



House of Commons

Tuesday 4 November 2014

PUBLIC BILL COMMITTEE PROCEEDINGS

PENSION SCHEMES BILL

[NINTH AND TENTH SITTINGS]

Steve Webb

Clause 44, page 17, line 12, after “3” insert “and section (*Pensions guidance*) and Schedule (*Pensions guidance*)” *Agreed to* 58

Clause, as amended, agreed to.

Clause 45 agreed to.

Clause 14 agreed to.

NEW CLAUSES

Steve Webb

To move the following Clause—

Agreed to NC1

“Extension to Scotland of certain provisions about marriage of same sex couples

Sections 17(11), 24D(5), 37(7) and 38A of the Pension Schemes Act 1993 (regulations about relevant gender change cases) extend to Scotland.”

Steve Webb

To move the following Clause—

Agreed to NC2

Pension Schemes Bill, *continued*

“Judicial pensions: pension sharing on divorce etc

In paragraph 1(5) of Schedule 2A to the Judicial Pensions and Retirement Act 1993 (pension credits), for the words from “in respect of the office” to the end substitute “in respect of the rights from which the pension credit is derived”.

Steve Webb

Agreed to NC3

To move the following Clause—

“Pension scheme for fee-paid judges

- (1) In the Judicial Pensions and Retirement Act 1993, after Part 1 insert—

“PART 1A

FEE-PAID JUDGES

18A Pension scheme for fee-paid judges

- (1) The appropriate Minister may by regulations establish a scheme for the payment of pensions and other benefits to or in respect of fee-paid judges.
 - (2) The scheme may make provision for payments to or in respect of a person in relation to the person’s service before the scheme is established.
 - (3) No benefits are to be provided under a new public service pension scheme in relation to service in relation to which benefits are to be provided under a scheme under this section.
“New public service pension scheme” means a scheme under—
 - (a) section 1 of the Public Service Pensions Act 2013, or
 - (b) section 1 of the Public Service Pensions Act (Northern Ireland) 2014 (c. 2).
 - (4) Regulations under this section may, in particular, include provision corresponding or similar to—
 - (a) any provision made by Part 1, section 20 or Schedule 2 or 2A;
 - (b) any provision that may be made by regulations under Part 1, section 20 or Schedule 2 or 2A.
 - (5) In this section—
“judge” means a person who holds an office specified in the regulations;
“fee-paid judge” means a judge whose service is remunerated by the payment of fees (as opposed to the payment of a salary).”
- (2) Schedule (*Amendments to do with section (Pension scheme for fee-paid judges)*) contains related amendments.”
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Steve Webb

Agreed to NC4

To move the following Clause—

Pension Schemes Bill, *continued*

“Pension sharing and normal benefit age

- (1) The Pension Schemes Act 1993 is amended as follows.
- (2) In section 101B (interpretation), for the definition of “normal benefit age” substitute—
 - ““normal benefit age”, in relation to a pension credit benefit for a member of a scheme, is the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);
 - “normal pension age”, in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);”.
- (3) In section 101C (basic principle as to pension credit benefit), for subsection (1) substitute—
 - “(1) The normal benefit age in relation to a pension credit benefit for a member of a scheme—
 - (a) must not be lower than 60, and
 - (b) must not be higher than the permitted maximum.
 - (1A) The “permitted maximum” is 65 or, if higher, the highest normal pension age for any benefit that is payable under the scheme to or in respect of any of the members by virtue of rights which are not attributable (directly or indirectly) to a pension credit.””

Steve Webb

Agreed to NC5

To move the following Clause—

“Duty to act in the best interests of members

- (1) Regulations may impose a duty on the managers of a relevant non-trust based scheme to act in the best interests of members when taking decisions of a specified description.
- (2) In this section “relevant non-trust based scheme” means a non-trust based scheme that is—
 - (a) a shared risk scheme, or
 - (b) a defined contributions scheme under which any of the benefits that may be provided are collective benefits.
- (3) Regulations under this section—
 - (a) may provide for the duty to act in the best interests of members to override obligations that are inconsistent with that duty (including obligations imposed by any instrument, enactment or rule of law), but
 - (b) do not otherwise affect any duty that might arise apart from this section.
- (4) Regulations under this section may provide for the consequences of a manager breaching (or threatening to breach) the duty to act in the best interests of members to be the same as the consequences of breaching (or threatening to breach) a fiduciary duty owed by the manager to the members and, accordingly, for the duty to be enforceable in the same way as a fiduciary duty.

