, but the Government are working with the pensions industry to understand how common exit fees are, how large they are, and the terms under which they operate.

[4] Ibid c202

[5] Ibid c203-4

> Crucially, once the evidence is clearer, the Government will be able to decide whether additional measures are required to protect savers. At the moment we are gathering information, but we are determined to ensure that savers are protected. I hope that is helpful.[6]

The Government expected people in defined ambition schemes to be able to take advantage of the flexibilities for DC pension savers:

> We expect people with defined contribution arrangements within a defined ambition scheme to be able to access those arrangements in line with new budget flexibilities. Members of DC schemes that offer collective benefits will be able to cash out their collective benefits if they so choose. If they remain within the scheme, it is likely that they will receive a pension income for life, since that is how we envisage collective benefits being set up. People will not have to make decisions on how to access their savings; decisions on how to pay out scheme benefits will be made by scheme fiduciaries.
>
> These schemes will offer an option—that is the crucial point: the freedom and choice agenda—for those who wish the scheme to pay them a pension income for life. Either way, the individual will have choice over what to do with their savings. Together with the amendments that will follow shortly, the Bill will set out a legislative framework that will mean greater choice and flexibility for future private pensions, tailored to the needs of employers and individual savers.[7]

For the Opposition, Shadow Pensions Minister Gregg McClymont asked how effective the Government expected the guidance guarantee to be:

> If the annuities market did not work because individuals did not exercise the open market choices they were offered, how can we expect these reforms to be more successful, if the guidance is not cast iron of the highest quality and as expansive as possible? […] The building up of pension pots is based on a default opt-in, with choice exercised only if an individual chooses to opt out of the pension scheme the pension scheme the Government have put them in; yet it is suddenly suggested that, on retirement, individuals alone can get best value for money in what is a complex market known for mis-selling.[8]

He said the Bill was silent on aspects that he thought were central to the success of defined ambition schemes. These included whether collective schemes would reduce pensions in payment, the governance arrangements for collective schemes

> The first aspect—as far as I am aware, the Minister was silent on this—is the awareness that cross-generational collective pensions can, in extreme circumstances, involve a reduction in pensions in payment. This is not something that the UK is culturally and historically attuned to. In a cross-generational collective pension fund, the smoothing of risk and reward between different generations can mean, in extreme circumstances, that the pensions being paid to pensioners are cut. That is something with which our politics is not familiar and an important point about defined-contribution collective pensions that has to be considered.
>
> The second important point is that governance is even more important in collective pension schemes of this kind than it is in other forms of pension. Managing a rolling pension fund—one that brings together the savings of teenagers, pensioners and

[6] Ibid c204

[7] Ibid c205

[8] Ibid c207

> every generation in between and that demands that each cohort is treated equally—requires substantial technical expertise. […] There is nothing in the Bill about the standards of governance that CDC pension schemes will have to meet. Everything is left to secondary legislation.[9]

Furthermore, he said the Bill was silent on the sort of collective DC the Government wanted to promote:

> Broadly, there are two kinds of collective pensions that the Government might wish to promote. One is a form of collective DC that sets a target income for each saver and a probability of the target income being met on retirement—a 95% probability, say, of that target being realised. This form of collective DC demands significant assets in reserve so as to make the probability realistic. Given the substantial assets that any scheme would need to materialise, that is what we might call a heavy form of collective DC pensions.
>
> There is also, however, a lighter form of collective DC, which is more intra-generational than inter-generational—involving risk sharing among a particular cohort rather than between generations. That lighter form of DC collective pensions is also to be welcomed, as it would bring the advantage of scaling and pooling within a generation. Fundamentally, too—I am not sure the Minister mentioned this—the great advantage of collective pensions is that they avoid the real difficulty of having to make the decision on the spot on retirement for the rest of one's retirement. That does not happen under either the heavier or lighter form of collective DC, as a form of draw-down applies. The pension fund never ends; it continues, so a form of draw-down is possible. As I said, an on-the-spot, once-in-a-lifetime decision about retirement income might apply under the Bill.
>
> The Government have not stated which form of collective DC they wish to see materialise from the Bill. As with governance, the Bill is entirely silent on those points. Everything is left to secondary legislation once again, and I see a pattern when it comes to pensions legislation under this Government.[10]

He asked how the Government expected the new flexibilities for DC pension savers to impact on pension pots:

> […] we need to know how the budget reforms will impact on the pension pots and retirement income of low and middle earners. That is important. One of the weaknesses of individual DC, from which the Minister is trying to move away, is that 10 years from any individual's retirement, the pension fund has to move assets into low-yielding bonds to avoid any risks so close to the retirement age. There is less risk, but less return. The danger of the Government's flexibility provisions on retirement is the interaction with pension fund asset management. It now becomes the norm that individuals will cash in their pension pot at 55, 56 or 57, which means that at the age of 45, 46 or 47 the pension fund will have to move into low-risk, low-yielding assets, reducing the pension pot when cashed in on retirement.[11]

He also asked about the interaction with help for social care:

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[9] Ibid c209
[10] Ibid c210
[11] Ibid c210

How do the Government view the position of the ability of local authorities, for example, to say that a pension pot is a realisable asset that can be brought inside the capital disregard for social care and other benefits?[12]

He asked about transfers into NEST and the collective schemes more generally:

> The Minister did not mention the National Employment Savings Trust and that is no surprise, because he has promised that the restrictions on NEST will be lifted, but since July 2013 we have heard nothing on when they will disappear. That is important because, if we are thinking about collective defined-contribution pensions, NEST is a trusted pension provider backed by the Government that could offer such pensions. In doing so, just as it has in the auto-enrolment sphere, it could constrain the pensions industry and drive up standards and quality, so that the products that the Minister, I and everyone would like to see delivered are delivered by the industry. Therefore, the restrictions on NEST are a problem. The Minister has indicated that he will lift them. Can we have some clarity on when they will be lifted, especially since they pertain to the Bill's objectives?
>
> More narrowly, technical drafting may prevent someone from transferring their pension pot to a CDC scheme unless they were an "earner" and their current employer was an employer in relation to the CDC scheme. I know it is a technical issue, but there would appear to be no good reason why a workplace CDC scheme should not be able to take in pots from any source if the person willing to transfer in thinks that they receive a good valuation for their contribution. For longevity risk, investment risk and lower costs reasons, an individual may prefer a steady income from CDC instead of draw-down or annuity.[13]

He also asked whether the Government intended to introduce measures to promote scale, one of the conditions considered necessary for collective schemes to operate successfully.[14]

Responding to the debate, Financial Secretary to the Treasury David Gauke said there was evidence of interest from employers in offering defined ambition schemes:

> DWP research found that more than a quarter of employers are already interested in offering a pension involving greater risk sharing between members and employers. Over half of employers—52%—said that they would like to set up a scheme where the employer pays fixed contributions and where there is more certainty for the employee, such as DC plus. The response to our "Reshaping workplace pensions for future generations" consultation also demonstrated a strong desire from unions for collective models. In terms of that demand, the DWP has had discussions with interested employers, but I am sure the House will understand that employers will want to see the detail and communicate with their work force.[15]

Regarding collective schemes, the Government would make regulations for how they should be governed under provisions in the *Pensions Act 2014*. It wanted to leave flexibility so that insurance firms, or schemes that were not occupational could offer collective benefits.[16] As regards the likely success of the guidance guarantee, he said:

> The shadow Pensions Minister asked whether flexibility and guidance would address inertia in the annuities market, but prior to the Budget announcements, consumers

[12] Ibid c212
[13] Ibid c212
[14] Ibid c212
[15] Ibid c244-5
[16] Section 43 and Schedule 17

> were not incentivised to shop around for annuities. They will have more options and more reasons to engage with the market as a result of greater flexibility, and access to impartial, good-quality guidance will be key to having better informed and more empowered consumers. They will be equipped to look for products that work for them, and the decumulation market, including the annuities market, will be incentivised to respond to the demands of more empowered consumers and will have the freedom to do so.
>
> It is sometimes said that people simply will not be able to make good choices, but leaving aside concerns that that view is somewhat patronising, I argue that the existing system restricts choice at the point of retirement, and the Government do not believe that that is right. The Government recognise that with more choices at retirement, consumers' decisions will become more complex, so we have introduced the guidance guarantee to help consumers to understand their options.
>
> The shadow Pensions Minister referred to the apparent contradiction between auto-enrolment, which is predicated on inertia, and the Turner proposals and giving greater choice to savers. It is always right that people save and that we put in place a regime that encourages saving, but when savers reach retirement it is right that they have the opportunity to engage and have a full range of choices available to them. We believe that it is sensible to set out the detailed technical requirements in secondary legislation, which will allow time for consultation and to respond to evolving risks in the market.[17]

The Bill received its Second Reading without a vote.[18] On 8 September 2014, the Government confirmed its intention to lift the restrictions on NEST from 1 April 2017.[19]

3 Public Bill Committee stage

Following its Second Reading, the Bill was committed to a Public Bill Committee. The Committee was chaired by Peter Bone and Linda Riordan. In addition to Pensions Minister Steve Webb and Shadow Pensions Minister Gregg McClymont, its members were:

Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
Blenkinsop, Tom *(Middlesbrough South and East Cleveland)* (Lab)
Coffey, Dr Thérèse *(Suffolk Coastal)* (Con)
Graham, Richard *(Gloucester)* (Con)
Hammond, Stephen *(Wimbledon)* (Con)
Hemming, John *(Birmingham, Yardley)* (LD)
Kwarteng, Kwasi *(Spelthorne)* (Con)
Latham, Pauline *(Mid Derbyshire)* (Con)
Love, Mr Andrew *(Edmonton)* (Lab/Co-op)
McCann, Mr Michael *(East Kilbride, Strathaven and Lesmahagow)* (Lab)
McFadden, Mr Pat *(Wolverhampton South East)* (Lab)
Maynard, Paul *(Blackpool North and Cleveleys)* (Con)
Mills, Nigel *(Amber Valley)* (Con)
Morris, James *(Halesowen and Rowley Regis)* (Con)
Paisley, Ian *(North Antrim)* (DUP)
Watkinson, Dame Angela *(Hornchurch and Upminster)* (Con)
Watts, Mr Dave *(St Helens North)* (Lab)

[17] HC Deb 2 September 2014 c246
[18] Ibid c248
[19] HC Deb 2 September 2014 c31-2WS

The Committee took oral evidence over four sessions:

- First sitting – Tuesday 21 October 2014 morning - The Pensions Regulator; the Pension Protection Fund; Financial Conduct Authority; Pensions Advisory Service Money Advice Service.
- Second sitting – Tuesday 21 October 2014 afternoon – Royal Society of Arts; Cardano; First Actuarial; KPMG; Aon Hewitt; Financial Services Consumer Panel; Confederation of British Industry.
- Third sitting – Thursday 23 October morning – Mr Dominic Lindley; Which?; Trades Union Congress; Pensions Policy Institute; Dr Ros Altmann; Age UK.
- Fourth sitting – Thursday 23 October afternoon – Association of British Insurers; Dr Debbie Harrison; National Association of Pension Funds; Mr John Greenwood; Strategic Society Centre; Towers Watson; Department for Work and Pensions.

There is a consolidated version of the written evidence to the Committee.

The Committee then considered the Bill over six further sessions, ending its deliberations on the afternoon of 4 November 2014. The Government made some 72 amendments to the Bill. Some of these were to restructure the Bill, bringing it into what the Government considered to be a more logical order, others were of a technical nature.

The restructuring of the Bill involved changing the order of parts 2 and 3 and adding two new parts, including one on pensions guidance:

Bill 12	Bill 114
Part 1 - Categories of pension scheme	Part 1 - Categories of pension scheme
Part 2 - General changes to legislation about pension schemes	Part 2 - Collective benefits
Part 3 - Collective benefits	Part 3 - General changes to legislation about pension schemes
Part 4 - Miscellaneous and general	Part 4 - Pensions guidance
	Part 5 - Miscellaneous
	Part 6 - General

The government amendments on which there was most debate related to the introduction of the guidance guarantee (see section 7 below). Amendments unrelated to the Budget would make provision for pensions fee-paid judges and extending certain provisions regarding same-sex marriages to Scotland.

