Pension Schemes Bill 2014-15 – House of Lords stages

Standard Note: SN 7105

Last updated: 18 February 2015

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Section Business and Transport Section

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; and 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 Act 2014.*

The Bill went through its Commons stages between 26 June and 25 November 2014. HL Bill 63 had its First Reading in the House of Lords on 26 November and its Second Reading on Tuesday 16 December. It then had two sessions in Committee on 7 January and 12 January 2015, Report Stage on 27 January and Third Reading on 5 February. The Commons is scheduled to consider the Lords' amendments on 24 February.

The Government made amendments to the Bill during the Lords' stages, for which has it produced Explanatory Notes. A significant developments during the course of the debates was the announcement by the Financial Conduct Authority of its plans to introduce additional protections for consumers. The Government also said it would produce clear guidance explaining the interaction of pension freedoms with means-tested benefits and social care.

Issues raised by the Opposition included proposals for: an annuity brokerage service, governance arrangements, a charge cap in drawdown funds and arrangements for monitoring the impact of the pension freedoms. It did not push any of its amendments to a vote.

For the background see Library Note SN 7030 *Pension Schemes Bill 2014-15 – House of Commons stages* (December 2014) and RP 14/44 Pension Schemes Bill (August 2014).

Contents

1 Introduction

The *Pension 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); and

- 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 publications related to the Bill can be found at Gov.UK - *Pension Schemes Bill 2014-15.*

HL Bill 63 had its First Reading in the House of Lords on 26 November and its Second Reading on Tuesday 16 December. It then had two sessions in Committee on 7 January and 12 January 2015, Report Stage on 27 January and Third Reading on 5 February. The Bill as amended on Report is HL Bill 90.

The Lords Amendments to the Bill can be seen here - HL Bill 166. There are also Explanatory Notes. The House of Commons is to consider the Lords' amendments on Tuesday 24 February 2015.

Participants in the debates included Government Whips Lord Bourne of Aberystwyth (Conservative) and Lord Newby (Liberal Democrat); Shadow spokespersons, Lord Bradley, Lord McAvoy and Lord Davies of Oldham; Conservative Peer Lord Balfe; Lord Liberal Democrat Peer Lord German; Crossbench Peer Baroness Greengross; and Labour Peers Lord Hutton of Furness, Baroness Drake, Lord McKenzie of Luton and Baroness Hollis of Heigham.

2 Progress through Parliament

The Bill had its Second Reading in the House of Lords on 16 December 2014.[1] The *Taxation of Pensions Bill* had its Second Reading and its remaining stages on the same day. The *Taxation of Pensions Act 2014* received Royal Assent on 17 December 2014.[2]

Opening the debate for the Government, Lord Bourne explained that the Pension Schemes Bill would make "changes to pension legislation as a result of the freedom and choice created by the Taxation of Pensions Bill." In addition, it would create a "clear space for shared risk or defined ambition" pensions and enable "the provision of collective benefits in

[1] HL Deb 16 December 2014 c122-164

[2] This is discussed in more detail in Library Note SN 7036 Taxation of Pensions Bill – debates in Parliament (February 2015).

the United Kingdom."[3] Lord Davies of Oldham said the Opposition supported the "principle of increased flexibility for people in retirement and reform of the pensions market so people can get a better deal." He set out the three tests that the Opposition had set for the pension reforms (relating to guidance fairness and cost). He explained that it was concerned about the speed with which the reforms were being pushed through and would press the Government to undertake a review within two years of the reforms coming into force.[4] The Bill received its Second Reading without a vote.[5]

The Government made amendments to the Bill during its House of Lords' stages – see Bill 116 – Lords Amendments to the Pension Schemes Bill and Explanatory Notes.

The following is a guide to the main issues debated at Committee Stage, Report Stage and Third Reading.

3 The issues

The Bill had its first day in Committee on 7 January 2015. Clauses 1 to 7 were agreed to without debate.[6] These clauses would introduce new definitions into the pensions framework: defined benefits, shared risk and defined contributions scheme.[7]

3.1 Schemes providing collective benefits

Regulation-making powers – clause 8

Clause 8 sets out the defining characteristics of a "collective" benefit i.e:

> Where, in all circumstances the rate or amount of the benefit payable to or in respect of a member depends entirely on (a) the amount available to pay that member's and other members' benefits and (b) factors used to determine what proportion of that amount is available for the provision of the particular benefit, these benefits are defined as 'collective' in the Bill.[8]

Clause 8 (3) provides that a benefit is not a collective benefit if it is (a) a money purchase benefit or (b) of a description specified in regulations. The DPRRC said regulations made under this should require the affirmative procedure.[9]

At Committee Stage, Lord Bradley proposed an amendment implement this recommendation.[10] Lord Bourne responded that the Government accepted that there was a strong case for affirmative procedure on first use but not thereafter.[11] It amended the Bill accordingly at Report State. Lord Bourne explained:

> Clause 8 is a key provision as it defines the scope of the provisions relating to collective benefits in Part 2. Because it is a key provision it should be subject to the affirmative procedure the first time it is used but there are circumstances where the

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[3] HL Deb 16 December 2014 c126
[4] Ibid, c130
[5] HL Deb 16 December 2014 c164
[6] HL Deb 7 January 2015 c361
[7] See RP14/44 Pension Schemes Bill, section 3.2
[8] HL Bill 63-EN
[9] Delegated Powers and Regulatory Reform Committee – Twelfth Report. Pension Schemes Bill; Cohabitation Rights Bill [HL]; National Insurance Contributions Bill: Government Response, 17 December 2014, para 6; DEP 2015-0011
[10] HL Deb 7 January 2015 c370
[11] Ibid c374

Government may need to use this power without unnecessary delay to avoid members' benefits being affected and to avoid schemes being subject to expensive requirements around the setting of targets, actuarial valuations and so on, which are not appropriate because other regulatory and governance requirements would be more appropriate to them. As the affirmative procedure could result in delay, leading to significant distress to members who would be without clarity as to whether their benefits were caught by the collective benefit provisions, we believe that the power in Clause 8(3)(b) needs to be affirmative on first use only.[12]

Clauses 9, 10, 11 and 21

The DPRRC recommended that powers under these clauses should require the affirmative power on first exercise:

> 7. We went on to consider the difficulties faced by the House in identifying the likely shape of the new "collective benefits" arrangements, in order to debate them effectively, particularly as no drafts of the many regulations that will need to be made under Part 2 are apparently to be made available to the House during the passage of the Bill. We have concluded that, in conferring the powers, such details as are included in clauses 9 to 29 probably give a sufficient idea of the broad nature of the provision likely to appear in the regulations made under them, so that we would not go so far as to regard the delegations themselves as necessarily inappropriate.
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> 8. It appears to us, however, that there are certain areas where the likely ingredients of regulations will be so significant to the working of Part 2 as a whole that the negative procedure will not afford the House an appropriate opportunity to debate the provision that will determine the shape of the arrangements. The powers concerned are those conferred by
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> - clause 9 (which will enable regulations to provide for the targets that scheme trustees and managers are to be set with respect to collective benefits);
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> - clause 10 (under which regulations may require trustees and managers to have policies about the proportions of funds to be allocated to particular benefits, and which may, significantly, make provision about the content of any policy);
>
> - clause 11 (whereby regulations may provide for the factors to be used when determining such proportions); and
>
> - clause 21 (which will enable regulations to require trustees and managers to have a policy for dealing with a deficit or surplus).
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> Because we consider that the first regulations to be made under each of these clauses will determine important aspects of the arrangements for "collective benefits", **we recommend that the powers conferred by clauses 9, 10, 11 and 21 should require the affirmative procedure on first exercise.**[13]

The Government accepted this and amended the Bill accordingly at Report Stage. Lord Bourne explained:

> The Delegated Powers and Regulatory Reform Committee recommended that the regulation-making powers in Clauses 9 to 11 and Clause 21 should be subject to the affirmative procedure the first time they are used. In response to amendments tabled by the noble Lords, Lord Bradley and Lord McAvoy, in Committee, I made clear that

[12] HL Deb 27 January 2015 c149

[13] Delegated Powers and Regulatory Reform Committee – Twelfth Report. Pension Schemes Bill; Cohabitation Rights Bill [HL]; National Insurance Contributions Bill: Government Response, 17 December 2014, para 7-8

> the Government accept that recommendation in respect of those powers. This amendment therefore places regulations made under those powers subject to the affirmative procedure on first use, as the Committee recommended.[14]

Governance

At Committee Stage, Lord Bradley argued that managers of collective schemes should be required to "act in the best interests of members of the scheme."[15] He argued that the Bill did not go far enough on governance and that if the Government were "serious about encouraging and building collective benefit pension provision, the governance rules have to be robust right from the very beginning." His proposed amendment would:

> Require pension schemes to appoint a "board of independent trustees". Those trustees would have a fiduciary duty to pension holders that would take preference over any duty owed to shareholders.[16]

Lord Bourne agreed that governance was important but said the Government was already putting appropriate arrangements in place:

> Under powers in the *Pensions Act 2014,* this Government are introducing a new approach to governance standards for all workplace occupational pension schemes. These will come into force from April 2015. The Government's commitment to improving the governance of workplace pension schemes was demonstrated in the *Pensions Act 2014* and in the subsequent publication *Better Workplace Pensions: Putting Savers' Interests First*, which was launched on 17 October last year. This confirmed the Government's plans to introduce governance standards in all workplace money purchase occupational pension schemes from April this year.
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> The Financial Conduct Authority has also completed a consultation on draft rules for independent governance committees for workplace personal pension schemes, to ensure oversight of these schemes in members' interests from April this year. These proposals are built on an earlier agreement between the Association of British Insurers and the Office of Fair Trading to establish independent governance committees, and go further by introducing these on a mandatory footing.
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> The October command paper also included a consultation on draft regulations to place minimum governance standards on occupational pension schemes which are money purchase or have money purchase elements to them. This consultation ended on 14 November 2014, and the Government are currently considering the responses. Subject to parliamentary approval and any changes as a result of the consultation, the governance measures in these regulations will commence from April this year. This is in response to the Office of Fair Trading which, after completing its market study in the summer of 2013, proposed minimum governance standards for workplace pension schemes.[17]