Regarding the commencement timetable, the Government said its intention was:

> […] for all the measures in relation to the new pension flexibilities announced in the Budget to come into effect for April 2015. For Defined Ambition legislation, the aim is for required secondary legislation and any additional tax changes to come into effect

> for April 2016, so that employers considering options at the time of the ceasing of contracting out have more options available to them than at present.[20]

Two Opposition amendments – one relating to the fiduciary duties of trustees and the other aimed at those who do not make a decision at decumulation stage - were negatived on division.

The Bill as amended in Public Bill Committee is Bill 114 - 2014-5. The following is a guide to the debate at Public Bill Committee stage. References are to Bill 12.

4 Debate on part 1 – Categories of Pension Scheme

4.1 Clauses 1 to 4 - definitions

Part 1 of the Bill define three mutually exclusive definitions of pension. The definitions are based on the type of promise the scheme offers members during the accumulation phase about the retirement benefit (retirement income or a retirement lump sum provided to members).[21] Briefly, **clause 1** introduces some key expressions used in pensions legislation:

- A defined benefits scheme is one that provides a pre-determined retirement income to all members, beginning at pension age and continuing for life **(clause 2);**

- A shared risk scheme is one that offers a 'pension promise' but not a full pension promise, to all members at some point during the accumulation phase in relation to at least some of the retirement benefit that members might receive **(clause 3);**

- A defined contributions scheme is one that gives no promise during the accumulation phase in relation to any of the retirement benefits that may be provided to members **(clause 4).**

These are discussed in more detail below. The new definitions apply only where the legislation expressly states that they should. They do not apply in any public service pensions legislation (**clause 1 (2)**).

The Committee agreed that these provisions should stand part of the Bill.[22]

4.2 Clause 5 – 'pensions promise'

Clause 5 explains what is meant by a 'pension promise'. Pensions Minister, Steve Webb, explained:

> […] the word "promise" has been chosen with great care in drafting the Bill to convey that a commitment has been made that goes beyond an intention or an expectation on the part of the person or scheme making it. Although legislative protections are in place to minimise the risk of the promise not being met, it does not in itself provide a complete cast-iron guarantee to the member.[23]

Subsection 6 provides that where there is discretion to vary a benefit for individual circumstances, this would not prevent a scheme being a DB scheme:

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[20] Pension Schemes Bill 2014-15 – new flexibilities announced, 23 October 2014

[21] Bill 12 EN, para 31

[22] PBC Deb 28 October 2014 c145-156

[23] Ibid c157

> An example would be to make provision for ill health early retirement. Because those discretions are exercised only on an individual basis, they are different from discretions that are applied at the scheme level. We have therefore set out that the discretion for individual circumstances does not constitute a failure of the test in subsection (1)(a). In other words, it could still be a DB scheme.[24]

The Government amended clause 5 to:

> […] add a regulation-making power under which discretions that are capable of being used only for reasons relating to a member's individual circumstance would have to meet any other requirements that might be specified in regulations. We have tabled the amendment as a result of conversations we have had with the industry on the definitions and how various scheme designs would be categorised. We will use the regulation-making power to prevent abuse of the discretion exclusion. It will allow us to prescribe in regulations that the exclusion of such discretions may apply only if certain other requirements are met.[25]

4.3 Clauses 6 and 7 - scheme treated as separate schemes

Clause 6 provides for a scheme to be treated as two or more separate schemes – for example where an existing scheme has a defined benefits section which is not open to new members, and a defined contributions section for new members. **Clause 7** defines some of the terms in Part 1.

The Committee agreed that these clauses should stand part of the Bill.[26]

4.4 Clause 8 and Schedule 1 - amendments to do with Part 1

Clause 8 and **Schedule 1** makes consequential amendments to existing pensions legislation to take account of the new categories provided for in Part 1. The Government amended clause 8 to "describe its purpose correctly following the restructuring of the Bill to make it work better." The restructuring of the Bill included changing the order of part 2 (general changes to legislation about pension schemes) and part 3 (collective benefits) and moving the provisions in Schedule 4 (collective benefits: amendments to other legislation) into Schedule 1 (amendments to do with Part 1). Steve Webb explained the amendments being made to clause 8 as follows:

> We need to restructure in light of the various amendments that we are making and, as part of that, we are moving provisions currently in schedule 4 so that they sit alongside other amendments to existing legislation currently in schedule 1. Amendment 29 changes the description of schedule 1 in clause 8 as a result. Amendments 30, 33 and 36 insert definitions of terms used in the Bill into existing legislation and are purely technical. Amendments 31 and 35 make clear how the new scheme categories work in relation to the new scheme categories and collective benefits. Amendment 35 and the first part of amendment 31 makes changes to existing legislation to make it clear how the new categories in part 1 of the Bill will apply. They make it clear how existing provisions apply under the new categories for wind-up, employer debt, contribution notices for the avoidance of employer debt, financial support directions and so on. In other words, we have had to sit down and think about what the new definitions imply for all the familiar things in the pensions world, such as what happens when an employer becomes insolvent, in order to get everything updated. Amendments 32 and 34 import text from schedule 4 that is being removed by amendment 40.

[24] Ibid c157
[25] Ibid c157-8
[26] Ibid c161-4

> Although all that is rather technical, the general point is that we are trying to restructure the Bill into a more logical order, to put things in schedule 1 that belong there and to ensure that previous references to money purchase schemes are removed, but that we retain the concept of money purchase benefits. The amendments make the Bill more rational and clause 8, which enables schedule 1, will help to ensure that the Bill sits well with existing pensions legislation.[27]

The Government also made an amendment to Schedule 1, linked to a new clause 10 which it was introducing. This was to make provision for the treatment of a surplus in a scheme providing collective benefits. Steve Webb explained:

> […] amendment 55 seeks to remove funds held for the purpose of providing collective benefits from existing provisions in the *Pensions Act 1995*, which sets out when trustees may pay to the employer funds held for the purposes of the scheme. New clause 10 makes it clear that regulations will require that funds held to pay collective benefits can be paid only to members except in limited circumstances. Under the new clause, regulations will specify that funds held to pay collective benefits can be paid only to members except in limited circumstances, because the employer has no automatic right to any surplus. We want to ensure that members have confidence that the funds in the scheme will be available to pay their benefits. However, limited exceptions will be set out in regulations.
>
> We have made it clear that the employer has no automatic call on any surplus, but we are conscious that there may be limited circumstances when it may be appropriate for an employer or some other party to be entitled to some share of any surplus. For example, it is possible that an employer may want to assist a scheme with collective benefits that falls into difficulty. We want to encourage such action and it might be more likely to happen if employers could arrange for the possibility of full or partial repayment if the scheme has a future surplus. We may therefore want to make regulations expressly allowing for that possibility. We would provide for that only after careful consideration of the implications and consultation with stakeholders.[28]

The Government made further amendments to Schedule 1 and – added new clause 11 – to enable any regulations made under Part 3 of the Bill to override a provision in scheme rules. Mr Webb explained:

> Under new clause 11, any regulations made under part 3 of the Bill can override a provision in scheme rules to the extent that they conflict with them. That is an override power. It is important that schemes are clear when legislation overrides scheme rules. That means that, for example, we can be sure that regulations providing important member protection will always take precedence over scheme rules that say something different. This is a fairly common provision in existing pensions legislation and ensures that trustees and managers of pension schemes are clear about their responsibilities where legislation and scheme rules appear to conflict.
>
> There are some consequences for existing legislation. There are other provisions in pensions legislation that make reference to scheme rules being overridden by relevant legislation, for example, provisions relating to the modification of subsisting rights and transfers. Amendments 42, 56 and 57 would add into the definition of relevant legislation reference to the overriding regulations made under part 3 of the *Pension Schemes Act 2014*.[29]

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[27] Ibid c166

[28] Ibid c167-8

[29] Ibid c172

5 Debate on part 2 – general changes to legislation about pension schemes

5.1 Clause 9 – pension promise obtained from a third party

Clause 9 relates to the possibility of a promise being obtained from a third party. It contains a regulation-making power to enable the Secretary of State to prohibit trustees or managers of a scheme from obtaining a pensions promise from a third party unless specified conditions are met. It allows for safeguards to be put in place where the pension promise is secured through the scheme from a third party. The Government amended clause 9 to remove certain powers which it had decided it did not need.[30]

Shadow Pensions Minister Gregg McClymont raised the question of whether there should be one regulator for workplace DC pensions. The Minister said he now was not the time to start reorganising regulators:

> The FCA was set up only a couple of years ago. We are in the middle of the roll-out of automatic enrolment. In my judgment, throwing all that up in the air and coming up with a new regulatory framework right now would not feel right. There is a process of triennial reviews of arm's-length bodies in our Department. We have just concluded the review of TPR. There were some minor operational things, but broadly the status quo was fine for now. As the roll-out of auto-enrolment concludes when the next three-yearly review is up, that would be a logical point to look at this again.[31]

The Government made further amendments to clarify that regulations under clause 9 may impose obligations on trustees in the context of a trust-based scheme and on managers in the context of a scheme not established under trust. The Minister explained:

> Our main aim in inserting a definition for the term "trustees or managers" is to make it clear that where either an occupational or a personal pension scheme is established under trust, any regulatory requirement on "trustees or managers" will fall on the trustees even if there are other people, other managers effectively. But if the scheme is not established under trust we want the requirements to bite on the person responsible for the management of the scheme.[32]

5.2 Clause 10 – disclosure of information about schemes

The *Pension Schemes Act 1993* (section 113) provides for the Secretary of State to make regulations requiring pension schemes to keep certain persons informed of various matters. The requirements for occupational and personal pension schemes are in the *Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (SI 2013/2734)*.[33] **Clause 10** would amend section 113 of the 1993 Act to remove the 'non-exhaustive' list of those people to keep informed. Clause 10 (4) would require schemes to have regard to guidance prepared by the Secretary of State when complying with disclosure requirements.[34]

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[30] Ibid c174

[31] Ibid c176

[32] PBC Deb 28 October 2014 c177

[33] Details of the consultation are on the Gov.UK website – Occupational and Personal Pensions (Disclosure of Information Regulations)

[34] DWP, *Pension Schemes Bill Delegated Powers,* June 2014, DEP2014-0911, para 25-6

The Minister explained that he anticipated that shared risk and collective benefits might require specific forms of disclosure.[35] The Committee agreed that clause 10 should stand part of the Bill.[36]

5.3 Clause 11 – extension of preservation of benefit under occupational schemes

Before the *Pensions Act 2014,* legislation required occupational pension schemes to offer a refund of contributions, or a cash transfer to a member leaving a scheme after three months and before two years of service who had not accrued any right to future benefits under the scheme.[37] Section 36 of the 2014 introduced a requirement that, where all the benefits to be provided are money purchase benefits, a preserved benefit must be provided after 30 days' service. The right to a refund of contributions was removed.[38] **Clause 11** would extend this to apply to all cases where the pension benefit is not salary-related. This is to ensure that the preservation requirements apply appropriately when the new scheme definitions were introduced.[39]

The Government amended clause 11 to put it beyond doubt that a 30-day rule would apply to shared benefit schemes and those providing collective benefits.

> The amendments put beyond doubt the treatment of collective benefits under the preservation requirements. In part 3 of the Bill we set out a framework for collective benefits. The framework creates the opportunity for a number of different models, and there is the possibility that some collective benefits could arguably fall within the strict legal definition of "salary related" that we drafted for the purpose of the preservation benefits. This would mean the two-year preservation rule might apply with all that goes with it, and that is not appropriate for collective benefits. Collective benefits are not salary related as there is not a promise or benefit related directly to the member's salary.
>
> Amendments 9 and 10 add a separate reference to collective benefits that puts it beyond doubt that a 30-day rule will apply to collective benefits. The uniform accrual rules are intended to ensure that early leavers are not unfairly treated where the benefit accrues at different rates at different times. For example, if the accrual rate in a salary-related scheme increases after a specified period of time, someone leaving early may not get the benefit. Those rules were crafted for a defined-benefits world and have no relevance to the world of collective benefits. The usual rule should apply to collective benefits, that is, that short service benefit should be computed on the same basis as long service benefit. Amendment 11 ensures that the uniform accrual rules will not apply to collective benefits.[40]

5.4 Clause 12 and Schedule 2– revaluation of accrued benefits

Clause 12 would make provision for the way in which the deferred benefits of early leavers are revalued. The Committee agreed that clause 12 should stand part of the Bill.[41] The Government amended Schedule 2 to provide for revaluation rules that will apply when a pension is shared on divorce. It explained:

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[35] PBC Deb 28 October 2014 c178
[36] Ibid c178-182
[37] *Pensions Schemes Act 1993*, section 101
[38] *Pensions Act 2014* – Explanatory Notes, para 154-5
[39] PBC Deb 28 October 2014 c185
[40] Ibid c186
[41] Ibid c187-9

> For occupational schemes the new revaluation rules in Schedule 2 depend on when the member's pensionable service took place. For benefits derived from pension sharing on divorce, this amendment will mean that the revaluation rules depend on when the pension was shared rather than when the pensionable service took place.[42]

The Minister said:

> Amendment 4 is to ensure that the new revaluation provisions that I just described work in the limited situations where they apply to pension credit benefits after a divorce. Amendments 37 to 39 are to make it clear that the default method of revaluation will apply to collective benefits and remove any chance of the final salary method applying.[43]

5.5 Clause 13 and Schedule 3 – Transfer values

Clause 13 and **Schedule 3** would make amendments relating to transfer values to reflect the new scheme categories defined in Part 1 of the Bill. The Minister said the key point was that the policy for transfers remained unchanged as a result of the new scheme categories.[44] The Government amended the Bill to make similar changes to the legislation about transferring the pension credit benefit where a pension is shared on divorce. Mr Webb said:

> As with transfers for ordinary scheme rights, the policy for transfers of pension credit rights remains unchanged. The existing rights to a transfer continue to apply to all benefits, including rights accrued in shared risk schemes and schemes providing collective benefits. The amendment inserts the new definitions to make it clear that a pension credit member in any of the new categories of schemes will have the same rights as current credit members to transfer their pension credit benefits and that these rights will also apply in schemes which are for collective benefits.[45]

5.6 Clauses 15 and 16 - exempt from indexation

Clause 15 would exempt Regulatory Own Funds (ROF) – a model under which collective benefits can be provided - from the indexation requirements in the *Pensions Act 1995*. **Clause 16** would introduce a regulation-making power to exclude other pensions of a prescribed description. As regards ROFs, Steve Webb explained:

> In practice, a ROF will apply part of the member's contributions towards the buffer fund to meet its funding requirement. As such, the members are effectively directly bearing the cost of funding the promise. Given the direct impact on member benefits, we do not think it is appropriate to constrain the benefit design in terms of what must be contained in the promise.[46]

Gregg McClymont asked about the circumstances in which the power to exclude pensions of a prescribed description might be used. Steve Webb explained that:

> We had to decide whether cash balance schemes should have mandatory indexation. It could be argued that those schemes are really DC—they are like pots of money—and, therefore, why would there be mandatory indexation? Or it could be argued that they are salary related and, as in the supermarket example which I gave, the amount of cash which someone builds up in a cash balance scheme depends on their salary. It

[42] Ibid c190
[43] Ibid c190
[44] Ibid c193
[45] Ibid c193
[46] Ibid c195

> is a percentage of their salary. So which is it? Is it salary related and therefore indexed, or is it cash and therefore not indexed? We took the view some years ago that we would not require indexation of cash balance benefits, because what most people were actually doing was taking the cash and buying an un-indexed annuity.[…]That is really all that we mean by these powers. We have set out our general approach and we are not touching existing indexation or DB more generally. However, if in future a type of scheme comes up that is in a bit of a grey area, we would reserve the power to make a judgment on whether indexation applied.[47]

The Committee agreed that clauses 15 and 16 should stand part of the Bill.[48]

5.7 Clause 17 – registered of independent trustees

Clause 17 would remove the statutory requirement for regulations to provide that the Pensions Regulator (TPR) compile and maintain a register of trustees. The Shadow Pensions Minster asked about the flexible procurement panel by means of which TPR would exercise its obligations in future. The Minister said:

> The regulator sometimes finds himself in a position where a trustee has to be found, for example where someone is disqualified or, as in the case discussed, where there is an insolvency event and a trustee needs to be put in. We have to make sure that a scheme is still being well run. What the Pensions Regulator can do is get somebody in flexibly, without going through the processes that a scheme might go through. It is a more light-touch framework for putting trustees in place.[49]

The Committee agreed that clause 17 should stand part of the Bill.[50]

5.8 Clause 18 – rules about modification of schemes

Section 67 to 67L of *Pensions Act 1995* sets out the conditions under which the subsisting rights of members of occupational pension schemes can be modified:

> They protect members by placing restrictions on modifications to schemes, where the change would or might have an impact on the members' subsisting rights. Some changes can be made only if the member agrees, and these are called protected modifications. Section 67A sets out the circumstances in which a modification to members' rights is a protected modification.[51]

Reflecting the new definitions to be introduced by the Bill, **clause 18** would provide for the existing protection arrangements in section 67 to apply to a proposal to replace benefits to which a promise is attached, with benefits where there is no promise. The Government amended clause 18 to add another protected modification:

> On reflection, we had some concerns that we had not gone quite far enough to reflect the breadth of shared risk schemes. Making modifications that take a benefit from a pensions promise to no pensions promise is clear cut, but there may be other benefits where the nature of the promise changes. So we have added another protected modification, which applies where the proposed modification would take accrued rights

[47] Ibid c199
[48] Ibid c195-200
[49] Ibid c198
[50] Ibid c200
[51] Ibid c200

> where there is a right to an income, subject to a pensions promise and change them to a non-income benefit.[52]

It also inserted new regulation-making power to enable it to enable it to disapply the subsisting rights provisions where appropriate:

> We need to make sure that the subsisting rights provisions do not put obstacles in the way of collective benefits operating as we intended. There could be circumstances where it might be appropriate to disapply subsisting rights provisions in relation to collective benefits.[53]

Mr McClymont asked about the sorts of shared risk schemes that might be provided for under the legislation. Mr Webb responded that a variety of shared risk schemes were possible, including the pension income builder, cash balance schemes and schemes that pool longevity risk.[54]

Stephen Hammond asked about the Transport for London (TfL) scheme, which he said contained provision allowing "any individual member to veto any rule that might change benefits in any way."[55] The Minister said he thought there had to be a "very high bar before Governments override scheme rules."[56]

6 Part 3 – collective benefits

6.1 Clause 19 – introduction and definition

Clause 19 would provide for the definition of collective benefits.

Gregg McClymont said there would be significant challenges for schemes providing collective benefits in terms of communicating the potential advantages and disadvantages to scheme members and in establishing adequate governance arrangements.[57] Nigel Mills thought it would be difficult to persuade members to move from a DB scheme to one providing collective benefits.

The Minister responded that the overarching regulatory framework provided for in the Bill would be underpinned by regulations:

> Clear communications and good governance of schemes are both essential to the effective working of the new types of collective models that we are trying to create space for. For employees, it is absolutely critical that they have information about how their pension arrangement works and that schemes operate transparently. We have designed the new framework for collective benefits with that in mind.
>
> For collective benefits, the Bill—in clause 19 and the following clauses—sets out an overarching regulatory framework that will be underpinned by a comprehensive set of regulations governing their day-to-day running and decision making by trustees and managers in areas such as benefit targeting and investment performance. We have taken powers in the Bill in relation to scheme policies and their publication, and we

[52] Ibid c201
[53] Ibid c202
[54] Ibid c203
[55] Ibid c205
[56] Ibid c208
[57] Ibid c212-3

already have further powers on disclosure and governance requirements under existing legislation.[58]

Regarding the options available to a scheme whose funding was insufficient to meet its targets, he said:

> The processes of what happens when someone will miss the target are much more to do with the rate at which future service is accrued, the rate at which discretionary benefits are paid and the contributions required from the employees. Those are the adjustment factors.[…] The point of collectives is the pooling of risk, so the more varied membership, the better. However, schemes can adjust. For example, a scheme that is not getting an in-flow of new members could reduce its exposure to risk. It might have a relatively high exposure to risk if it has lots of young members, because on the whole that is what they will want. If the number of young members and their contributions start drying up, it might choose to rebalance its investment strategy and have a lower-risk approach. That would obviously lower the average expected return but increase the probability of reaching the target benefit. Adjustments can be made. It could merge with another scheme that has a more diversified membership.[59]

Regarding members wanting to transfer funds out of the scheme in order to take advantage of the flexibilities announced in Budget 2014, he said:

> With CDC, clause 30 will require schemes to have a policy that they will follow to calculate a transfer value when someone wants to leave a scheme. As part of that we will be able to set out certain provisions of that policy, and our regulations of policy will reflect the need to ensure that those transfers out do not have an impact on the probability of being able to pay the target benefits of other members. That is the crucial point. Someone in a CDC scheme could reach 55 and want to cash out but would not do so in a way that is detrimental to the people left behind. That will in turn be reflected by the transfer value. The people running the schemes will know the law. They will know that people aged 55 and beyond can cash out. They will plan for that and make assumptions about the likelihood of that happening, but they will have discretion to reflect the impact of someone leaving earlier than expected in the transfer value.[60]

In response to a question from Nigel Mills regarding converting from DB scheme to a scheme providing collective benefits, he said:

> We do not envisage taking a DB pot and transferring it into a CDC scheme, which would almost certainly be illegal. The accrued rights of the DB pot are hard-wired, statutory-protected rights. A CDC scheme has no promises in it. I think that clause 20 states that a target is "unenforceable." A CDC scheme's target is therefore not enforceable. DB pots would not be moved en bloc into CDC because people would lose a lot of rights. They could individually transfer if they wanted to, but it is possible for a DB employer to say, "I'm not going on with DB anymore. I'm a big employer with lots of members putting in quite a bit of money each year. I'm going to start or join a CDC scheme." We get to scale quite quickly, not because we brought a legacy pot across, but because it is a big firm with lots of money going in each year.[61]

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[58] PBC Deb 30 October 2014 c223
[59] Ibid c225-6
[60] Ibid c226-7
[61] PBC Deb 30 October 2014 c228; PBC Deb 28 October 2014 c185 [Nigel Mills]

6.2 Clause 20 – Duty to set targets for collective benefits

Clause 20 would provide for regulations to require trustees or managers of schemes offering collective benefits to set targets in relation to the rate or amount of those benefits.

The Government amended clause 20 to replace references to a required probability level with references to a specified range. The Minister explained:

> In my explanation of clause 20, I will refer to clauses 26 and 28, because the other amendments in the group are consequential amendments to those clauses and have been grouped for rational reasons. Clause 20 talks about the targets and the probability of achieving them. Clause 26 talks about valuation reports to manage that process. Clause 28 is about what schemes must do when they underachieve or overachieve against those targets. The amendments will substitute probability ranges for probabilities in each clause.
>
> Throughout the process, we have been keen to continue talking to potential providers, employers and members of schemes. Feedback on the Bill has indicated that to have a single probability—for example, to specify that there must be a 97.5% chance of funding a scheme up to the requisite level—is too rigid. These numbers are illustrative and picked at random, but if we said instead in regulations that a scheme could have a 90% to 95% chance, the managers of a scheme would have to take action only if the probability of reaching its targets fell below 90% or rose above 95%. Within that range, the scheme would have a margin of flexibility.
>
> If schemes have annual valuations, we do not want, to use a technical term, to keep fiddling. If we go back to my 97.5% example, we would not want the managers of a scheme to discover in a valuation that the scheme was at 97.4% or 97.6% and to decide as a result to scrap indexation or to double pensions in payment. We do not want to keep mucking about with schemes. Having as the target a range of probabilities will allow a bit of ebb and flow between annual valuations. Scheme managers will monitor what is going on but will not be required to make a series of short-term changes.[62]

The Government would only require schemes to meet a probability in relation to the target. This was different to the position in Canada, where there are both funding and probability requirements. It would consult on the detailed figures in relation to the probability requirement.[63]

Mr McClymont commented that this involved putting a “lot of authority and responsibility in the hands of actuaries” and asked about the role they would play.[64] The Minister responded that:

> It is important to understand what the role of actuaries is and is not. The trustees or scheme managers—I will say “trustees” as shorthand—act on behalf of scheme members. They are expected to ensure that the scheme follows its rules. They obviously must take action if the data presented to them show that the scheme is not on course to hit its probability. That is what the trustees do. They take expert actuarial advice. The actuary might also say, “You are going to be outside your probability range, but there is a range of things you could do.” They could say that increasing employee contributions would have a certain effect on probability, or changing the investment mix to reduce risk would have another. The trustees will make the

[62] Ibid c229
[63] Ibid c231
[64] Ibid c233

> decisions, having been informed by expert advice on the different options and how they would feed through into the probability. That seems a sensible division of labour. The experts will crunch the numbers and tell the trustees how things stand and the implications of different choices, but the trustees will make the decision.[65]

Regarding the information that would need to be communicated to scheme members and others, he said:

> The trustees—the people in charge of the scheme—need to know what is going on at a sophisticated level, but the scheme member does not need too much information. All the complexity needs to be available for those who are interested, but it does not need to be imposed on scheme members.[66]

In response to Mr McClymont's comment that much of the detail was left to secondary legislation, he said:

> We do not anticipate that any of this will go live until post-April 2016. As we have got time, we want to set out the overall framework and go on talking to potential providers, employers and members about what they want, and then we can frame the regulations in the light of that, rather than second-guessing them at this stage.[67]

6.3 Clause 21 and 22 - Payments

Clause 21 would provide a power to make regulations that may require trustees or managers to prepare a payment schedule that shows the contributions due for payment to the scheme in respect of collective benefits. The Committee agreed that the clause should stand part of the Bill.[68]

The Government made a technical drafting amendment to **Clause 22,** which would provide a regulation-making power to require the trustees of managers of a scheme to notify a specified person in the event of a payment becoming overdue.[69]

6.4 Clauses 23 to 25 - Investments

Clauses 23 to 25 set out a number of powers that will allow requirements to be placed on the trustees and managers of schemes in relation to investments held for the purpose of providing collective benefits. Clause 23 will provide a power to require the trustees or managers of a pension scheme to prepare a statement of their investment strategy.[70] Steve Webb made some points of clarification on clause 23:

> There needs to be clarity about the principles governing decisions on how the collective fund is invested. It is envisaged that the regulations will set out the form that the statement of investment strategy must take, together with requirements about the content. For example, regulations might require the trustees or managers to ensure that the statement of investment strategy includes their policies in relation to the kinds of investment to be held, the balance between different kinds of investment and the expected returns on those investments.
>
> The regulations need to be appropriate to schemes that provide collective benefits.[…] For example, because there is no employer standing behind the collective benefits, it

[65] Ibid c234
[66] Ibid c235
[67] Ibid c236
[68] Ibid c236
[69] Ibid c237
[70] Ibid c237

may be appropriate for the investment strategy for collective benefits to be revisited more regularly than an investment strategy relating to the provision of other types of benefit.

> Finally, we must ensure that regulations are up to date and respond to the development of scheme benefits and designs.[…][71]

The Government made amended the Bill to remove **clause 24** (choosing investments), replacing it with new clauses 7 (investment powers), 8 (restriction on borrowing by trustees or managers) and new clause 9 (investment powers: duty of care). The Minister said new clause 7 would extend the power in clause 24, so that:

> regulations may also make provision about the delegation of investment decisions and the powers of any person with investment decisions delegated to them. [72]

He explained how he expected the powers in new clause 7 to be used:

> The power in new clause 7 may be used to make similar or corresponding provision for schemes providing collective benefits, which could be set up as occupational or personal pension schemes. For example, we want to ensure that investments are made in regulated markets and that investments are diversified. We need provisions to apply to schemes with collective benefits that are similar to existing investment provisions. There are provisions in existing legislation for trust-based occupational pension schemes, such as section 35 of the *Pensions Act 1995* and the regulations made under it.
>
> We are likely to want to make similar provision for schemes containing collective benefits because we want trustees and managers of schemes with collective benefits to exercise their investment powers and be able to delegate investment decisions to investment managers appropriately. We need appropriate regulations for collective schemes. In practice, they will resemble regulations made under sections 34 and 36 of the 1995 Act, but regulations made under the clause may need to be adjusted as new types of scheme providing collective benefits are designed.[73]

New clause 8 would provide for restriction on borrowing by trustees or managers. The Minister explained that it would put schemes providing collective benefits "in the same place as trust-based occupational schemes":

> It is important that the liabilities of schemes providing collective benefits are restricted. We want to ensure that funds held for the purpose of collective benefits are utilised to provide those benefits. We want to ensure that there are only limited circumstances in which there may be other calls on the fund. New clause 8 will allow us to make similar provisions to those made under section 36A of the 1995 Act, which limits trustees of trust-based occupational schemes and those that have had investment decisions delegated to them from borrowing money against the scheme's funds or acting as a guarantor, except when there is a need to resolve a temporary liquidity problem so that benefits can be paid. We intend to make corresponding provision in a way that will also apply to managers of schemes providing collective benefits.[74]

[71] Ibid c238
[72] Ibid c239
[73] Ibid
[74] Ibid

New clause 9 would provide for a duty of care in relation to the exercise of investment powers, again putting schemes providing collective benefits in the same place as trust-based schemes:

> Existing legislation—again, the 1995 Act, but section 33 this time—ensures that trustees of trust-based occupational schemes and those who have had investment functions delegated to them cannot exclude themselves of an obligation to take care and apply skill in the exercise of those investment functions through an instrument or agreement. That includes putting barriers in place, such as making enforcement of rights subject to restrictive or onerous conditions, restricting any right or remedy or subjecting a person to any prejudice as a consequence of his pursuing any such right or remedy. However, the existing provisions only cover trustees of trust-based occupational pension schemes, whereas collective benefits can be offered by both occupational and personal pension schemes, whether trust or contract-based. In other words, the existing provisions cover some of what might follow, but not all of it. The new clauses try to give comprehensive coverage. New clause 9 will allow us to apply the same restrictions to trustees and managers, to help to ensure that collective funds are properly managed.[75]

Mr McClymont raised the question of whether collective schemes should be trust-based or contract-based. The Minister said the Government was not modelling collective benefits on trust-based DB schemes. It was "simply saying that there is legislation on the statute book and we need to ensure that we cover the schemes, whether trust or contract-based."[76]

Clause 25 includes a power to require trustees or managers to obtain reports about the performance of collective benefit investments". Mr McClymont questioned the quality of information provided by investment managers:

> The Government, in another Bill, have given the Financial Conduct Authority the power to force a disclosure of all transaction costs in pension asset management. Whether the FCA will take the bull by the horns and insist on full disclosure of all transaction costs remains unclear so far.[77]

The Minister responded that from next April, trustees and managers would:

> […] have a duty to obtain the sort of information they have never had before, about transaction costs and what I have called the murky corners of the pensions industry[…] We will be able to see that and that will inform our decisions on further measures such as charge caps and whether some of the costs should be included.[78]

Draft regulations for this had just been published. There would be a "general duty on trustees to find out what is happening to their member's money".[79]

6.5 Valuations

Clause 26 contains a regulation-making power which may require trustees or managers of schemes to obtain a valuation report. The Government amended it to require the actuary to

[75] Ibid c239
[76] Ibid c241
[77] Ibid c242
[78] Ibid c243
[79] Ibid c244

certify that the probability of a scheme meeting targets in relation to collective benefits fell within a specified range of probabilities.[80]

Clause 27 would provide for the valuation process, which is "designed to provide members with confidence in the information they get from their scheme." The Government amended it to:

> […] ensure that we have a robust system for valuing the assets of schemes offering collective benefits, and […] give powers to require schemes to disregard any administrative expenses or other items specified in regulations to be paid out of the scheme when valuing assets for the purposes of a valuation report.[81]

6.6 Clauses 28 and 29 – dealing with a deficit or surplus

Clause 28 would provide for regulations to be made requiring trustees or managers to set out a policy about how to deal with deficits or surpluses in the probability relating to the provision of collective benefits. The Government amended this, following the approach taken in clause 20, to provide that there would be a deficit or surplus if the probability of the scheme meeting a target in relation to the benefit was below or above the required range.[82] The Government wanted to allow trustees and managers some flexibility in the way they responded:

> Just to elaborate on what happens to those who are outside the probability range, we will not be overly prescriptive about what the policy should contain, because we want trustees and managers to have some flexibility as to how any deficit or surplus should be dealt with. The appropriate action might differ depending on the scheme design or the nature of an external event. This is why subsection (4)(b) contains a power to require the policy to contain provision for a deficit or surplus to be dealt with in one or more of a range of ways. Where there is a deficit the scheme could reduce the planned level of indexation. It could freeze indexation or it could cut targeted benefits for all members. Where there is a surplus it could reverse previous cuts to targeted benefits, restore loss indexation or introduce additional indexation or an increase in the target.
>
> It is important to stress that the targets can themselves be adjusted. Trustees and managers will have to take action to achieve certain results within a prescribed period of time. Members will be consulted on the policy in certain circumstances and we will require schemes to have and to follow a policy which will help to protect the interests of members across the generations. That is a key concern. We would not want schemes to carry a large deficit below the required probability for a sustained period as this would carry a greater risk that members do not receive the benefits that have been targeted for them. In particular, a sustained deficit would increase the risk of the scheme having to make a larger correction later, at short notice, and could increase the risk of unfair transfers between generations.[83]

Clause 29 would provide for deficits attributable to an offence or the imposition of a levy. The Minister explained:

> The clause enables regulations to be made to provide for an amount to be treated as a debt due from an employer to the trustees or managers of a pension scheme that provides collective benefits in cases where there is a deficit that is attributable to a specified offence or the imposition of a levy. In general, the employer is not on the

[80] Ibid c245
[81] Ibid c246
[82] PBC Deb, 30 October 2014 (afternoon), c251
[83] Ibid c252

> hook for a CDC scheme, but, in this one specific case, we may provide for an amount to be treated as a debt due from an employer.[84]

An offence in this context would relate to the running of the scheme, for example, dishonesty or fraud.[85]

6.7 Transfer values

Clause 30 contains a regulation making power to require trustees or managers of a collective scheme to have and follow a policy for the calculation and verification of cash equivalent transfer values (the cash equivalent calculated on a given date of any benefits that have accrued to or in respect of a member under the rules of a scheme).[86] The Minister explained that this needed to reflect the nature of collective benefits:

> There is a collective pool of assets. Members' benefits are calculated from the assets available and risks are shared between members to try to achieve a smoother outcome. Therefore, we cannot deal with transfers in the same way as other benefits. Transfer values for money purchase benefits use the realisable value of the member's share of the assets, and final salary schemes, for example, use a cash equivalent for the promised benefits. There will not be one model of collective benefit, so whatever we do needs to work across a range of models.
>
> Transfer values for collective benefits will need to take account of the effect of pooling of assets and risk sharing at the time a transfer value is calculated to ensure that a given member does not get a disproportionately low or high figure. The process needs to be transparent, and the requirement for trustees or managers to have policies on transfer values will provide such transparency. I assure the Committee, however, that we will consult on any regulations made under the clause.[87]

6.8 Winding up

Clause 31 would enable the Government to make regulations to cater for the winding-up of schemes providing collective benefits. The Minister explained that:

> It provides for regulations to disapply or modify the application of sections 73, 73A, 73B and 74 of the *Pensions Act 1995*, which, as the Committee well knows, concern the winding-up of occupational pension schemes in relation to collective benefits. It also allows for provisions to be made on those matters in relation to collective benefits.
>
> Section 73 of the 1995 Act provides for a priority order if a scheme winds up without enough assets; section 73A makes provisions for how a scheme should operate during wind-up; section 73B makes supplementary provisions, and section 74 deals with the discharge of liability on wind up. All that the clause does is ensure that we have equivalent provisions for the wind-up of schemes with collective benefits as we do for other forms of pension provision. The details of that will follow in regulations as we work through the Bill, but the basic point is that the clause is giving us primary power to introduce such regulations to work through the fine detail over the coming months.[88]

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[84] Ibid c252
[85] Ibid c255
[86] Ibid c253
[87] Ibid c253-4
[88] Ibid c254

6.9 Requirement to obtain actuarial advice

Clause 32 contains a regulation-making power that may require trustees or managers to obtain advice from a scheme actuary before making specific decisions or taking specified steps. The Government amended it to replace references to a "scheme actuary" with references to an "actuary", providing for actuarial input to be able to commissioned from others, not necessarily the scheme actuary.[89]

Clause 33 would enable discretion on matters of actuarial valuation to be delegated to an actuary.[90] **Clause 34** would provide for the publication of documents, to aid regulatory scrutiny of schemes. The Committee agreed that these clauses should stand part of the Bill.[91]

6.10 Other provisions

Clause 35 would provide a power to make regulations regarding **enforcement**. The Government amended it to remove the power to confer functions on a specified person in connection with the enforcement of regulations under part 3. This was because "on further reflection we concluded that the relevant regulators have the powers they need."[92]

The Government amended the Bill to remove **clause 37** (collective benefits: amendments to other legislation) which introduced Schedule 4, most of the provisions of which had been moved to Schedule 1 as part of the restructuring of the Bill.[93]

The Committee agreed that **clause 38**, which would enable the Department to fund the **Remploy pension scheme** directly should that be required at some future date, should stand part of the Bill.