At Report Stage, Lord McAvoy said the Bill did not go far enough to address governance issue in defined contribution schemes.[18] Lord Bourne responded that the Government had been consulting on minimum governance standards and would lay regulations before Parliament shortly.[19]

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[14] HL Deb 27 January 2014 c149; See also HL Deb 7 January 2014 c386
[15] HL Deb 7 January 2015 c375
[16] Ibid c376
[17] Ibid c382; See also DEP-0048
[18] HL Deb 27 January 2014 c113
[19] Ibid c115

The draft *Occupational Pension Schemes (Charges and Governance) Regulations 2015* were laid before Parliament on 4 February 2015. They apply minimum governance standards for occupational pension schemes providing money purchase benefits. The FCA is making equivalent rules for workplace personal pension schemes.[20]

Investments

Lord McAvoy proposed that a power to make regulations should be replaced with a duty to do so in two instances. One related to clause 14, which would allow regulations to be made requiring scheme trustees or managers of collective schemes to prepare an investment strategy. The other related to clause 15, which would allow regulations to be made requiring the trustees or managers to report on the performance of collective benefit investments. He asked whether the Government could imagine leaving these powers unused.[21] Baroness Drake supported this, saying that:

> […] it seems to me pretty inconceivable that a collective benefits scheme would be allowed to operate without the preparation of such a statement, particularly given the way in which such a scheme is managing risk on a collective basis across and between different generations of savers, and where the individuals in the scheme do not have a well -defined pot over which they have clear and individual ownership.[22]

Lord Bourne responded that the Government's intention was to:

> […] produce a comprehensive set of regulations governing the day-to-day running and decision-making in schemes that provide collective benefits. This will include detailed provision around the statement of investment strategy and the investment performance reports that are the subjects of these amendments.[23]

He believed that the permissive approach being taken by the Government was correct:

> The difference here is between "may" and "must". We believe that driving this forward in the way that we are, in conjunction with the industry, is appropriate and that this is likely to deliver—indeed, will deliver—the best result.[…] I should also say that this is related to trust schemes. Further work and conversations are required with the Financial Conduct Authority to establish how it will regulate non-trust-based schemes offering collective benefits. It may be that it is more effective and appropriate for some of the regulation-making powers under Part 2 to be used in relation to occupational schemes only, and for the FCA to make parallel provision in relation to personal pension schemes.[24]

Policy for dealing with a deficit or surplus

Lord Bradley argued that the Secretary of State should be under a duty to make regulations requiring scheme trustees or managers of collective benefit schemes to have a policy for dealing with a deficit or surplus. He asked whether the Minister could foresee any circumstances in which the power to make such regulations would not be used.[25] Lord Bourne explained how the Government intended to use the powers in clause 21:

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[20] Draft Occupational Pension Schemes (Charges and Governance) Regulations 2015 – Explanatory Memorandum, para 7.5-9

[21] HL Deb 7 January 2015 c393-4

[22] Ibid c395

[23] Ibid c396

[24] Ibid c396

[25] Ibid c398

> The first question to ask is why we require trustees or managers of schemes providing collective benefits to draft a policy on deficit and surplus in the first place. We believe that this is essential because schemes providing collective benefits function in an open and transparent way. It is vital to engender confidence in the way that these schemes are managed and are seen to be managed. Indeed, the lack of a policy set out in advance about how schemes would adjust members' benefits if required has led to heated public debate in the Netherlands, where some schemes had to reduce benefits when members were not expecting that to happen. I hope that we have learnt lessons from experience elsewhere, as I indicated earlier; this is very much central to the Government's approach.
>
> We would certainly not want that situation to happen here. So, to address any potential concerns or confusion about how over or underperformance against the probability range will be dealt with, we have introduced Clause 21. Using these powers we may require trustees or managers to schemes providing collective benefits to set out a policy in advance in which they explain clearly how they will deal with such situations and the different options they may take depending on the situation.[26]

However, the Government wanted to "regulate only where necessary and appropriate."[27] As recommended by the DPRRC, the Government would be amending the Bill at Report Stage to provide that such regulations would be subject to the affirmative procedure in the first instance.[28]

Calculation of cash equivalent benefits

Lord McAvoy argued that regulations under clause 25 should be subject to the affirmative procedure. The clause would give the Secretary of State power to require the trustees or managers of schemes to have a policy concerning the cash equivalent of a pension within a collective scheme.[29] Lord Bourne explained that the Government considered the negative resolution procedure to be appropriate: the regulations would "need to include a fair amount of technical detail, and some of the requirements will be largely procedural in nature."[30] The Government made minor and technical amendments to clauses 27 and 32.[31]

Annual review

Lord Bradley proposed requiring the Secretary of State to report annually on progress in the establishment of combined benefit schemes.[32] In response, Lord Bourne said that the Government thought this could be more appropriately monitored in other ways, for example through the Office for National Statistics, which conducts surveys and collects data. In addition, Cabinet Office guidance already required a review within three to five years of Royal Assent. If there was anything further the Government could do supplementary to that, he would come back to the issue on Report.[33]

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26 Ibid c399
27 Ibid c399
28 Ibid c400
29 Ibid c401
30 Ibid c401
31 Ibid c402-4
32 Ibid c405
33 Ibid c406

3.2 Other pension issues

Annuity brokerage service

At Committee Stage, Lord Bradley proposed a new clause on decumulation. He explained that it was "aimed at protecting savers who default into an annuity with their same savings provider". It would:

> […] require the recommendation of an independent broker to sell an annuity to someone who has saved with the same scheme. This would protect consumers from getting a bad deal when taking a crucial decision in their lives.[34]

Lord Bourne said he appreciated the intention behind the amendment but had concerns about the costs that would be involved:

> The amendment would effectively require all schemes that offer an annuity to provide or source an independent annuity broker run by independent trustees and overseen by the Pensions Regulator. What is less clear from the amendment is who is to meet the extra costs of this provision.[35]

The guidance service was being put in place to support consumers in making retirement choices:

> The guidance service will help consumers to understand their retirement choices, including the different kinds of annuity product available—for example, single or joint life or enhanced annuities for those with health problems. It will also provide consumers with information on how to proceed to the next step if they wish to purchase a product, for example by signposting them to the Money Advice Service's impartial annuities comparison table.[36]

Former Pensions Commission member, Baroness Drake argued that the amendment related to what happened after the guidance stage, when the consumer was going on to buy a product or select a retirement route:

> It is what happens at that stage—the relationship between the consumer and the person providing the annuity, whether it is a scheme or a retail provider of retirement products—which is causing a lot of people anxiety. Some refer to it as the second line of defence; this is another way of addressing that. It is trying to regulate the quality of the exchange between the provider of the product, be it an annuity or in some other form, and the consumer at that point.[37]

Lord Bourne responded that guidance would set out the options available on annuities and, where appropriate, signpost people to advice.[38]

Lord Bradley returned to the issue at Report Stage, arguing that guidance would not be enough:

> […] it may help them to decide whether to draw down, take cash or annuitise, but deciding between options for annuities will require another level of advice. Because of

[34] Ibid c362
[35] Ibid c363
[36] Ibid c365
[37] Ibid c366
[38] Ibid c366

> that it seems sensible, if the consumer is to get it right for their retirement income, to empower pension schemes to undertake their responsibilities.[39]

Lord Bourne thought that there would be unintended consequences:

> If the amendment were agreed to, an individual would be able to buy an annuity from their savings provider only if it is recommended by an independent annuity broker. This requirement would catch everyone who wants to buy an annuity from their savings provider, not just those who accept an annuity from their scheme without having looked for a better deal on the open market. It would also affect those who have made extensive investigations on their own behalf and who would therefore be paying a broker to tell them something they already know.
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> Moreover, the amendment would not protect consumers from getting a bad deal. I acknowledge that it may limit the providers who could offer that bad deal, but only regarding their existing customers. There would be nothing to stop someone getting a bad deal from an annuity provider chosen on the basis that it has a shop on their high street or appeared first on their internet search, as the annuity broker requirement would only bite if the member wanted to buy an annuity from his existing savings provider. If the broker does not recommend the savings provider, the member will not be permitted to buy an annuity from them. Are we so sure of the competence of all annuity brokers that we should, effectively, take this decision out of the hands of the person most affected by it and put it into the hands of the annuity broker?
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> On the idea of empowering schemes to undertake the responsibility for ensuring the member gets the best deal by using the advantages of bulk buying, there again appears to be nothing in the amendment to facilitate this. In any case, I remain agnostic on these advantages in the context of an individual choosing what to do with their pension savings. The purpose of the Budget changes is to allow the member to choose from a range of options that suit them best, based on their knowledge of their specific circumstances and wishes. It is not clear how schemes bulk buying annuities for cohorts of members would be able to reflect these choices.
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> In addition, we must always be careful of the law of unintended consequences—a law that cannot be amended by this House. There would be a real risk that Members would simply stop even considering internal annuity products because of the inconvenience and delays, not to mention the extra costs involved in consulting a broker.[40]

Duty to consider scale

Lord Bradley proposed placing a duty on trustees “to consider whether the scheme has sufficient scale to deliver good value for members.” He said:

> Currently, the Bill contains no measures which would help promote scale, which most independent observers believe is necessary for collective DC schemes and work-based pensions in general to do the best for their employees. We have long argued that measures to promote scale are vital to ensure the best outcomes for savers, and those measures deal with the important issue of finding high-quality trustees. If there are fewer schemes, there is less need for a large number of trustees and we therefore address the quality as well as the quantity in schemes that are currently in place. The Government could, for example, require that automatic transfers default into