The Government amended **clause 41** (regulations) to correct an "oversight", which would have provided for regulations dealing with commencement, transitory or savings provision to be subject to further parliamentary scrutiny.[94]

Clause 43 (extent) was amended to allow the extension to Scotland of certain provisions about marriage of same sex couples.[95]

6.11 Pensions for fee paid judges

The Government amended the Bill to introduce new clause 2 (judicial pensions: pension sharing on divorce etc.); new clause 3 (pension scheme for fee-paid judges) and new schedule 1 (amendments to do with the pension scheme for fee-paid judges). The Minister explained:

> The amendments deal with the situation involving judges who are fee-paid, which could include a whole range of judicial appointments, but not on a salaried basis. A recent court case established that there was an omission in pension provision specifically for fee-paid judges. Our colleagues at the Ministry of Justice have therefore asked us to use the Bill to respond appropriately to that court case so that we make proper provision for fee-paid judges. Various consequential changes follow, for

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[89] Ibid c256
[90] Ibid c257
[91] Ibid c258
[92] Ibid c258
[93] Ibid c259
[94] Ibid d261
[95] Ibid c262

> example involving what happens to a fee-paid judge's pension rights when they divorce.[96]

6.12 Pension sharing and normal benefit age

The Government amended the Bill to introduce new clause 4 – pension sharing and normal benefit age – which would come into force on 1 April 2015. The Minister explained that the amendment was needed to prevent schemes being required to put pensions to former spouses into payment at an earlier age than to scheme members:

> Where a couple share the value of pension rights on divorce, most schemes require the former spouse to transfer their share out to a personal pension. However, some allow—or, in the case of unfunded public service schemes, require—the pension share to remain in the original scheme, to be put into payment at the scheme's normal benefit age. Currently, the normal benefit age cannot exceed 65, even though schemes may have a higher normal pension age for ordinary members. Few private sector schemes, if any, are in that position. However, from April 2015, new public service pensions will have a normal pension age, which is the member's state pension age, meaning that from that date, normal pension age will be above 65 for most members of such schemes.
>
> If the amendment is not made, schemes must continue to put pensions to former spouses into payment at an earlier age than the scheme members themselves can receive their own benefits from the scheme. The amendment removes that anomaly, but schemes will not be able to have a normal benefit age higher than the highest normal pension age for any benefit payable under the scheme. The change is permissive; no scheme is being forced to change its normal benefit age. It simply gives schemes flexibility if they wish to do so.[97]

7 Provisions related to *Taxation of Pensions Bill*

The Government is legislating in the *Taxation of Pensions Bill 2014-15* to give people more flexibility from April 2015 about when and how the access their defined contribution (DC) pension savings, subject to their marginal rate of income tax. For more detail, see Library Research Paper RP 14/57 Taxation of Pensions Bill (23 October 2014).

7.1 The guidance guarantee

Recognising that it will be important for people to make informed decisions, the Government has made a commitment to introduce a guarantee that all individuals with a DC pension would be offered guidance at the point of retirement that:

- is impartial and of consistently good quality
- covers the individual's range of options to help them make sound decisions and equip them to take action, whether that is seeking further advice or purchasing a product
- is free to the consumer
- is offered face to face.[98]

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[96] Ibid c263
[97] Ibid c265-6
[98] HM Treasury, *Freedom and choice in pensions,* Cm 8835, March 2014

Definition

New section 333A would define pensions guidance as:

> (2)…Guidance given for the purpose of helping a member of a pension scheme to make decisions about what to do with the cash balance benefits or other money purchase benefits that may be provided to the member.

The Minister emphasised that it was distinct from advice:

> Guidance will discuss the pros and cons of different types of financial products and services, and many consumers will engage with the regulated financial services market, whether taking financial advice or buying a product, after taking guidance.[99]

The FCA was continuing to encourage the development of affordable models of advice for retail investment products:

> While full-blown, regulated and highly tailored independent financial advice can be relatively expensive, although it can also be very cost-effective, we are continuing to look at more streamlined and simplified advice. The FCA is continuing to encourage the development of affordable models of advice for retail investment products.[100]

Roles of HM Treasury, FCA and delivery partners

The Schedule sets out the roles of the Treasury, Financial Conduct Authority (FCA), the Pensions Advisory Service and Citizens Advice. The Minister explained that:

> Proposed new section 333B of the 2000 Act puts a duty on the Treasury to put in place the guidance service and ensures the Treasury is accountable for delivering for the commitment made at the Budget to a guidance guarantee. That means that the Treasury can deliver aspects of the guidance itself or make arrangements with other bodies to do so. In fact, the web channel—that is nothing to do with me—of the guidance service is being delivered on the gov.uk website by a Treasury-based team of experts drawn from the Government Digital Service and the Money Advice Service.[101]

The Government had announced on 18 October 2014 that Citizens Advice Bureau would provide expert face to face guidance, and telephone guidance would be provided by the Pensions Advisory Service.[102] New section 333E would designate these organisations as guidance providers. It would also enable HM Treasury to designate others and to withdraw a designation by notice in writing.[103] New schedule 333F would "introduce a power to make it a criminal offence for somebody to impersonate the guidance services."[104]

Under new section 333N, the FCA will be under a duty to:

> Discharge its general pensions guidance functions with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.

The Minister explained how the roles of the FCA and Treasury would complement each other:

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[99] PBC Deb 4 November 2014 c283
[100] Ibid c305
[101] Ibid c282
[102] Gov.UK 'Pension guidance providers unveiled', 18 October 2014
[103] PBC Deb 4 November 2014 c284
[104] Ibid c283

The Treasury is responsible for choosing and designating delivery partners and holds the funding levers over them. The FCA will be equipped to set the standards, bringing to bear its insight as the regulator responsible for the conduct of the financial services industry, and to monitor them. That is why the Bill gives the FCA and Treasury a dual-key approach to ensuring delivery partners comply with the FCA's standards. The FCA will be able to make recommendations to delivery partners to remedy any non-compliance and, in the interests of transparency, it will make this public, as in proposed new section 333I, with limited exceptions. It must set out its policy on recommendations, with the consent of the Treasury under proposed new section 333J. It must consult on this policy statement in draft under proposed new section 333K.

While it is difficult to imagine that delivery partners will not respond to such a recommendation, the FCA can, if necessary, recommend to the Treasury that it should issue a direction in writing, copied to the FCA, to designated guidance providers. The Treasury's powers in that respect are set out at proposed new section 333L, and non-compliance with a direction can be enforced through the courts. Like FCA recommendations, directions will, with limited exceptions, be published by the Treasury, after it has considered any representations by the designated guidance provider regarding publication. Proposed new section 333M sets it out that revocation of designation is also an option in cases of non-compliance with FCA recommendations.[105]

Standards

New section 333G would require the FCA to "from time to time set standards for the giving of pensions guidance by designated guidance providers". Under new section 333H it is required to maintain arrangements for monitoring compliance by designated guidance providers with the standards it has set. Where there is a failure to comply, it can recommend steps that the provider should take to prevent the continuance of the failure or to make redress for those affected (new section 333I). New section 333E would provide that a designated guidance provider and any subcontractor will be subject to the FCA's new standards regime.

The standards regime will be similar to but not the same as the FCA's regulatory regime, because guidance will not give recommendations and is therefore quite distinct from regulated financial advice.[106] The Minister explained:

Proposed new section 333G places a duty on the FCA to put in place standards with which designated guidance providers must comply. Standards are, to all intents and purposes, equivalent to FCA rules for regulated markets. Like FCA rules, subsection (2) of proposed new section 333G provides that failure to comply is actionable by a private person—that is, individuals can take designated guidance providers to court for breaching the standards whereby they have incurred a loss as a result. The FCA can specify where any standards are not actionable, where, for example, a standard is high level. I should stress that we do not expect consumers to be bringing lengthy and costly court cases. Like the Financial Ombudsman Service, which helps individuals resolve complaints against financial services firms, there will be robust arrangements for handling complaints about the guidance service, with recourse to an independent adjudicator and ultimately to the Parliamentary and Health Service Ombudsman. Proposed new section 333O allows the FCA to issue guidance to complement or explain standards, in the same way that it does with rules for regulated markets. Proposed new section 333H places a duty on the FCA to monitor compliance with standards and gives it powers to monitor compliance, broadly similar to the powers it has to supervise regulated firms. It can request information, conduct interviews, obtain

[105] Ibid c285
[106] Ibid c283

> evidence and, in extreme circumstances, could obtain a warrant to enter designated delivery partners' premises if that were necessary.[107]

Nigel Mills thought it should be possible to specify in the Bill the standards that had to be met for guidance to be worthwhile:

> I can accept that there is a good question about how much we should put in law, how much we should leave to the regulator and how much we should leave to the contract between the Treasury, the CAB and TPAS, but there is a role for us here. If we agree to these reforms and think they are the right thing to do as long as we provide the right kind of guidance, we should be able to set out the standards that have to be met for that guidance to be worthwhile. It needs to look at people's entire financial affairs, and people need to be prepared at least to understand their own situation when they are given guidance rather than it being completely abstract.[108]

Gregg McClymont asked whether guidance would be "simply about someone's pension pot, abstracted from their other assets and liabilities":

> How can an individual make a wise decision about what to do with their pension pot, or pots, if a broader view of their assets and liabilities is not included in the guidance conversation? That is very important.
>
> The FCA is clear that the conversation should include tax implications, but working out the tax implications depends on a broad perspective of an individual's assets and liabilities. That tension can be summed up by asking whether guidance is a portal towards advice or something more substantial. Are individuals making the right decisions about their pension pots, given their assets and liabilities more widely? Will that be part of the guidance conversation, or will that conversation only take place if someone pays for advice? Those questions are critical.[109]

The Minister responded that:

> The FCA's consultation set out that the guidance must cover factors relevant to an individual's financial situation, including their motivations, and it will certainly include things such as tax, so it will not be simply a route to somewhere else. […] I have a couple of observations on life expectancy. One reason why the guidance service is there is to help people understand how their pension saving can provide an income in retirement, and part of that will be addressing how long their money needs to last.[110]

(The FCA's July 2014 consultation, *Retirement reforms and the Guidance Guarantee,* proposed the following key stages in the consumers journey through the guidance session:

- Set out the scope, purpose and limitations of the session.
- Request relevant information about the consumer's pension entitlement.
- Request relevant information about the consumer's financial and personal circumstances and objectives.
- Discuss the relevant options, including the key facts and consequences for the options and based on the information provided by the consumer, set out other issues for the consumer to consider.

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[107] Ibid c284
[108] Ibid c299
[109] Ibid c292
[110] Ibid c303

- Set out next steps for the consumer to take forward and appropriate signposting to further sources of information, guidance or advice.[111])

Gregg McClymont also asked how consistency of provision would be maintained across different providers. He said:

> Citizens Advice does a very good job but historically has not undertaken this sort of guidance in such a complex area.[112]

He asked what the qualifying requirements would be for Citizens Advice staff in order to dispense the guidance.[113] The Minister responded that:

> We are not saying, "You have to have a GCSE in pensions guidance." That is not the way we are going to do it. We will have an arrangement, and we will give grants to TPAS and Citizens Advice groups. They will have a duty to provide guidance of a specified standard and content.[114]

Signposting

New section 127B would place a duty on the FCA to impose signposting requirements on pension providers through its rules. The Minister said:

> The FCA's rules are flexible and can be updated much more easily than statute. That is clearly important. The FCA has proposed that signposts be included in wake-up packs that are sent out four to six months before the intended retirement date, or when a customer makes contact indicating that they wish to access their pension funds. However, if it becomes clear that different timing or a different approach is necessary to maximise engagement, the FCA can change its signposting rules or make them more or less prescriptive.
>
> As the FCA's recent consultation makes clear, signposting is about more than simply referring to the existence of the guidance service. Signposting should include reference to the fact that the guidance is free and impartial and that it is designed to help consumers with defined-contribution pots approaching retirement to understand and navigate their choices in the new retirement landscape. It should show how guidance can be accessed and provide contact details and the basic information that customers will need to make an informed decision about their pension pot.[115]

Nigel Mills thought providers should be required to send out something in an approved content:

> I instinctively think we should have a regulatory-approved flyer, letter or e-mail, so that the provider sends out something with approved content that is in the right format and easy to understand, and plays up how important the issue is, rather than something in the middle of a pre-retirement pack where, on page 37 in the bottom right-hand corner, it says, "By the way, you can seek independent guidance if you have the time."[116]

He also suggested that DWP should also be involved in signposting:

> When people come up to their retirement age, not only do they get a pack from a pensions scheme, but they get correspondence from DWP telling them they are about

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[111] FCA, *Retirement reforms and the Guidance Guarantee* CP14/11, July 2014, para 2.16
[112] PBC Deb 4 November 2014 c290
[113] Ibid c295
[114] Ibid c306
[115] Ibid c287
[116] Ibid c300

> to come to retirement age and can draw their state pension: "This is what it will be, and you can defer it if you want." Deferment is an important decision, because the returns are quite generous. It strikes me that the DWP communication is really where we should promote the guidance. It comes at the right time, it is from a trusted source, and it is clearly relevant because it tells someone what their state pension will be.[117]

Will guidance be a one-off event?

Gregg McClymont asked whether one-off guidance would be enough to prepare someone for more than 20 years of retirement. [118] The Minister said they were thinking through how this might work in steady state:

> […] We are not going to ban people from phoning TPAS. They will still be able to ring someone up and chat things through. They will still be able to go to a website.
>
> On day one, we will have not just the people coming up to pension age in April 2015, but the whole carry-over group of people who have been on hold for a year. There is an issue about being sensible about capacity on day one, but in the steady state we are continuing to think about how best we meet the needs of people who would benefit from repeat visits to the service.[119]

As regards the length of any one guidance session, the Minister agreed that a worthwhile amount of time would need to be spent with people but did not want to hardwire any such provision into legislation.[120]

Take-up

Organisations giving evidence to the Committee had given different estimates regarding the take-up of guidance. David Geale of the FCA said:

> I think if we look at the research, there is conflicting research in the market in terms of what the take-up will be, so Legal & General's pilot shows very low figures; Chartered Insurance Institute research shows very high figures. It is incumbent on all of us to help people understand what they are getting; but take-up will be a matter for public choice.[…] I think that the CII research suggested it was as high as 90%, which is obviously very much on the high side.[121]

Michelle Cracknell of the Pensions Advisory Service said:

> Our ambition is that the take-up rate will be very high, with over 75% of people taking the guidance. However, we do not think that that will be the position from day one. We think that because of the nature of the calls we are receiving at the moment from people where the defined contribution pension is a very small element, who have other pension provision elsewhere. That suggests that there will be less interest in taking the guidance, because it is a smaller decision for the individual to take. Our initial estimate of the take-up rate of the guidance service is more likely to be around 25%.[122]

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[117] Ibid c301
[118] Ibid c295
[119] Ibid c306
[120] Ibid c311
[121] PBC Deb 21 October 2014 Q35-6
[122] Ibid Q75

The Minister said the Government was refining its estimates and would provide a progress report by the end of 2014.[123] He also said he did not want to get too hung up on a percentage - the important thing was that the right people took guidance:

> […] there is a set of people at the top who will probably bypass guidance and go straight to regulated financial advice. They know that is what they are going to need so they might as well just get on with it. Many of the people right at the top will pay for advice straight away and the people at the bottom will probably bypass guidance. We will make it available to them, but many of them will just say, "Why do I need to do that? I've got 500 or 700 quid; I'm just going to take the cash." There is not a target, but if there was it would not be 100%.[124]

He did not think guidance should be made compulsory, on the grounds that "seeing the CAB cannot be a condition of someone accessing their own money."[125]

A second line of defence?

In evidence to the Committee, Yvonne Braun of the ABI had argued for a 'second line of defence' for those who did not take-up guidance:

> We are quite clear that all providers of financial services in this retirement income space should make sure that they ask their potential customers a series of important questions, such as the ones I have just mentioned. We have set this out in the ABI's code on retirement choices as an obligation on all our members to ask customers, as I said, about financial dependants in particular, health, inflation risk and so on.
>
> We would like to see the FCA make clear its expectation that all providers of retirement income products from next April will ask customers the same questions and make sure that customers are aware of the same risks. It is not clear whether everybody is going to take up the guidance, so there needs to be some sort of second line of defence—guard rails, back-stops, or whatever you want to call them. [126]

In response to a question on this point from Gregg McClymont, the Minister said;

> It is worth saying that protections and rules are already in place. If I go to a product provider, there are the Treating Customers Fairly rules, and the FCA has product regulatory powers. However, the FCA continues to look at the issue as part of its ongoing thematic review of annuity sales practices and the retirement income market study, both of which will be completed before we start the new process.[127]

Richard Graham asked whether the FCA's review would consider the option before April 2015:

> There is evidence of clear breaches of the treating customers fairly regime by certain providers. As my right hon. Friend the Minister knows, some contributors in the pensions market have suggested that a way round that problem is for the FCA to oblige providers to ask a series of mandatory questions to prompt customers about issues likely to affect their retirement benefits. They said we should not continue with the status quo, and accept the customer's instructions without active intervention. I

[123] PBC Deb 4 November 2014 c303
[124] Ibid c307
[125] Ibid c308
[126] PBC Deb 23 October 2014 Q238
[127] PBC Deb 4 November 2014 c296 and 307

guess the question is whether the Minister really believes that the FCA's review will consider that option before it comes into force in April next year.[128]

The Minister said he could not pre-empt the outcome of the FCA's studies and reviews.[129]

Default options for people do not make a decision

Gregg McClymont as what safeguards there would be to prevent pension providers from enrolling savers who fail to shop around into poor-value products.[130] The Minister responded that:

> Our impression from looking at providers and so on at the moment is that there are restrictions on simply being defaulted into a product. There are already protections in the system, so schemes cannot default members unless their membership has been deferred for at least a year and they have provided written notice of at least 30 days. Many schemes will have other defaults—for example, cash accounts, bonds or lower risk investments that allow members to exercise all options under the flexibilities, if and when they later engage. The Association of British Insurers advises us that this is common practice when a member does not engage. This issue came up in the oral evidence sessions. Forcing people into a default such as an own-brand annuity would be exceptional and there are already protections in place, but obviously we will continue to monitor that.[131]

Funding

New sections 333P and Q would provide for the funding of the service:

> Part 4 deals with funding and the levies. Proposed new sections 333P and Q concern funding. Taking 333Q first, this provides for the mechanism for funding the running of the guidance service in future. While set-up costs are being met by the development fund of up to £20 million allocated at the Budget, the Government announced in July that this service will be funded by a levy on the financial services industry. The Government believe that those firms that stand to benefit from better-informed consumers, who are more inclined and better equipped to engage with the financial services industry, should pay their fair share towards the costs of the guidance service. Proposed new section 333Q allows the Treasury to ask the FCA to collect a certain amount to cover the costs of delivering the guidance service. The FCA must then propose, and consult on, how it plans to allocate the levy among regulated firms.[132]

The costs to be covered by the levy would include the delivery partners' costs, the Treasury's costs of delivery, awareness raising, research and other relevant costs.[133] There would be a separate levy to cover the FCA's costs of setting and monitoring against standards and its other guidance guarantee functions, paid as a fee to the FCA.[134]

7.2 Restriction on transfers out of public service defined benefit schemes

Clause 14 would provide for regulation-making powers enabling the Treasury to ban members of unfunded defined benefit public service pension schemes from transferring their pension rights to a defined contribution scheme in order to take advantage of the flexibilities

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[128] Ibid c309
[129] Ibid
[130] Ibid, c295
[131] Ibid c304-5
[132] Ibid c285
[133] Ibid c285
[134] Ibid c286

announced in Budget 2014. The Minister explained that the Government would bring forward further amendments to this clause on Report:

> The amendment will ensure that the ban on transfers from unfunded defined-benefit public service pension schemes to schemes in which the new flexibilities are available is actually made in the *Pension Schemes Act 1993* rather than in regulations. That is to give the measure primary force.[135]

It would also table amendments to introduce a "new statutory requirement for DB schemes to check that all individuals who are transferring to DC have taken advice before transferring."[136]

8 Others

8.1 Duty to act in the best interests of members

The Government added a new clause to the Bill to enable regulations to be made:

> […] which may impose a duty on managers of non-trust based schemes to act in members' best interests when taking certain specified decisions. This duty may apply in relation to shared risk schemes and schemes providing collective benefits.[137]

The Minister explained that the Government recognised there was an issue with governance:

> There is a potential for new risks from the new types of decisions that might need to be taken in non-trust based schemes that provide collective benefits and in shared-risk schemes. To be clear, I am talking about the new sorts of collective benefits that the legislation allows, the governance of which needs to be changed because it is a different sort of governance. As new types of schemes and benefit designs are developed, it is likely that there will be more circumstances in which scheme managers may be taking decisions on the behalf of members or exercising discretions that affect members' benefits. As a result of the new types of risks that may arise in the new types of shared-risk schemes and schemes offering collective benefits, we want managers to have a duty to act in members' best interests when taking certain specified decisions. That is the purpose of new clause 5.
>
> The decisions on which we are focusing will generally be taken where the individual member has no ability to influence or control the decision made, but where that decision could have a significant impact on their benefits. The details will be specified in regulations, but such decisions could include the distribution and redistribution of assets between members in schemes that provide collective benefits and, in shared-risk schemes, decisions relating to third-party promises—in particular, decisions about whether to offer or purchase a guarantee, the accurate attribution of the promise to relevant members, and retrieving and allocating any returns on such promises. The need for a new duty obviously does not arise in trust-based schemes, as those trustees are already in a fiduciary relationship with the members of the schemes,[138]

The power under the new clause would also provide for the consequences of breaching the duty to act in the best interests of member:

> We seek to mirror the fiduciary duties of trustees and apply them to managers in regard to specified decisions. Of course, members will also have recourse to the same civil remedies as those in place for a breach of fiduciary duty in a trust-based scheme.