[39] HL Deb 27 January 2015 c146

[40] Ibid c146-7

> aggregators, and the criteria necessary for qualifying as an aggregator could include scale.[41]

Baroness Drake said that although in principle "putting small inefficient schemes into large efficient schemes [was] a good thing", important issues needed to be considered:

> The problem arises when considering what a small scheme is transferred into. In real life, some real pressures come to bear. For example, an employer may be keen to see members of a closed, small trust-based DC scheme bulk transfer into a contract-based product, but if that product is a personal pension which falls outside the scope of the new charges cap or the quality standards, the value for money and governance benefits on transfer may not be so clear-cut. Equally, the trust scheme rules of small schemes, even in DC, may have some beneficial provisions. For example, the employer may meet the administration costs, so some of the costs of that DC provision are met by the employer. What happens to that protection on transfer?
>
> Certainly, the principle of promoting scale consequentially to promote value for money is a good one. However, if there is to be a provision to require trustees to transfer their schemes in certain circumstances, there needs to be regulatory clarity about the standards of schemes into which schemes can be transferred or directed by the regulator—whether there are nominated aggregators or whatever into which a regulator could so direct if it felt that something was quite small and unsustainable.[42]

Lord Bourne said the Government did not belief that forcing scale would necessarily drive good governance, investment expertise or low costs. Its analysis showed that there were "already effective benefits of scale operating within the marketplace, including significant consolidation of schemes." It believed the appropriate framework was already in place:

> The Government believe that their flagship reforms of introducing, for the first time, minimum governance standards to ensure that schemes are well governed with low and fair charges for members is the correct approach to drive better member outcomes. We do not believe that it would be right to interfere with how the marketplace is evolving, bearing in mind the existing fiduciary duties that trustees are acting under. It would be strange if trustees were not already considering the viability of the trust and the benefits of scale as they assess its workability. [43]

Lord Bradley responded that his amendment was not about forcing scale but looking at what was in members' best interests.[44]

Lord McAvoy returned to the issue at Report Stage, saying that that:

> […] we should always be looking to get best value and protect the interests of the public throughout this process. Strengthening the arm of the Pensions Regulator will help to achieve that scale.[45]

Lord Bourne responded that "trustees' existing fiduciary duties already require them to act in their members; best interests, so it would be unusual if they did not consider this point." A specific requirement to do so would introduce unnecessary cost and complexity:

[41] HL Deb 7 January 2015 c388-9
[42] Ibid c390
[43] Ibid c391-3
[44] Ibid c393
[45] HL Deb 27 January 2015 c139

> Specific legislation would place the financial cost of managing a difficult and complex forced consolidation on members. In many cases it would be in direct conflict with scheme rules which may not permit such transfers and mergers.
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> A further difficulty with this amendment is the complicated underlying process that trustees would be required to undertake to implement its requirements. The noble Baroness, Lady Drake, put her finger on this in Committee when she said that problems could arise around transfers. Trustees would, for example, be required to find a suitable alternative scheme, assess the scheme's suitability and undertake independent checks. Again, the costs of that would be borne by members; it could be a costly process if they are required to do that in the way this amendment suggests.[…] Both to stipulate what "sufficient scale" in members' best interests means and for the Pensions Regulator to measure and police it would be very difficult.[46]

Lord McAvoy responded that it was reasonable to require trustees to consider the issue but withdrew his amendment.[47]

Transparency in investments

Lord German proposed an amendment intended to achieve a "high level of transparency in the operation of pension schemes." He explained that:

> The amendment provides a general requirement for pension schemes to account to savers for their investment and stewardship decisions; and a right for savers to access meaningful information about how their money is being invested and managed. It is an attempt to set a standard—a floor—guaranteeing savers rights to certain information about how their money is used. In doing so, it aims to rebuild the trust currently lacking between savers and those managing their money.[48]

Lord Bourne responded that the Government was committed to improving transparency in pension schemes. This included the recent consultation on draft legislation to improve scheme governance. The wider issues raised by the amendment would be best considered as part of a transparency work programme that had already been set up:

> Regulations and rules made as a result of the *Pensions Act 2014* will significantly improve the transparency of costs and charges in pension schemes and lead to members receiving better value for money. However, I recognise that the proposed amendment would go much further than this. It seeks to place requirements on trustees and managers of occupational and all other personal schemes to provide members with detailed additional information relating to their schemes' investment functions, over and above what is already required, and additional to the improved transparency of costs and charges information that we intend to introduce from April. The amendment, were it to be accepted, would require trustees and managers to provide investment-related information to members on request where that is reasonable—and there is a rebuttable presumption that it is—which would be additional to existing requirements and would do so before we have consulted with the industry, savers and other interested stakeholders, as we announced we would in our *Better Workplace Pensions* consultation last October.
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> We believe that there is merit in examining and considering further the requirements contained in this amendment. However, we consider that greater transparency in relation to costs and charges, as well as about how schemes manage their

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[46] Ibid c141
[47] Ibid c143
[48] HL Deb 7 January 2014 c424

investments, go hand in hand. As such, they would be better considered together as part of the same well established transparency work programme, which is already under way and which we are committed to consult on later this year.[49]

Existing primary legislation already provided the powers for making regulations along the lines suggested by the amendment.[50] Further detail on this was provided in DEP 2015-179.

Power to create other exemptions from indexation

Lord Homes of Richmond proposed an amendment to deal with an anomaly in the requirement to index cash balance benefits following changes made in the *Pensions Act 2011.* Lord Bourne responded that the Government had not received any representations relating to instances of actual detriment arising from this:

> I confirm that the Government are aware of this issue, and we have some sympathy with the points that my noble friend made and the anomalies that he has highlighted. The requirement to index cash balance benefits was removed by the Pensions Act 2011, as he rightly stated, in response to representations from the pensions industry. It was pointed out that the requirement to index money purchase benefits was removed in 2005, and cash balance benefits are very similar in that entitlement is generally based on calculation of a lump sum rather than an income stream. Therefore it was a relatively easy decision to follow suit with cash balance benefits when the opportunity arose. However, the decision was made at that time that we would not disturb contracted-out schemes—they are subject to their own requirements. That was for very good and very technical reasons.
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> We now accept that in theory that means that there could be members with rights to cash balance benefits that still have to be indexed, and that might be because another totally unconnected member has some contracted-out pension rights somewhere in the same scheme. That does seem odd, but to be honest we have not received any specific representations and we do not know of any particular case of concern. If the noble Lord can bring forward any specific examples of schemes or individuals who have suffered detriment as a result of this issue, it would clearly support the case for change that he has eloquently set out.[51]

Requirement to maintain a register of independent trustees

Lord McAvoy probed the rationale for clause 44 which would remove the requirement on the Pensions Regulator to maintain a register of independent trustees.[52] Lord Bourne said the register was superfluous:

> […] there is already an existing power for the Pensions Regulator to appoint trustees where he can appoint a trustee without reference to the register […]
>
> […] the regulator is committed to ensuring that any process to replace the register would provide the same level of assurance to members and schemes that an independent trustee appointed to a scheme is fit for the task. That, after all, is the paramount issue. The selection criteria would remain rigorous and transparent. The criteria and processes being published on the regulator's website, along with the procedures for appointing and removing trustees, would be guaranteed. We will ensure that appointments will continue to deliver the best candidate for the job, given the specific circumstances of the scheme in question.

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[49] Ibid c431-2

[50] Ibid c432

[51] Ibid c435-6

[52] Ibidc437

> I think there is little doubt that this register is superfluous and that there is the ability for the Pensions Regulator to draw on an existing pool of trustees without the need for the register.[53]

NEST restrictions

Lord Bradley proposed that the Government lift the restrictions on the National Employment Savings Trust (the ban on transfers and the contribution cap) within one month of Royal Assent rather than in April 2017.[54] NEST was established to support automatic enrolment by ensuring that all workers have access to a low-cost workplace pension scheme. Its design - including the annual contribution limit and transfer restrictions - was intended to focus NEST on its target market of low to moderate earners and smaller employers who the market found difficult to serve.[55] Lord Bourne responded that there were two issues to consider:

> The first is that we want NEST to fulfil its core function. We believe it is doing that very well and do not want to disturb that. The second is that 2017 is only two and a bit years away, and we believe it could take a significant amount of time to vary the state aid consent, but we will have another look at that issue.[56]

Lord Bradley returned to the issue at Report Stage, arguing again that the restrictions should be lifted more quickly:

> NEST has been a success […] we should celebrate the fact that it has provided a high-quality, low-cost product in an important market that has not always or often service the saver well. Restrictions remain that prevent NEST building on that success.[57]

Lord Bourne said the evidence showed that the restrictions were not in fact preventing NEST from serving its target market. The Government wanted NEST to focus on the roll-out of auto-enrolment to small and micro-employers:

> The scale of this challenge should not be underestimated – for example, during 2016, around half a million small employers will need to enrol their workers, which is an average of more than 40,000 employers per month.[58]

Furthermore, if the Government intended to lift the restrictions earlier, it would need to check with the European Commission whether this would breach state aid rules.[59]

Draft regulations were approved by the House of Lords on 3 February 2015 and by the House of Commons on 2 February 2015.[60] The *National Employment Savings Trust (Amendment) Order 2015 (SI 2015/178)* remove the annual contribution limit and the transfer restrictions imposed on NEST from 1 April 2017.