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[135] PBC Deb 4 November 2014 c315

[136] Ibid

[137] Ibid c319

[138] Ibid c320-1

> Remedies in respect of fiduciary duty are provided for in common law rather than in statute. They may, for instance, include damages to put a member in the position that they would have been in had the breach not occurred.[139]

He did not believe there was need for a fiduciary duty to apply to DC schemes that only offer money purchase benefits:

> In relation to the issue that we are concerned about in new clause 5, DC schemes that offer only money-purchase benefits are similar to other types of commercial financial products, to which a fiduciary duty does not apply. By contrast, in schemes that provide collective benefits, members will hand over most of the decision making to the trustees or managers who run those more complex schemes. Members will not necessarily be able to exercise choice in relation to the decisions that we are concerned about, such as investment decisions. That will also be the case in some shared-risk schemes.[140]

Furthermore there was already protection for members of such schemes. For example, independent governance committees (IGCs) were being introduced which would:

> challenge providers on the value for money of their workplace pension schemes. That is different from the powers in new clause 5 in relation to schemes that provide collective benefits. IGCs will report on how those schemes meet quality standards on the design and review of default funds, costs, charges and standards of administration. IGCs will have a duty to act in members' interests. They will have to have a minimum of five members, the majority of whom must be independent of the firm, and the chair will always have to be independent. IGCs will have the power to escalate any concerns to the FCA, scheme members and employers.[141]

Gregg McClymont argued that the Minister was missing the chance to simplify the governance of pension schemes. He had reservations about IGCs which were a "form of advisory board, so they do not provide independent governance":

> […] they have no power to compel contract-based pension schemes to implement their findings. They can refer it to the FCA, but they have no power to ensure that the insurance company or the pension provider implements their findings.[142]

He proposed instead introducing a regulation-making power to require any pension scheme not already overseen by independent trustees to appoint independent trustees:

> As we take the view that there is no simple or obvious way to reconcile that conflict of interest between shareholders and individual savers without trust-based governance, we take the approach that we do in new clause 14. […] Nothing is absolute and finding 100% proof of anything is difficult, but the international evidence, and common sense at some level, should tell one that we are more likely to get tougher, better governance through trustees.[143]

The government's amendment (new clause 5) was accepted.[144]

The Opposition also proposed introducing a fiduciary duty on trustees to consider whether a scheme had sufficient scale to deliver good value for members.[145] Mr McClymont said:

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[139] Ibid c320
[140] Ibid c322
[141] Ibid c322
[142] Ibid c325
[143] Ibid c319
[144] Ibid c332 and 342

The issue around scale on the trust side is significant. It is true that on the trust side governance issues are usually around scale. There are also issues around the quality of trustees when there are so many pension schemes, as the hon. Member for Gloucester mentioned. Our answer is to encourage forcefully the reduction in the number of pension schemes to increase that scale, which is widely recognised as an important aspect of getting value for money, and to clarify the issue around the number of trustees available.

What is the international and pensions landscape evidence? The Pensions Regulator gave evidence, I think to the previous pensions Bill; there have been so many pensions Bills that it is hard to remember. The Pensions Regulator was clear that scale must be encouraged. It is critical to delivering value for money because it enables higher-quality governance and the economies of scale that can make a big difference when there is a lot of money under management. It also encourages a focus on the pooling of risk so that returns are greater; one can take more risk and hedge against it with a larger number of assets under management.[146]

The Minister responded that "other things being equal there are potential advantages to scale". However, considerable consolidation was already happening and forcing it would "not automatically drive good governance, investment expertise or low costs". The Opposition amendment (new clause 14) was negatived in division by 5 votes to 10.[147]

8.2 Decumulation

The Opposition provide an amendment which would prevent a money purchase scheme from selling annuities directly to anyone who had saved with the scheme unless this was on the recommendation of an independent annuity brokerage service (new clause 15). Gregg McClymont said:

[…] the Budget reforms and the guidance guarantees inserted into the Bill in the amendments do not explicitly solve the challenge of consumers defaulting back to their savings provider for an annuity. As the Minister pointed out, some consumers will still choose a retirement income. Our new clause is designed to ensure that those individuals—there is a danger that they will be forgotten about with the focus on the new flexibilities—get the best deal possible.[148]

Steve Webb responded that:

The new clause is stuck in a time warp. Just at the point where annuities are no longer compulsory, the Opposition want to put an annuity broker into primary legislation. We will have a guidance guarantee. Someone will reach an age at which they are interested in doing something with their retirement pot. The Government will write to them about a guidance guarantee. The scheme would tell them that they could not take an annuity unless they had spoken to an annuity broker. That person might be well served to talk to an independent financial adviser, because an annuity might not be the right thing. All those different people could be telling them different things, but the one who had the power would be the independent annuity broker, because if the person wanted to stay with the people they were with, his word would be law.[149]

Gregg McClymont said there was a difference of opinion:

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[145] Ibid c335
[146] Ibid c336
[147] Ibid c340-2
[148] Ibid c343
[149] Ibid c347

> The Opposition are strongly in favour of ensuring that those who have not exercised the choice of retirement get better value for money than they do now. The Minister wants to tell the individuals who are getting 20% less in their annuity than they otherwise would that that is backwards and in a time warp—so be it, but, while it is fair to disagree, I think that the Minister caricatures the disagreement between us.[150]

New clause 15 was defeated on division by 5 votes to 10.[151]

9 Report stage

Government amendments to the Bill at Report Stage consisted of 33 new clauses and 72 other amendments.[152] Some related to the new legislative framework for private pensions, others to the flexibilities to be introduced for DC pension savers from April 2015.

Government amendments to Parts 1 and 2

The first set of amendments were to Part 1 (categories of pension scheme) and 2 (collective benefits) of the Bill. Pensions Minister, Steve Webb, explained that the changes were in two broad categories:

> […] the addition of two regulation-making powers relating to the new pension scheme category definitions in part 1, which will offer more clarity; and to provide more detail and additional regulation-making powers on certain aspects of collective benefits in part 2.[153]

He explained that the amendments to Part 2 (collective benefits) were intended to improve governance and transparency:

> They add to the powers in the Bill in relation to: enabling regulations to be made in respect of the matters to be taken into account, and the principles trustees and managers must include in the scheme policy, and follow, on key areas where policies are required; enabling regulations to require trustees or managers to act in a specific way in certain circumstances, for example, in relation to dealing with a deficit or surplus in respect of any collective benefits in particular circumstances; and making provision for regulations in respect of identifying collective assets in a scheme, winding up a scheme with collective benefits, calculating collective benefits and applying transfers calculation methods to pensions sharing on divorce. I hope that that high-level overview helps the House to understand the purpose of this group of new clauses and amendments. I will deal with them in turn.
>
> New clauses 1 and 2 help to provide the necessary transparency about how members' benefits will be calculated. They introduce a requirement for schemes to have a policy, which they will follow, about the factors used to determine each collective benefit. Regulations made under powers in new clause 1 may set out certain requirements about the policy, including in relation to content and matters that the trustees or managers must take into account when drawing up the policy. Regulations made under new clause 2 may impose requirements about factors used to determine each collective benefit.
>
> New clause 3 and amendments 5, 6, 23 and 25 will ensure that schemes act appropriately to keep the scheme on target. In general, trustees and managers will have discretion about how they will respond to a deficit or surplus and will explain in

[150] Ibid c348
[151] Ibid c349
[152] House of Commons, Tuesday 25 November 2014 – Consideration of Bill
[153] HC Deb 25 November 2014 c 799

their policy the actions they will take. Amendment 5 allows regulations to specify certain matters that trustees or managers must take into account when formulating that policy. However, there may be particular circumstances in which it would be appropriate for regulations to require that a deficit or surplus is dealt with in a particular way. New clause 3 provides a regulation-making power that will allow us to specify circumstances in which schemes must respond in a particular way to deviations from the required range, and amendment 6 is consequential to that. Amendments 23 and 25 simply insert definitions of "deficit" and "surplus" into the interpretation clause in part 2, and give them the same meanings as the definitions included in clause 19. The word "deficit" in clause 20 has its own, separate, definition.

On Government amendments 7 to 13, trustees and managers of schemes providing collective benefits need to have a policy on calculating cash equivalents, which should cover all circumstances where a cash equivalent might be required. Amendments 7 to 12 simply ensure that the policy deals with calculation of cash equivalents for the purpose of pension sharing on divorce and transfer of pension credit benefits arising from a pension share, as well as revising a cross-reference to the Pension Schemes Act 1993. The amendments also include a power to add, through regulations, further circumstances where a cash equivalent might be required. Amendment 13 allows regulations to set out matters to be taken into account, or principles to be followed in formulating that policy. […]

Amendment 22 ensures that trustees or managers of schemes providing collective benefits can be required to seek actuarial advice before making any specified decisions or taking any other specified steps.

Government new clauses 4, 5 and 6, and amendments 14 to 21, all relate to the issue of winding-up schemes with collective benefits. This group of amendments is the result of continuing development of policy on creating the right legal framework for collective benefits. Winding up a pension scheme can be a difficult and complex process, and we need to ensure we have the necessary legislative framework in place. Collective benefits are different, so we need broad regulation-making powers to allow us to work with the pensions industry and others to get the detail right and to respond to developments.

This group of amendments covers: new clause 4, which provides for regulations to set out circumstances where a scheme, or part of a scheme, providing collective benefits must be wound up; and new clause 5, which requires trustees or managers to have and follow a policy about winding up a scheme that provides collective benefits. New clause 6, which is also part of this group, provides a power to make regulations setting out how to work out which assets are available for which benefits. This is not specific to winding up, as it may be used for other purposes as well. There are also a number of amendments that will ensure we can make regulations to ensure schemes providing collective benefits wind up effectively.

Amendments 14 to 17 provide for additional powers to enable regulations to make provision about the winding up of a pension scheme containing collective benefits and to make clear how collective benefits will be treated when a scheme winds up. Amendments 18 and 19 ensure we can amend existing legislation that might need to change to cater for winding-up schemes providing collective benefits. Amendments 20 and 21 remove the limitation that changes to existing legislation relating to wind-up are only in relation to collective benefits.[154]

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[154] Ibid c801-2

The Government also made amendments to Part 1 (categories of pension scheme) to specify the additional requirements which must be met for a scheme to fall within the 'defined benefits' definition:

> Amendment 2 has been made in response to discussions with industry and testing of the definitions, specifically in relation to theoretical and potential avoidance risks in new scheme designs, which would undermine the delivery of the policy intent for part 1. For example, we would not want a scheme that shared investment risk with the member to be categorised as a defined benefits scheme. Therefore, this regulation-making power provides that regulations can ensure that, as we intended, only schemes that provide members with certainty throughout the accumulation phase about the level of retirement income to be provided will fall within the defined benefits scheme definition.[155]

A further amendment addressed the meaning of "at a time before the benefit comes into payment". This is because the category a scheme falls into depends on the extent to which it provides a "pensions promise" at any time before the benefit comes into payment. The Minister explained:

> We want to capture promises made in relation to income or saving while the member is saving—that is broadly what clause 5 already does—but the amendment caters for defined contributions schemes that also provide an income stream in retirement. Technically, such schemes will need to discuss and make a commitment to the member about that retirement income before the first payment is made. The schemes will usually only make the promise in relation to income that may be derived from the final pot and only in the immediate run-up to the retirement date. This means, in effect, that it provides no more certainty to the member than other defined contributions schemes and so should fall within the defined contributions scheme definition. However, the phrase
>
> > "at a time before the benefit comes into payment",
>
> in the meaning of "pensions promise", might mean that it would be defined as a shared risk scheme. The amendment and the regulation-making power therefore make an exception in relation to this type of promise and ensure that this type of scheme falls within the defined contributions scheme definition.[156]

Other amendments were consequent upon restructuring of the Bill at Committee stage. In addition, provision was made for fee-paid judges, who were subsequently appointed to the salaried judiciary, to have the same transitional protection rights as members moving between existing public service pension schemes.[157]

For the Opposition, Stephen Timms asked when regulations would be available. The Minister responded that:

> On the timing, our broad goal is to have all this in place by April 2016. The right hon. Gentleman will know that a very significant change in April 2016 will be the end of contracting out, so defined benefit pension schemes will be considering what they do in response to that. In particular, if a shared risk scheme or something of that sort is envisaged, there clearly needs to be a legislative framework by around that time—not

[155] Ibid c802
[156] Ibid c853
[157] Ibid c803

> right on the day, but about that time. That is our goal and the rough timetable that applies[158].

Government amendments to Part 4

A further set of government amendments related to the announcement in Budget 2014 that new flexibilities for DC pension savers would be introduced from 6 April 2015. Steve Webb explained that:

> They include new clauses that provide safeguards for individuals who want to transfer to pension schemes to which the flexibilities apply; restrictions on transfers from public service pension schemes; a number of changes to pensions legislation to ensure that the flexibilities work as they are intended to; and further amendments relating to guidance to ensure that the arrangements run smoothly.[159]

Transfers

Amendments provided for a requirement on individuals to take financial advice before making a transfer from a DB scheme to a DC scheme. The Government had announced its intention to do this in its response to consultation in July 2014.[160] Pensions Minister, Steve Webb, explained:

> New clauses 7 to 12 and new clause 13 create a safeguard to ensure that those who transfer from defined benefit to defined contribution schemes have received appropriate independent advice before doing so. That is important, because continuing membership of a DB scheme is likely to remain most people's best option. However, the Government recognise that the attractiveness of transferring from DB to DC may increase for a limited number of people as a result of the reforms to DC savings.
>
> New clause 7 creates a requirement for trustees and managers of a scheme to check that a member has received appropriate independent advice before converting a "safeguarded benefit" to a "flexible benefit", or making a transfer payment in respect of safeguarded benefits to a scheme in which the member will acquire flexible benefits. In this context, the term "member" extends to any current or former employee, and any survivor of a member with subsisting rights to "safeguarded benefits".[…][161]

A regulation-making power was also introduced to enable employers to be required to pay for advice in certain circumstances:

> As we say in our response, we intend these circumstances to be, first, when a transfer is as a result of an employer-led transfer exercise, and secondly when a transfer is between DB and DC sections within the same scheme.[162]

In addition, transfer rights for those with 'flexible benefits' were extended beyond their schemes normal retirement age:

> We will do that by extending the current transfer rights for those with "flexible benefits" up to and beyond their schemes' normal retirement age, and applying statutory transfer rights at benefit categories, rather than at scheme level. Amending the transfer rules will ensure that individuals with uncrystallised flexible benefits will have the option to transfer their rights to another pension scheme.