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[53] Ibid c437; See also DEP 2015-0054
[54] Ibid c438
[55] Ibid c441; SN 4826 *National Employment Savings Trust – background* (October 2013), sections 2.9 and 2.10
[56] Ibid c442; See also DEP 2015-0053
[57] HL Deb 27 January 2015 c133; See also DEP 2015-0053
[58] HL Deb 27 January 2015 c137-8
[59] Ibid c138
[60] HL Deb 3 February 2015 c544; HC Deb 2 February 2015 c100

PPF compensation cap

The Pension Protection Fund (PPF) was set up under the *Pensions Act 2004* to provide compensation to members of defined benefit pension schemes that wind up underfunded on the insolvency of the employer.[61]

At Committee Stage, Lord Balfe, proposed a review of the cap on compensation for those below normal pension age when their scheme enters a PPF assessment period. He was particularly concerned about the impact on pilots:

> In particular, I refer to pilots who used to work for Monarch Airlines—which has gone into the Pension Protection Fund—many of them with many years of service, but because of the cap that was put on payments out, they are limited as to the amount of pension which they can now draw. That cap was put into place for very good reason: to stop moral hazard; to stop directors who were members of their company pension fund abusing the fund knowing that they could basically transfer their liabilities for their own pensions to the Pension Protection Fund. However, the people who I am speaking about, such as the pilots of Monarch Airlines, are inadvertently caught. They had no say whatever in the way in which the company was run. They were workers for the company; they were higher-paid workers […][62]

Lord Bourne responded that the PPF did not aim to replace lost benefits in full:

> The PPF pays compensation at the full rate of the pension in payment at the insolvency date to anyone over their normal pension age. Pilots as a group, with their relatively low pension age of 55, benefit from this, as more of them are likely to be over that threshold than if the scheme had a more usual pension age of 60 or 65. It is those below their normal pension age who have their compensation set at broadly 90% of the pension accrued at the insolvency date. Further, it is this group—those below their scheme's normal pension age—who are affected by the compensation cap.
>
> The current cap produces what many would think was rather a generous entitlement of £32,761 per year at the age of 65. The cap is of course reset for anyone who chooses to take their compensation at an age lower than 65, to reflect the longer period of payment. So a person with an unusual pension age of 55, such as pilots, would have a cap of £26,571 precisely. Noble Lords might also wish to be reminded that the Pensions Act 2014 contains provision for a long-service increase to the cap, which has been referred to during the debate, of 3% for each year of service above 20 years, although I accept this may not be relevant for many pilots because of the lower retirement age.
>
> Understandably, those affected by the cap compare the amount of compensation to what they expected to get from their pension scheme. However, that is not a valid comparison, at least in terms of how the scheme operates. As I have said, their pensions have already been lost, and if the scheme could have paid them more than the amount of compensation then it would not have entered the Pension Protection Fund in the first place.[63]

He did not the cap was so unfair as to justify increasing PPF costs:

> To begin with, the compensation paid to others could be reduced, but I am sure that noble Lords are not advocating that approach. Another option is to increase the PPF's income. Compensation is funded by a combination of the schemes' remaining assets,

[61] See Library Note SN 3917 *Pension Protection Fund* (July 2012)
[62] HL Deb 12 January 2015 c626
[63] Ibid c631

> investment return and a levy on ongoing schemes. If the money had to be found through an increase in the levy, the costs are borne by those schemes that are still backed by solvent employers. Some 78% of schemes eligible for the PPF were in deficit at the end of November 2014, and their aggregate deficit was £221 billion. Noble Lords may wish to consider whether this is the right time to be increasing their costs.
>
> Lastly, we could expect the PPF to absorb this extra liability.[…] Given that the number of schemes eligible to pay the PPF levy is declining, the PPF has taken the decision to aim to be self-supporting by 2030 so that it can continue to pay compensation, which could be necessary into the 22nd century. There are significant risks to this goal in terms of future levels of insolvency and scheme deficits. In view of this, the current surplus has, if I may put it in these terms, already been committed to help to safeguard the future.
>
> The Pension Protection Fund currently pays compensation to about 150,000 people and protects around 11 million scheme workers. We should be very cautious before we place any extra burden on the fund. The argument for so doing must be very strong and, respectfully, I do not think that it has been made out in this case. While I sympathise with those who have lost their pensions, as do the Government, they will still get a significant amount of compensation. I do not think that the position of people with capped compensation is so unfair as to justify putting an extra burden on to the PPF.[64]

Public service schemes - miscellaneous

The Government made a small change to the *Public Service Pensions Act 2013,* enabling new pension schemes for the Security Service and Secret Intelligence Service to be introduced from April 2018.[65] It also made an amendment to ensure that regulations under new section 18A of the *Judicial Pensions and Retirement Act 1993* were subject to the affirmative resolution process.[66]

3.3 Guidance guarantee

Recognising that it will be important for people to make informed decisions about how to draw their pension savings, the Government announced in Budget 2014 that individuals with a DC pension would be offered guidance at the point of retirement.[67] Clause 47 and Schedule 3 of the Bill would provide for this.[68]

The Financial Conduct Authority (FCA), which will be responsible for setting and maintaining standards for guidance and monitoring compliance with these standards, consulted on high level standards between 21 July and 22 September 2014.[69] It issued a policy statement issued on 27 November 2014. This included near-final standards and rules.[70] On 12 January 2015, HM Treasury published *Delivering pensions guidance: January 2015 update.* This had announced that the brand for the service would be Pension Wise, with the tagline "Your money. Your choice."[71]

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[64] Ibid c631-2
[65] HL Deb 27 January 2015 c148
[66] Ibid c174-5
[67] HM Treasury, *Freedom and choice in pensions,* Cm 8835, March 2014
[68] Bill 63 EN, para 171
[69] FCA, *Retirement reforms and the Guidance Guarantee,* para 3.29
[70] FCA, *CP 14/11: Retirement reforms and the Guidance Guarantee,* July 2014; FCA, PS 14/17 Retirement reforms and the guidance guarantee including feedback on CP 14/11, November 2014
[71] See also, Gov.UK, Pension Wise unveiled, 12 January 2015

The Government made technical amendments to clause 47 and Schedule 3 at Committee Stage intended to ensure survivors had access to guidance. Lord Newby explained:

> The amendments in this group adjust the definition of pensions guidance in new sections 333A and 137FB of the Financial Services and Markets Act 2000, to extend pensions guidance to survivors of members who have benefits to which the flexibilities will apply, rather than just to members of pension schemes. This is needed because in some circumstances pension schemes may provide benefits to survivors of members of the scheme other than insurance-based products or cash lump sums – that is flexible benefits – without their becoming members of the scheme.[72]

In addition, as discussed below, Peers raised a range of issues regarding the standards for guidance providers, the requirements that would be placed on providers, and the arrangements being put in place to monitor the effectiveness of the service.

Review of effectiveness of guidance

Lord Bradley proposed an annual review to see whether the guidance service was working as intended:

> It is right to ensure the quality of the guidance and that adequate funding will be available so that people can have access to the guidance that they need. Specifically, we are asking for a review to include, first, how many people are accessing the guidance that they need. Given that the estimates vary between 2.5% and 90%, this is crucial. Given that many people have limited knowledge about pensions, we need to monitor this to ensure that people know of the guidance that is available to them and where to get it, and that the service is promoted. Secondly, the review should look at why people do not take up guidance. Given that we all agree that it is necessary to offer guidance to help people make informed choices about pension pots and financial planning for their retirement, we need to be sure that they have considered guidance, and if they have elected not to take it up, it would be useful to know why. Thirdly, we need to assess the quality of that guidance and whether it is preventing people from purchasing the most appropriate products. We need to be assured that as the guidance rolls out, the first users of the service are not seen just as guinea pigs but are used to inform and change guidance that is then appropriate because of the consequences of the information provided by those first people using it.[73]

Lord Newby responded that the Government was committed to:

> […] a full programme of monitoring and evaluation which will look at the uptake of the guidance as well as how it is achieving its objective of informing consumer decision-making at the point of retirement.[74]

He later explained that the Treasury would retain responsibility for service design and implementation until it was "very satisfied that it was working well and is seen to be in a stable and successful state."[75]

Content of guidance sessions

Baroness Greengross argued that the requirement on guidance providers to "take into account various sources of income, including housing wealth" needed to be strengthened:

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[72] HL Deb 12 January 2015 c559
[73] HL Deb 12 January 2015 c564
[74] Ibid c565
[75] Ibid c568

> I welcome the fact that Part 1 of the standards—Standard 20—stipulates explicitly what the guidance must contain, including requesting information about the consumer's financial situation—for example, whether the person is a home owner or renter—and personal circumstances that are relevant to their retirement options. However, there is no explicit reference to levels of housing wealth.[76]

She said guidance needed to cover the interaction with lending:

> Currently, lenders are unwilling to lend to older people and, in particular, to extend mortgage terms so that they are repayable after retirement. This could mean that more consumers have to repay debts when they reach state pension age. Many of those with a need to repay a mortgage post-retirement will have an interest-only mortgage.[77]

It was vital that guidance made the implications for help with the costs of social care "crystal clear". Guidance should also take account of state pensions and benefits:

> Using your private pension to take up options such as deferring state pension or buying extra state pension could provide much more income than buying an annuity, unless it would affect means-tested benefits. For example, deferring a pension may provide a higher income when it is finally vested, so the individual's current and future income, assets and liabilities need to be taken into account. Lenders will have to be much clearer on how they will treat small pension pots, and this clarity should be a key part of best-practice guidelines that balance the interests of borrowers and of lenders.[78]

The standards for designated guidance providers will be provided for in a Financial Conduct Authority instrument.[79] Lord Newby explained that they would include requirements regarding the content of sessions:

> They state that the guidance must request all relevant information from the consumer about their pension entitlement; request relevant information about the consumer's financial and personal circumstances that would inform the discussion; discuss the relevant options and the key facts and consequences for each option and, based on the information provided by the consumer, set out other issues for the consumer to consider. Ahead of the guidance session, consumers will be encouraged to gather such information as would be useful for the session. The FCA has been clear as to what information it would consider to be relevant under these standards and which it would expect the guidance service to ask for. In terms of financial information, this would include information about pension pots and benefits, or those of their spouse. By any view, that would include any potential state pension that the individual was going to get, although I am willing to go back to the FCA to make it absolutely clear that that is its understanding. I am sure that it is, and it may be that the wording could be tweaked.
>
> Other things that fall under this heading are current and future sources of income; entitlement to state benefits, current and future; and whether they are a homeowner or renting. This gets to the point that a number of noble Lords have made about the importance of housing wealth […] I should add that the standards already refer explicitly to debt provision.[80]

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76 Ibid c586
77 Ibid c587
78 Ibid c587
79 HL Deb 12 January 2014 c565; FCA, PS14/17 Retirement Reforms and the Guidance Guarantee, including feedback on CP14/11, November 2014, Appendix 1
80 HL Deb 12 January 2015 c593; See also DEP 2015/0070 (housing wealth) and DEP 2015/0068 (state pension)

Funding

In its *Delivering pensions guidance: January 2015 update*, HM Treasury estimated that the cost of the guidance service in financial year 2015-16 was £35 million. This is to be funded by a levy on regulated financial services firms:

> As the Chancellor announced in the budget, HM Treasury will bear the FY14/15 set-up costs of the Pension Wise service. The ongoing cost will be funded by an FCA administered levy on regulated financial services firms. The initial estimate of the cost in FY15/16 is £35m; this will be confirmed in March, in the FCA's fees consultation paper. The operation of any service in its first year naturally carries a higher than usual degree of uncertainty. This is especially true here, given the number of people who have deferred a pension decision in FY14/15 and may wish to access the guidance alongside those coming up to that decision point during the year itself. Rather than incorporate a contingency element into the initial levy, HM Treasury has decided to cover any costs above the levy value itself in the first instance, and reclaim these from the subsequent year's levy (consistent with the policy that the service should be funded by industry). This ensures both that the industry will only be asked to pay for what it can be said with confidence is required to fund the service, and that incentives to deliver an effective, efficient service, providing value for money, are fully aligned.[81]

The Government is bearing the set up costs in 2014/15. Lord Newby explained £20 million had been made available for this in Budget 2014:

> […] grant agreements are already in place to ensure that delivery partners are appropriately funded in the current set-up phase. That funding is coming out of a £20 million development fund that the Chancellor announced in the Budget, of which a £10 million advance was approved by Parliament last July to cover preparatory work on the service.[82]

Guidance providers

Lord Bradley asked about the arrangements with Citizens Advice, which will deliver the face-to-face guidance:

> Specifically, I am seeking assurance that the CABs are capable of delivering the guidance, that they will have sufficient start-up costs and that they will be properly funded to deliver face-to-face guidance through the proposed levy.[83]

He said that involvement in the guidance service would probably take CABs into a new area and a largely new client base:

> We should remember that the enactment date is less than three months away and we have not had any sight of the regulations, while the FCA is developing a standard framework within which guidance will be offered – some of which we have had further information about today. There is still more information to come: information that, again, the CABs will rely on. Clearly, it is not the intention to set up CABs or any other provider to fail. If CABs are to deliver a service from April 2015, they perhaps should have had their guidance and information framework well in place before now.[84]

He also asked for assurance that the service would be adequately funded:

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81 HM Treasury, Delivering pensions guidance: January 2015 update
82 HL Deb 27 January 2015 c155
83 HL Deb 12 January 2015 c595
84 Ibid c596

> We want to ensure the highest quality of that service but we also want to make sure that the other range of activities that are essential in communities are not undermined by the emphasis on the new service.[85]

Lord Newby responded that the Treasury was "committed to the delivery of high-quality guidance from the start" and would be under a duty to ensure people had access to this:

> Given that when we say "pensions guidance" we mean high-quality pensions guidance, that means that there is a legal requirement on the Treasury to will the means as well as the ends.
>
> In terms of the scale of the challenge ahead, we estimate that approximately 300 guidance providers are going to be required, including the CABs, the telephone appointments and the website, and we are actively recruiting them, The funding that the CABs are getting is the subject of continuous discussions between the Treasury and CABs. I gather that, for the moment at least, the CABs feel that they are getting the resources they need to do the job that they are being asked to do without any deflection of their core grant and without there being any requirement to fund this from other sources of income that they receive.[86]

Lord Bradley returned to the issue at Report Stage:

> Specifically, I am seeking assurances that those two organisations [Citizens Advice and the Pensions Advisory Service] are capable of delivering the guidance and that the quality of the guidance will be consistently high across the two delivery partners. Key to this is that the delivery agencies receive the funding they need to deliver a quality advice service for those who request it.[87]

Regarding funding, he asked about the estimates the Government had made of take-up of guidance via the different channels, saying that without such an assessment it was difficult to understand how demand would be managed by the different delivery agencies. He also asked about qualifications and training:

> It has been noted that TPAS is recruiting telephone advice workers at a salary of around £30,000 per annum. Applicants are expected to have five years' experience of pension work and advice and, ideally, a relevant qualification. However, the CABs are recruiting people for face-to-face work on salaries of around £18,000 to £24,000. Applicants there need merely to be numerate, and knowledge of pensions is desirable but not essential.[88]

Furthermore, there were questions about the coverage of the face-to-face service:

> In Committee, it was pointed out that Citizens Advice has a network of some 300 bureaux across the country, but the specialist pension guidance staff would be located in only 44 offices.[89]

Lord Newby responded that grant agreements were already in place to ensure that delivery partners were appropriately funded in the set-up phase.[90] There was a wide degree of

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[85] Ibid c596
[86] Ibid c597
[87] HL Deb 27 January 2015 c150
[88] Ibid c152
[89] Ibid c153
[90] Ibid c155

uncertainty as to how many people would take up the guidance service. Regarding the quality of the service and its coverage, he said:

> The noble Lord and other noble Lords asked a number of detailed questions about citizens advice bureaux's readiness for 6 April. I hope that I can reassure them on progress to date. First, delivery partners have had clarity on FCA standards since they were published last November. That provides the framework for the guidance against which their compliance will be measured. I can assure him that delivery partners and the Treasury have been working hard to ensure that the service will fully comply with those standards.
>
> The noble Lord asked about the 44 participating bureaux. The 44 bureaux, the names of which have already been published, are the first tranche of participating bureaux. We will not limit the number to 44 across the country as a whole; that is the first tranche, and a further wave will be announced shortly. So there will be significantly more than 44, and we are still in discussion with Citizens Advice about exactly what that number should be.
>
> Recruitment is under way, and there has been a very encouraging response so far. I understand the concerns of the noble Lord and others about training and whether, at the end of it, people will be able to give high-quality advice. The development of that programme is well under way and it will be accredited by the Chartered Insurance Institute, which is an extremely well respected professional standards body. All trained guidance specialists must have undergone training and passed the assessment at the end of the training programme.[91]

Lord Bradley remained concerned:

> This is no comment on the integrity or the quality of the CAB. I just worry that by moving into this specialist area, it will not have the level of expertise to give the proper guidance to ensure that people make the right decisions about their retirement income. Again, while I cast absolutely no criticism on the CAB, I worry that the haste in which the service is to be rolled out—in barely eight weeks' time—will not ensure that the bureaux are able to deliver as comprehensively as will be required, or that they have the level of staff in the 44 offices in the first instance to respond to the demand.[92]

3.4 Other issues related to the April 2015 pension flexibilities

Requirements on providers

Lord Newby explained that progress was being made towards the standardisation of pension statements:

> While it is not yet a formal requirement, the Government are clear that progress must be made by industry more quickly. The FCA has clarified in its near final rules that will underpin the guidance service that information about a customer's pension pot must include, at a minimum, the current value of the pension pot, along with information on guarantees and other relevant special features. Building on this, the Treasury is working with the industry to standardise how the key information is presented. We have made it absolutely clear that the Government consider this to be a key priority. […] The Government welcome the FCA's commitment to consider making such standardisation a mandatory requirement in the wide review of its rules that will take

[91] Ibid c156
[92] Ibid c158

place in the first half of this year. If the trials show that such standardisation helps consumers, I imagine that will be a very strong case for the regulator to require it.[93]

Furthermore, the FCA was introducing new requirements on providers to "recommend that consumers should seek guidance or advice rather than simply signposting to it." Firms would also "be required to give a description of the tax implications of the option selected by a consumer."[94] It had also clarified that:

> Where a firm is concerned that an individual is making a decision which does not seem consistent with their circumstances, it can check this with the consumer without it being regarded as regulated financial advice.[95]

A second line of defence

At Committee Stage, Lord Bradley proposed that there should be a 'second line of defence', by placing specific requirements on providers to:

> […] make an active intervention to ensure that they help savers when accessing their DC pension pots to ensure that they get the advice or guidance that they need, check that the products are appropriate for them, and have taken into account the tax implications, their partners, lifespan and other matters relevant to retirement planning.[96]

Baroness Drake said that the need for this was indicated by two recent FCA reports. The interim report of its retirement income market study, for example, had suggested that consumers would be "poorly place to drive effective competition" and that the introduction of "greater choice and potentially more complex products" would "reduce consumer confidence and weaken the competitive pressures on providers to offer good value for money." She was particularly concerned at what happened beyond guidance when the saver moved into the process of selecting a retirement income route:

> It is what happens at that stage – the exchange between the consumer and the provider – that is causing so much anxiety. […] The FCA should require pension providers to take active steps to make people aware of factors passively referred to in the literature and key facts documentation, by asking key questions of the consumer to highlight such matters as the potential impact of health, income tax, dependants, longevity, investment risk and income needs throughout retirement. That will highlight factors whose impact can lead to poor choices if overlooked.[97]

Lord Newby agreed that consumers should be "assured of their protection in the financial services market and […] furnished with the right information to make an informed choice." The FCA was a new body with new powers:

> […] it has a duty to ensure that the retirement income market is working for consumers. That is captured under its statutory objectives, including its objective to secure an appropriate degree of protection for consumers in this market, which already extends across retail financial services markets. The FCA has specifically committed to closely monitor how the retirement income market develops and to take action where appropriate. It has broad powers to take action if there is evidence of mis-selling of products that are clearly inappropriate for consumers. It also has product intervention powers, which allow it to ban features of products or require products to be sold with