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[158] Ibid c805-6
[159] Ibid c810
[160] HM Treasury, Freedom and choice in pensions: response to consultation, chapter 4
[161] HC Deb 25 November 2014 c810-1; Impact Assessment – November 2014, p6
[162] Ibid c811

> Those amendments will also give individuals greater flexibility by giving members a statutory right to transfer at benefit category level, rather than at scheme level. Where an individual has more than one category of benefits under a scheme, they will now have an option to transfer out of a particular category of benefit, or their entire pot if they wish to, provided they have ceased to accrue rights in that particular category of benefit. Amendments 28, 49 and 50 make minor consequential change in respect of new clause 24 and new schedule 1.[163]

The Government had decided to legislate to prevent members of unfunded public service schemes transferring their pension rights to a DC scheme, except in very limited circumstances.[164] Provision for this had been included in the Bill as initially presented to Parliament.[165] An amendment at Report Stage replaced this with a new clause (clause 66 of HL Bill 63) which would restrict the prohibition on transfers to unfunded public service schemes. The Explanatory Notes say:

> 200. This clause restricts the right (under the *Pension Schemes Act 1993*) to transfer from one pension scheme to another, so as to prevent a member of an *unfunded* public service defined benefits scheme using that right to transfer to another pension scheme in which they can obtain flexible benefits. The clause confers a power enabling the Treasury to make regulations providing that that restriction will not apply in certain circumstances or in relation to certain schemes or to schemes of a certain type. The restriction will not apply where a member has already made an application under section 95 of the *Pension Schemes Act 1993* requiring the trustees or scheme managers to use the member's cash equivalent to transfer to another scheme before 6th April 2015.[166]

The Minister explained that limited exceptions to the ban could include some "specific circumstances under Fair Deal."[167]

To protect funded public service schemes – where members would be allowed to transfer out - the Government amended the Bill to enable a cash equivalent transfer value to be reduced a transfer increased the risk of, or amount of, taxpayer intervention in the scheme. Steve Webb explained:

> Our expectation therefore is that, in the vast majority of cases, allowing greater flexibility in the funded public service pension schemes will not impact on public finances. However, it would be inappropriate for the Government to provide these freedoms to members of public service pension schemes and provide no back-stop protection to taxpayers, should transfers—either singly or in combination with other factors—contribute to a scheme needing support from local or national taxpayers to meet the cost of its liabilities.[…] Should a situation arise in which there is a risk to the taxpayer, this new safeguard will give Ministers and scheme managers the appropriate tools to address it.[168]

Amendments would also restrict transfers out of schemes underfunded at wind-up:

> If an occupational pension scheme is underfunded at wind-up, assets relating to non-money purchase benefits shall be distributed according to a specified priority order.

[163] Ibid c813
[164] HM Treasury, Freedom and Choice in Pensions, March 2014, Cm 8835, Chapter 5
[165] Clause 14 Bill 12
[166] HL Bill 63 - EN
[167] HC Deb 25 November 2014 c814
[168] Ibid

> Members therefore see a reduction in their benefits in accordance with that priority order. New clause 17 contains provisions about the conversion of benefits during wind up. We want to prevent some members from avoiding any reduction to Pension Protection Fund levels of compensation. Therefore, we want to prevent members from converting non-money purchase benefits to money purchase after a scheme begins to wind up. If we did not do that, there would be a risk that benefits converted to money purchase would be discharged in full, to the potential detriment of other members.
>
> If schemes offer the new decumulation options, we need set out how rights under the scheme are treated if the scheme enters the PPF. Our provisions restrict what can be done with non-money purchase benefits when a scheme is in a PPF assessment period. New clause 17 prevents the conversion or replacement of non-money purchase benefits with money purchase benefits. New clause 18 restricts the payment of lump sums to those that would be payable if the scheme transferred into the PPF. Crucially, a scheme needs to be in as steady a state as possible while it is assessed for transfer into the PPF, so that its overall financial position can be determined. In addition, if members were able to transfer or discharge their benefits, this would delay the process and deplete the assets available to be transferred with which to pay compensation to other members. There are no restrictions on the payment, transfer or discharge of money purchase benefits. New clauses 19 and 23 replicate these provisions for Northern Ireland.[169]

Parallel provisions were made for Northern Ireland.[170]

New definitions

The Government also introduced new definitions – "flexible benefit" and "cash balance benefit" – which would determine whether particular requirements would apply:

> New clause 31 introduces the definition of a "flexible benefit", which will determine whether the requirements relating to independent advice, draw-down, treatment of lump sums and transfers will apply to that form of benefit or not. New clause 32 contains definitions of "cash balance benefits". which are a form of benefit that will fall within the scope of flexible benefits. Those definitions seek to ensure that where a member's pension saving results in a cash amount, as opposed to an income amount, they are able to access those benefits flexibly. The definition of "flexible benefit" is intended to include all those benefit categories that fall within the scope of the flexibilities introduced by the Taxation of Pensions Bill. The definition includes money purchase benefits, cash balance benefits and a residual category of benefits which are neither money purchase nor cash balance benefits for the purposes of pensions legislation, other than the provisions relating to pensions in the Finance Act 2004. This residual category may include a benefit structure which provides a sum of money at the member's retirement date but is also subject to an additional guarantee, such as the option of a guaranteed annuity rate offered before the member becomes entitled to receive their pension. New clause 33 also defines a range of terms to ensure that the flexibilities apply to the right individuals, both members and those who may be entitled to survivor rights, as well as at the right points in time.[171]

The guidance guarantee

The Government has made a commitment that from April 2015 people with DC pensions approaching retirement will be offered guidance.[172] Provision for the guidance guarantee was made by means of amendment to the Bill at Committee stage (see 7.1 above). Amendments

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[169] Ibid c815
[170] Ibid c811-3
[171] Ibid c816
[172] HM Treasury, Budget 2014, HC 1104, March 2014, para 1.160

were made at Report Stage to align definitions with those used elsewhere in the Bill. In addition, guidance providers and the Treasury would be required to co-operate and share information. The Minister explained:

> On information sharing, amendment 60 inserts new section 333 EA in new part 20A of the *Financial Services and Markets Act 2000*. Subsection (1) provides for a duty on designated guidance providers and the Treasury to co-operate in the giving of pensions guidance. Subsection (2) provides for a gateway to share information. Ensuring that delivery partners and the Treasury are under an obligation to work together and, importantly, that they may share information with each other, subject to the usual data protection requirements, is important. It ensures a well-integrated and well-functioning guidance service; allows delivery partners to learn from each other and for evaluation of the overall service; and, finally and most importantly, facilitates a smooth journey for consumers through the service.[173]

Crispin Blunt and Paul Burstow tabled to require those delivering guidance to ask savers about other potential sources of wealth, in addition to their defined contribution pension schemes.[174] The Minister responded that:

> I do not want to over-promise what this relatively limited conversation can cover or achieve. It clearly is not regulated financial advice. It is not a fact check or a fact finder. It will not lead people to say at the end, "It's equity release for me." I am not saying that that is what my right hon. and hon. Friends are saying, but we must be absolutely clear that we will not stretch this thing to achieve other goals, laudable as though they might be, when they are not what it is being set up to do. For example, people who do not have DC pension pots might also want to think about equity release, but they will not access the guidance guarantee because they will not have a pot. If we think people should be accessing equity release more often, we need policies to deliver that. Shoehorning them into the guidance guarantee inappropriately will hit some people and not others. We must ensure that the guidance conversation delivers what it is meant to do and if we try to cram too much into it, we risk undermining that. That is one of the things we are testing through the surveying we are doing and through behavioural testing. If we bombard people with lots of products, issues and options, one of the worries is that they will just buy an annuity with their own provider and we will almost go back to where we started. So we are trying to strike that balance, and I wanted to put the caveat in first.
>
> Let me now try to be a little more positive. My hon. Friend the Member for Reigate asked for more detail on the guidance guarantee. Our colleagues at the Treasury have committed to providing further information in an update on progress on implementation that will be published before the end of the year on 31 December. That deals with the guidance guarantee.[175]

The guidance guarantee is discussed in more detail in Library Note SN 7042 *Pensions: the guidance guarantee* (1 December 2014).

10 Third reading

Introducing the Third Reading debate, Pensions Minister, Steve Webb said:

> The Bill follows the Government's extensive pensions reform. It is about enabling innovation in the pensions industry better to meet the needs of business and

[173] HC Deb 25 November 2014 c817
[174] Ibid c823
[175] Ibid c834

individuals, and about giving people greater flexibility in regard to how and when they access their savings. It will do that in two ways: by encouraging and enabling defined ambition or risk-sharing pension schemes and collective benefits, and by giving individuals new freedom and flexibility in relation to how and when they access their pension savings. It builds on the previous pension reform, including the new state pension and the highly successful implementation of automatic enrolment. Defined ambition legislation is a radical reshaping of pensions legislation to ensure that it remains relevant for future generations. It is intended to reflect, recognise and reinvigorate innovation in consumer-focused product design in shared-risk, or defined ambition, pensions.[…]

> This Bill, along with the *Taxation of Pensions Bill*, will mean that, from April 2015, individuals from the age of 55 will be able to access that pension flexibility if they wish, subject to their marginal rate of income tax, rather than the current 55% tax charge. The Bill will make the required changes to pension legislation. As we have discussed, it includes a guidance guarantee that means everyone with money purchase benefits or cash balance benefits will be offered free, impartial guidance so they are clear on the range of options available to them at retirement. The Bill contains a duty on providers and schemes to ensure that they make people aware of their right to guidance.
>
> The *Taxation of Pensions Bill* will legislate for the required tax regime changes. The Government will continue to allow members of private sector schemes offering safeguarded benefits—that is, benefits other than money purchase or cash balance benefits—the freedom to transfer to other types of scheme. In the majority of cases where a member has safeguarded benefits, it will continue to be in the best interests of the individual to remain in the scheme.
>
> As we have discussed, there will be two additional safeguards: the requirement to take advice from a financial adviser, and guidance for trustees on using their existing powers to delay transfers and on taking account of scheme funding when deciding transfer values. In addition, the Exchequer will put in place safeguards in general not allowing unfunded public service defined benefit scheme transfers. For funded public service schemes, Ministers will have a power to reduce cash equivalent transfer values.[176]

Stephen Timms said the Opposition would not oppose the Bill, although there were parts it thought should have been strengthened. He welcomed the new flexibilities but expressed concern that adequate safeguards had not been put in place:

> […] we are concerned that Ministers are not yet providing adequate safeguards in the Bill to protect the savings of people who have worked hard all their lives from the risk of excessively high charges.
>
> The changes will introduce increased flexibility for savers, and we agree that that is welcome. They will also make the pensions market much more complicated, however, and safeguards need to be put in place to protect savers from being taken advantage of, given the confusion that could arise as the changes bed down.[177]

He was also concerned at the number of government amendments, saying this did:

> […] not inspire confidence that these complex changes in an area of such immense importance have been properly thought through. This looks rather like a case of legislate in haste, repent at leisure. We can only hope that Members in the other place,

[176] HC Deb 25 November 2014 c880
[177] Ibid c881

> among whom there is substantial expertise in this area, can make significant improvements.[178]

The Bill received its Third Reading without a vote.[179]

[178] Ibid c881
[179] Ibid c883