[93] HL Deb 12 January 2014 c565
[94] Ibid c566
[95] Ibid c567
[96] HL Deb 12 January 2015 c598
[97] Ibid c601-2

> certain protections or restrictions in place.[…] the FCA's rules […] will require firms to provide a description of the possible tax implications when people apply to access their pension fund. The FCA has also made it clear that firms can question a customer's decision where they feel it is inconsistent with their circumstances without fear of overstepping the boundary into regulated advice.[98]

It was committed to reviewing its rules in the first half of 2015 and would consider whether additional consumer protections should be put in place.[99]

On 26 January 2015, the day before Report Stage, the FCA outlined plans to introduce additional protection for those accessing their defined contribution (DC) pension pot from April:

> Under the new additional protection rules firms will be required to ask consumers about key aspects of the circumstances that relate to the decision they are making about their pension pot. These include issues such as health and lifestyle choices or marital status. This will come into force from April.
>
> Providers will be required to give relevant risk warnings, such as warning of the tax implications of their decisions, in response to answers from consumers. Firms must also further highlight the availability of the Government's new Pension Wise scheme or regulated advice.[100]

This announcement was welcomed by Lord Bradley, Baroness Drake, Lord Hutton, Baroness Greengross and Lord German.[101] Lord Newby explained that the rules would introduce a "second line of defence":

> Pension providers will be required to ask consumers seeking to access their pension savings about key aspects of their circumstances relating to the choice that they are making and give relevant risk warnings in response to the answers. This is a very important element: we are keen not simply to have another tick-box exercise, which we could have done at this point. Providers will also have to highlight that guidance from the Pension Wise service, or regulated advice, can help them to avoid making a poorly informed decision. The FCA will also require that messages should be delivered to consumers in direct and simple language.[102]

The announcement was expected to be ratified by the FCA board at its February meeting. The rules would be introduced quickly under a fast-track procedure but this did not mean they were intended to be temporary:

> The temporary element of them relates to the fact that there has been no consultation. In order to get them in place in time, they have to be introduced quickly under a fast-track procedure. Again, while I cannot formally commit the board or the FCA, I think it is fair to say that there is no intention in anyone's mind that this should be a temporary provision. The new rules have a long-term purpose; there is no temporary element. It is certainly the intention that there will be permanent rules—but, as I say, the transition from temporary to permanent involves the consultation process which they would normally undertake.[103]

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[98] Ibid c603
[99] Ibid
[100] FCA introduces additional protection for consumers ahead of pension freedoms, 26 January 2015
[101] HL Deb 27 January 2015c120-1
[102] Ibid c123
[103] Ibid c123

DWP was working with the Pensions Regulator to see how this could apply to trust-based schemes on the same basis.[104]

Review of the impact of pension flexibilities

Lord Bradley proposed a review of the effects of pension flexibilities 18 months after they were introduced:

> We support the introduction of pensions freedoms and flexibilities, but we want to ensure that they are done in the right way and that consumers are adequately protected. […] The pace at which the wider pension flexibilities provided for in this Bill and the Taxation of Pensions Act have also lead to concerns among a number of other interested parties about whether the Government have fully bottomed out the policy and whether the rollout will go exactly as they are planning.[105]

Issues to consider would include the ongoing position of annuities, the cumulative effect on the revenues of the Treasury and the interaction with changes to social care.[106]

He also thought the Secretary of State should produce a report on the revenue impact of the changes, with particular regard to salary sacrifice:

> Taken together, there is the potential for the Government to lose a great deal of revenue. As a result, we want to probe the impact that this is likely to have on the figures that the Government have presented in the Budget and in subsequent reanalysis. The main issue at the core of this is so-called salary sacrifice […] whereby someone over 55 pays a large part of their salary into their pension pot to avoid paying national insurance and income tax.[107]

Lord Newby said the amendments were unnecessary:

> First, when considering new Clause 1 and the parts of new Clause 2 which relate to Exchequer revenues, it is important to note that in the Autumn Statement the Government published estimates of the Exchequer impact of the policy as a whole. These costings, which were certified by the independent Office for Budget Responsibility, cover all the changes made to the policy since the Budget as a result of consultation. The total impact of these decisions was set out in table 2.1 of the Autumn Statement document.[108]

Regarding the impact on individuals, he said:

> As set out during debate of the *Taxation of Pensions Act*, pensions flexibility does not have a direct consequential impact on household incomes. Distributional effects will be driven by the choices that individuals make about how and when to take their pensions. In addition, household income is not necessarily a reliable measure of pension wealth, particularly in the years immediately prior to retirement. It is possible that the impacts of this policy could be misrepresented if we were to review them only against the distribution of household income.
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> Additionally, Amendment 30B would require the Government to publish behavioural analysis. The costing of tax policies often involves an assessment of the behavioural

[104] Ibid c124
[105] HL Deb 12 January 2014 c571
[106] Ibid c571
[107] Ibid c572; On the treatment of salary sacrifice arrangements, see also DEP 2015-0067
[108] Ibid c575

impact of the measure and, in some cases, the capacity for additional tax planning and avoidance behaviour. These assumptions and methodologies are, of course, certified by the independent OBR. However, as a matter of policy, the Treasury considers that making these detailed behavioural assumptions public can have the potential to affect the behaviour they relate to, and as such can be potentially detrimental to policy-making. The policy costing note published alongside the Autumn Statement explains how the costings have been calculated.[109]

Trade bodies such as the ABI would continue to publish figures on annuity purchase.[110]

Lord Bradley returned to the issue at Report Stage:

> Once more, I urge the Minister to reconsider the Government's opposition to conducting the analysis outlined in the amendment. It is reasonable and proportionate given the speed with which these profound changes are being implemented and will help to ensure clarity and transparency of the effects of the policies, both inside and outside Parliament.[111]

Lord Newby explained why the Government thought this was unnecessary. He concluded by saying that much of the "information requested by this amendment is already in the public domain, published as part of the fiscal process."[112]

Interaction with means-tested benefits and social care

At Report Stage, Baroness Hollis asked about the interaction between pension freedoms, entitlement to income-related benefits and assessment for care and support. Lord Newby explained that someone's decision to use a flexible pension product should not significantly impact on how their means were assessed:

> On guiding principles, the Government want to ensure that someone's decision to use a flexible pension product does not significantly impact on how their means are assessed for social security purposes or social care charging purposes. Our intention is for the principles of the current rules to remain in place after April this year.[113]

A more detailed explanation was provided in writing:

> […] for those below Pension Credit qualifying age, pension pots will be disregarded in both Housing Benefit and Universal Credit unless it is drawn down. Where an actual income is taken from a pension pot, or where capital is withdrawn on an ad hoc basis (or all at once), then this will be taken into account. For example, where someone opts to take a regular drawdown from their pension pot before Pension Credit qualifying age, this would count as income for means-testing purposes, as it currently does where an annuity is purchased.
>
> Where a person below Pension Credit qualifying age has a partner who is above Pension Credit qualifying age, both of whom have not annuitised their pension pots, and is in receipt of income-related benefits, the person below Pension Credit qualifying age's pension pot would be disregarded by Universal Credit and Housing Benefit. However, a notional income from the above Pension Credit qualifying age partner's pension pot (if deferred) would be taken into account.

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109 Ibid c576-6
110 Ibid c577
111 HL Deb 27 January 2015 c169
112 Ibid c160-71
113 Ibid c166

> As you pointed out, for those above Pension Credit qualifying age, a rules provide that any pension product available, whether or not the customer has drawn it, is taken into account when we assess their entitlement, on the principle that people should utilise all forms of income to which they have recourse before claiming income-related benefits. In order to take the pension pot into account, we calculate a notional income based on the annuity that it is deemed the pension pot could yield. The Government intends to change the notional income rules from April 2015, so that 100% (rather than 150% as now) of the income an equivalent annuity would offer is taken into account. This will therefore be a more generous calculation than under the previous rules.
>
> In the example you provided of the 55-year old in receipt of Housing Benefit with a pension pot of £20,000: if left untouched, the pot itself would not be taken into account in the means test until they reached Pension Credit qualifying age – at which point it would be treated as generating a notional income. However, if they chose to access their pot, the funds withdrawn would be taken into account as income or capital as appropriate. Where it is treated as capital, it would be deemed to yield an income if it exceeded the £6,000 lower capital limit. If the capital exceeded the higher capital limit of £16,000, they would lose their entitlement to Housing Benefit.
>
> Individuals who choose to access their pension pot and invest it directly themselves will need to consider that this may affect the level of support which they receive – just as those who choose to save for retirement outside of a pension must do already. We believe that people should use their funds responsibly if the alternative to doing so is claiming income-related benefits.[114]

Baroness Hollis asked about the different treatment of savings in a pension and in an ISA:

> The key difference between pensions and ISAs in the past has not been their tax treatment, which is effectively identical if you are a basic rate taxpayer, both in work and in retirement, with the same tax relief on the way in and on the way out. That makes no difference at all, despite the letter from the Minister. The key difference has always been that ISAs are accessible and pensions are not. Because ISAs were accessible, they counted—rightly, in my view—against income-related benefits. Because pensions have not been accessible but were ring-fenced for retirement, they rightly did not count against income-related benefits. The Minister says that the primary purpose of pensions, and therefore the reason for treating them differently from ISAs between 55 and 65, is that they are for retirement. That is true now, but it will not be after April 2015.[115]

She asked whether people would be able to move savings from ISA into a pension and continue to claim full income-related benefits. Lord Newby responded that she would get a detailed response in writing.[116]

Baroness Hollis expressed her concern that the issue had not been resolved:

> We are eight weeks away and apparently the two departments have not worked out the different rules for the treatment of ISAs and pensions.[117]

She returned to the issue at Third Reading proposing that:

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[114] DEP 2015-0071
[115] Ibid c160
[116] Ibid c166
[117] Ibid c167

> The Treasury shall ensure that appropriate information is provided and disseminated so that people can make informed choices as to the effect of pensions freedoms and flexibilities on income-related benefits and social care costs.[118]

She identified three particular issues:

> The first is income. Let us say that at 56, you have a modest wage of £20,000. You rent privately and get housing benefit as you have minimal savings. You have a small pension pot of £25,000 and, after April, you take £15,000 of that pension pot to pay off debt or buy a new car. Up to 25% of that pot, some £6,000, is obviously tax-free under pension rules but will count as income against your means-tested benefits under DWP rules. Above that £6,000, you will pay income tax as well as lose benefit on the rest of the £15,000. It is essential that anyone on means-tested benefits at 56 knows what the hit will be for accessing their pension pot. It will cost them—and most, I suspect, would not even begin to know how much. They will need a plain English leaflet from CAB offices, welfare rights offices, the local library or charities, for example.
>
> So far, so sort-of simple—but then we come to a more difficult issue, which is that of capital. What happens if, instead of accessing your pension pot to count as income, it simply sits there as capital, fully accessible when you need it but not yet taken, just like an untouched ISA? Up until now, inaccessible pension pots have been ignored—quite sensibly, they do not count against DWP savings rules—whereas other accessible income and savings such as ISAs do. That is sensible as it stops people having, say, £100,000 in building society accounts or ISAs and still getting means-tested benefits, paid for by the taxpayer. That is right, but now the rules of DWP on capital and the new provisions of the Treasury on pensions collide. It is a real mess.
>
> Pensions and ISAs will from April, at age 55, become interchangeable. Pensions need no longer be for retirement; they have, like ISAs, become a savings pot. Both are similarly tax privileged, both are equally accessible and both—or neither—may be fully spent before retirement. There is no difference any more. Yet apparently ISAs will still count against means-tested benefits, while pension pots, though identical to ISAs, will not. Is this fair? No, because if you can access your savings in whatever form they take, you should be expected to do so rather than add to the taxpayer's benefit bill. If you treat them differently, though, as the Government have arbitrarily and illogically decided, people can game the system.
>
> Let us say that you are earning £25,000 a year, with £25,000 in ISAs and £25,000 in your pension pot. You have injured your back and need to stop work soon, and would want means-tested benefits—but your £25,000 of ISAs debar you. What do you do? It is a no-brainer: you cycle your ISAs into your pension pot and shelter them. When next year you retire at 56, you will get full means-tested benefits and potentially the same access to your savings that you had when half of them were ISAs. Great for that individual, but for the rest of us it means bigger benefit bills to be footed by the taxpayer—and no doubt youngsters of 20 will be blamed for the increase in the bills.
>
> Worse, spending your ISAs on, say, helping your son with his university fees could count as deliberately depriving yourself of capital. Therefore, to check such cheating, you are treated as though you still possess that money, as you cannot give it away and still get means-tested benefits. So will sheltering your ISAs or indeed any savings in your fully accessible pension pot be regarded as deprivation of capital—in other words, cheating? How can the DWP track that? How can people understand all or any of this?

[118] HL Deb 5 February 2015 c786

The third issue, and in many cases the most unfair and unpleasant, is social care. Social care at retirement, as noble Lords will know, is means-tested. At normal retirement age your pension pot, even if you have not touched it, is treated as though it was giving you a notional annuity income. This notional income is included when assessing what you pay for social care. Pension pots are not sheltered; okay, but if you are 55 and have built up a modest pension pot at work and now, alas, have broken your back and need social care, even though your pension pot is fully accessible, as if you were 65, your pension is not taken into account for social care means testing. Get injured at 55 and you pay little or nothing for your social care. Live on—as we hope—a few years longer, and your pension is taken into account and your social care bills soar. How is this fair? I reckon that it is age discrimination. How can we expect people to understand such perverse rules? I see judicial review ahead; this is a shambles.[119]

Lord Newby responded that DWP would issue clear guidance on the issue:

The DWP will issue clear guidance on the treatment of pension pots in income-related benefits in advance of April. This is to help people make informed decisions about accessing their pension pot. We plan to do this, as requested by the noble Baroness, by producing a leaflet which we will both print in hard copy and place online on GOV.UK. Other websites will be able to link to this information, and there will definitely be such a link from the GOV.UK Pension Wise website, which will direct those who are affected by this issue to the DWP information. Pension Wise will be a key way of equipping people with this information online on GOV.UK, on the phone through the Pensions Advisory Service, and face to face through citizens advice bureaux across the country. Alongside the new content being developed for Pension Wise, the new guidelines will also be reflected in the training programme for guidance specialists from the Pensions Advisory Service and Citizens Advice.[120]

Regarding the different treatment of ISAs and pension pots, the Government thought the current position remained the right one:

ISAs are taken fully into account in income-related benefits, whereas we ignore untouched pension pots until someone reaches pension credit qualifying age. The noble Baroness argues that this is an arbitrary distinction now that the tax treatment of the two products is more aligned.

The Government, however, firmly believe that the difference is an important one. ISAs are for use at any time, but we specifically encourage people to save into pensions to provide for themselves in later life. We would not want to design our benefit system in such a way as to encourage people to spend their retirement savings when they are still below pension credit qualifying age. Aligning the treatment of ISAs with that of pension pots in the means test would be expensive for the taxpayer, as people with resources could secure more benefit. On the other hand, aligning the treatment of pension pots with that of ISAs would mean that claimants could lose benefits and so may deplete their pension savings before reaching their retirement. Neither outcome is desirable, and we therefore believe that the current position remains the right one.[121]

He said it was “not the point at which money goes from ISAs into pensions that is a deprivation of assets”:

The Government have considered the matter seriously and, in the light of our analysis, we do not feel that we need to act on this matter presently. The numbers of income-

[119] HL Deb 5 February 2015 c787
[120] Ibid c791
[121] Ibid c791

> related benefits claimants with substantial ISAs is relatively modest and, should people move their savings to their pension pot, the additional upfront welfare costs to the Exchequer are partly offset by welfare savings in later life as those individuals would rely less on income-related benefits as a pensioner. On this issue, we plan to monitor behaviour after April when the new pension flexibilities are introduced, and respond proportionately if we need to.
>
> I should add that people deliberately depriving themselves of money in order to secure or increase benefit entitlement may be subject to rules on deprivation of assets that already exist in both the benefit and social care systems.
>
> **Baroness Hollis of Heigham:** Is the Minister saying—he may go on to say this in the next sentence—that if you cycle your ISAs into your pensions, that would be deprivation of capital?
>
> **Lord Newby:** No, I do not think I am saying that. I will make sure that I am not and correct myself if I am wrong. All I am saying is that the deprivation of assets rules which currently apply will continue to apply in respect of money taken out of ISAs.
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> **Baroness Hollis of Heigham:** That was my question. Can the Minister explain to me why, if money is taken out of ISAs and goes into pensions, that is not deprivation of assets?
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> **Lord Newby:** It is not the point at which money goes from ISAs into pensions that is a deprivation of assets. Deprivation of assets may occur if and when money is taken out of one or both of those pots.[122]

Baroness Hollis said hoped these undertakings would "give us a chance to get the policy clear so that the leaflets can be clear."[123]

Transfers from private sector defined benefit schemes

The flexibilities to be introduced from April 2015 are for those with defined contribution pension savings. However, members of defined benefit (DB) schemes have the right to a Cash Equivalent Transfer Value, allowing them to transfer to any other pension scheme, subject to certain conditions. The Government consulted on whether they should continue to allow such transfers after April 2015.[124] In its response to the consultation, the Government said that, as now, members of private sector DB schemes would be able to transfer to defined contribution schemes, except where the pension was in payment.[125] New safeguards would be introduced to protect individuals, who would be required to take advice, and pension schemes, who would be issued with guidance.[126]

Clause 48 (Bill 63 HL) would place a requirement on providers to ensure that an individual has sought independent advice before making a transfer of 'safeguarded benefits' (i.e. benefits other than money purchase or cash balance benefits).[127] Subsection 3 provides for a regulation-making power to make exceptions to this requirement. In its response to consultation in July 2014, the Government said the requirement to seek advice would not

[122] Ibid c792
[123] Ibid c794
[124] HM Treasury, Freedom and Choice in Pensions, Cm 8835, March 2014, chapter 5
[125] HM Treasury, Freedom and choice in pensions: the government's response to consultation, Cm 8901, July 2014
[126] Ibid
[127] See HMRC's Registered Pension Schemes Manual (RPSM20000000 – Glossary)

apply to “small pot holders with pension savings below £30,000 as the trivial commutation rules would still apply.”[128]

At Committee Stage to provide that a scheme must check whether a member has received appropriate independent advice before paying an uncrystallised funds pension lump sum from a scheme with a guaranteed annuity rate. Lord Newby explained:

> […] at Second Reading my noble friend Lord Bourne explained that there was a need to define flexible benefits due to differences between pensions and tax legislation regarding money purchase benefits. The definition of flexible benefits contains three elements. These are: money purchase benefits; cash balance benefits; and a third category of benefit which is not money purchase or cash balance but is calculated by reference to an amount available for the provision of benefits. The most common form of benefit offered in this category relates to a pension with the option of a guaranteed annuity rate. It is to this third category that the amendments are primarily aimed.
>
> Amendments 46 and 50 ensure that a scheme must check that a member has received appropriate independent advice before paying an uncrystallised funds pension lump sum from arrangements in the third category of flexible benefit, which includes guaranteed annuity rate pensions. Benefits within this third category offer a level of security of income akin to defined benefit arrangements. Guaranteed annuity rates were typically issued in the late 1980s and 1990s, their distinguishing feature being an enticement to customers promising that when they came to take these pensions, if they bought their annuity with the provider with which they had accumulated the pension, they would get an annuity rate specified at the point of purchase.
>
> Due to the decline in annuity rates, the pensions these guaranteed annuity rate arrangements provide by means of annuities are especially generous. Therefore in the Bill they are given the same safeguarded treatment as a defined benefit pension. An individual should, in each case, understand what it is they are giving up before taking advantage of the new flexibilities. The Bill already requires a scheme to check that advice has been received before an individual transfers their rights from such an arrangement, or where a member converts their benefit into a draw-down arrangement.
>
> Amendment 46 extends this protection to the circumstance where a member or survivor takes an uncrystallised funds pension lump sum. Clause 48 does not currently require this because taking such a lump sum does not constitute a transfer or a conversion. I must emphasise that these amendments only require that advice be taken before taking an uncrystallised lump sum in return for safeguarded benefits. It does not require that advice be taken on uncrystallised lump sums in any other circumstances.[129]

Parallel provisions were made for Northern Ireland.[130]

The Delegated Powers and Regulatory Reform Committee said that regulations under clause 48 (3) – providing for exceptions to the requirement on schemes to check that an individual

[128] HM Treasury, Freedom and choice in pensions: the government’s response to consultation, Cm 8901, July 2014
[129] HL Deb 12 January 2015 c609
[130] Ibid

has received appropriate independent advice - should be subject to the affirmative resolution procedure.[131]

At Report Stage, the Government said that because of time constraints, regulations providing for an exemption for those with safeguarded wealth of £30,000 or less would be subject to the negative resolution procedure. Those providing for any other sort of exception would be subject to the affirmative procedure. Lord Newby explained:

> Amendment 4 divides the original power, creating a specific power to exempt from the safeguard those who have rights to safeguarded benefits that are worth less than an amount specified in the regulations. This relates to the exemption we intend to make in regulations for those with safeguarded wealth of £30,000 or less. […] Amendment 14 changes the procedure that applies to regulations made under these powers, so that only regulations that make an exception for those whose safeguarded wealth is below the specified amount are subject to the negative procedure. These regulations will need to be in place by 6 April, so it will not be possible to make them subject to the affirmative procedure. However, regulations that create any other sort of exception will be subject to the affirmative procedure.[132]

He also said that the Government had decided that the £30,000 limit would only apply to safeguarded benefits in the scheme from which the member intended to transfer:

> The final part of Amendment 4 allows the regulations to specify exactly how this £30,000 threshold will be calculated. In response to feedback from stakeholders, we have decided that this should apply only to safeguarded benefits in the scheme from which the member intends to transfer, and be calculated on the basis of the cash equivalent transfer value, which is the standard measure in the industry.[133]

The DPRRC had also recommended that regulations under clause 48 (7) – which would define ‘appropriate independent advice’ - should be subject to the affirmative procedure.[134]

At Report Stage, Lord Newby explained that the intention was to define appropriate independent advice by reference to an activity regulated by the FCA. The Government was amending the clause to provide that advice should relate to the characteristics of the adviser providing it, with regulations subject to the affirmative procedure. It was retaining the power to specify the nature of advice in order to be able to respond to developments:

> In Committee, we explained that in the response document to the consultation on freedom and choice in pensions, the Government set out that the advice which schemes would have to check had been received would be given by an adviser authorised by the FCA. We also explained that our intention is to define “appropriate independent advice” in regulations by reference to an activity regulated by the FCA, and that in parallel to this Bill the Government will seek to legislate to add a new activity to the FCA’s regulated activity order. This will be done by means of a statutory instrument amending the *Financial Services and Markets Act 2000 (Regulated Activities) Order 2001*, which will be subject to the affirmative procedure. The Treasury will lay a draft of this statutory instrument before the end of the month, and ahead of Third Reading.

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[131] Delegated Powers and Regulatory Reform Committee – Twelfth Report. Pension Schemes Bill; Cohabitation Rights Bill [HL]; National Insurance Contributions Bill: Government Response, 17 December 2014
[132] HL Deb 27 January 2015 c125
[133] Ibid
[134] Delegated Powers and Regulatory Reform Committee – Twelfth Report. Pension Schemes Bill; Cohabitation Rights Bill [HL]; National Insurance Contributions Bill: Government Response, 17 December 2014

> Amendment 5 draws upon Amendment 44A, tabled in Committee by the noble Lords, Lord Bradley and Lord McAvoy, which suggested that advice should relate to the characteristics of the adviser providing it, as opposed to the nature of the advice itself. The amendment provides that, "appropriate independent advice" must be,
>
>> "given by an authorised independent adviser",
>
> and goes on to set out that this means someone who,
>
>> "has permission under … the Financial Services and Markets Act 2000 … to carry on a regulated activity specified in regulations".
>
> This pertains to the link we intend to draw from regulations between the definition of "authorised independent adviser" and the new regulated activity that the Treasury will seek to legislate to create.
>
> The clause, as amended, retains the power to specify the nature of the advice. This is being done as a precautionary measure to allow the Government to respond to practice emerging after April, which may require aspects of the definition of "appropriate independent advice" to go beyond that which can be expressed purely by the link to the FCA's regulated activity.[135]

The Government also made amendments to ensure that the transfer provisions contained in Schedule 4, which replace provisions under the *Pension Schemes Act 1993,* continue to operate effectively.[136] It made a further amendment at Third Reading to put "beyond doubt that the right to a transfer value falls away after either three months or any extension period granted by the legislation." Corresponding provision was made for Northern Ireland.[137]

Transfers out of public service defined benefits schemes

Provisions in chapter 4 of the Bill would introduce restrictions on transfers out of unfunded defined benefit public service pension schemes in Great Britain and Northern Ireland to schemes from which it is possible to acquire a right or entitlement to flexible benefits. The reason was that this would impose a cost that would need to be met either by the Exchequer or active scheme members.[138] The Government made minor and technical amendments to these provisions at Committee Stage.[139]

Cap on charges in drawdown funds

The Government made minor changes to the clauses dealing the drawdown of pension benefits. The first set followed amendments made to what is now the *Taxation of Pensions Act 2014*. [140] There were also small consequential amendments designed to ensure the transfer provisions worked as intended.[141]

Lord Bradley proposed that there should be a regulation-making power enabling a cap to be imposed on charges in flexi-access drawdown funds. He said:

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[135] HL Deb 27 January 2015 c125-6
[136] Ibid c171-3
[137] HL Deb 5 February 2015 c796
[138] HM Treasury, Freedom and Choice in Pensions, March 2014, Cm 8835, Chapter 5, para 5.6-7
[139] HL Deb 12 January 2015 c621-2; See also Amendments to Pension Schemes Bill (private sector defined benefit transfers),Impact Assessment 19 September 2014
[140] HL Deb 12 January 2015 c611
[141] Ibid c612-3

> The cap that has been introduced on charges for work-based pension schemes of 0.75% a year has no equivalent in draw-down products, but from April a great many more savers—perhaps an estimated 320,000—will be using these products to get a retirement income. They should be protected from unfair charges.[142]

He was supported by Baroness Drake, who said:

> The cost of income draw-down and the charges will come under intense scrutiny and fierce debate. The FCA market review has revealed that charges in these products can be high. Yet retail income draw-down products will not be scrutinised by the independent governance committees that have been put in place within the pensions industry […] There is not time to meet all the challenges associated with the new freedoms in pensions before April 2015—this is work in progress for some time to come. But it is the right time to recognise that the Government should be given the powers to regulate and control the charges and the quality standards of these products.[143]

Lord Bourne said the amendment was unnecessary:

> There already exist regulation-making powers which allow the Government to cap charges on the new flexi-access draw-down funds. The Government took broad powers under the Pensions Act 2014 to limit or ban charges borne by members of any pension scheme. These powers would allow us to cap charges on draw-down funds offered by a pension scheme, including any new flexi-access draw-down funds, if this proves necessary to protect consumers.
>
> Similarly, the Financial Services and Markets Act 2012 gave the Financial Conduct Authority wide-ranging product intervention powers. Under these powers, the Financial Conduct Authority also has the ability to cap charges on draw-down products, including flexi-access draw-down funds where these are offered by insurance companies. These existing powers cover all the institutions which could offer such draw-down arrangements.[144]

Lord Bradley returned to the issue at Report Stage, asking for further details of the Government's plans.[145] Lord Bourne said the Government would monitor developments in this area:

> Flexible draw-down is a relatively niche product, aimed primarily at those savers with large pension pots. HMRC data from the start of 2014 showed that only 5,000 people per year have entered flexible draw-down, which has been in place since 2011. Flexible draw- down is clearly not currently a mass-market product. With the introduction of the new flexibilities from April of this year, we expect this to change. We have given the industry a great deal of flexibility to develop a range of more flexible retirement income products and offer consumers greater choice. We want to see a vibrant and competitive marketplace, bringing forward products that meet consumers' needs and enable consumers to make reasoned choices. The Government believe that a competitive market is the best way to ensure that products are well priced and we expect the expansion in take-up of draw-down products to exert a downward pressure on charges. Moreover, as scheme members can withdraw variable amounts, draw-down products generally require more administrative activity than accumulation-phase products. With the introduction of the new pension flexibilities, none of us can be

[142] Ibid c613-4
[143] Ibid c616
[144] Ibid c617-8
[145] HL Deb 27 January 2015 c132

> absolutely certain how this market will develop. […] Imposing a charge cap on draw-down at this stage, before we have seen the charges on the new products that are currently under development, could therefore risk setting a new norm and arrest any reduction in charge levels, or set a charge that is too low to be deliverable and stifle the draw-down market altogether. We therefore need to monitor how this market develops from April to gather further evidence about average charge levels before making any decision on what would be an acceptable charge level.[146]

Power to make consequential amendments

At Committee Stage, the Government made technical amendments to enable the regulation-making powers in clauses 80 and 81 to be extended to Northern Ireland.[147]

[146] Ibid c133
[147] Ibid c632-3; DEP 2015-0131