Pension Schemes Bill, *continued*

- (5) In this section—
- “collective benefit” has the meaning given by section 19;
 - “defined contributions scheme” has the meaning given by section 4;
 - “non-trust based scheme” means a scheme that is not established under a trust;
 - “shared risk scheme” has the meaning given by section 3.”
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Steve Webb

Agreed to NC6

To move the following Clause—

“Collective benefits exempt from indexation

- (1) In section 51 of the Pensions Act 1995 (annual increase in rate of pension)—
- (a) in subsection (1), for “Subject to subsections (6) and (7)” substitute “Subject to subsections (6) to (7A)”;
 - (b) after subsection (7) insert—
 - “(7A) This section does not apply to any pension, or part of a pension, that is a collective benefit.”
- (2) Omit section 21(2) of the Pensions Act 2011, which is no longer needed given subsection (1).”
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Steve Webb

Agreed to NC7

To move the following Clause—

“Investment powers

- (1) Regulations may make provision about—
- (a) the investment powers of the trustees or managers of a pension scheme in connection with collective benefit investments;
 - (b) their powers to delegate decisions in connection with collective benefit investments (including provision as to liability for delegated decisions);
 - (c) the investment powers of any person to whom they have delegated decisions in connection with collective benefit investments.
- (2) The regulations may, in particular—
- (a) make provision corresponding or similar to any provision made by section 34 or 36 of the Pensions Act 1995 (powers of investment and delegation and choice of investments for occupational trust-based schemes);
 - (b) disapply those sections in relation to collective benefit investments.”
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Pension Schemes Bill, *continued*

Steve Webb

Agreed to NC8

To move the following Clause—

“Restriction on borrowing by trustees or managers

- (1) Regulations may prohibit a person to whom this section applies from borrowing money or acting as a guarantor except in specified cases.
 - (2) This section applies to—
 - (a) the trustees or managers of a pension scheme under which any of the benefits that may be provided are collective benefits, and
 - (b) any person to whom they have delegated decisions about collective benefit investments.”
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Steve Webb

Agreed to NC9

To move the following Clause—

“Investment powers: duty of care

- (1) Regulations may make provision to prevent any instrument or agreement from excluding or restricting any liability of the trustees or managers of a pension scheme, or any person to whom they have delegated decisions, in respect of the performance of investment functions involving collective benefit investments.
 - (2) The regulations may, in particular—
 - (a) make provision corresponding or similar to any provision made by section 33 of the Pensions Act 1995 (duty of care in respect of investment powers for occupational trust-based schemes);
 - (b) disapply that section in relation to collective benefit investments.”
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Steve Webb

Agreed to NC10

To move the following Clause—

“Payment of amounts out of collective benefit funds

- (1) Regulations must prohibit the making of payments out of funds held for the purposes of providing collective benefits except for—
 - (a) payments made for the purpose of providing those benefits, or
 - (b) other specified payments.
 - (2) The regulations may, in particular, make provision corresponding or similar to any provision made by section 37 of the Pensions Act 1995 (payment of surplus to employer in the case of an occupational trust-based scheme).”
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Pension Schemes Bill, *continued*

Steve Webb

Agreed to NC11

To move the following Clause—

“Regulations under Part 3: overriding requirements

Regulations under this Part may include provision for them to override the provisions of a pension scheme to the extent that there is a conflict.”

Steve Webb

Agreed to NC12

To move the following Clause—

“Pensions guidance

Schedule (*Pensions Guidance*) contains amendments of the Financial Services and Markets Act 2000, and of other legislation, that are about the giving of pensions guidance to pension scheme members with a right or entitlement to cash balance benefits or other money purchase benefits.”

Gregg McClymont

Withdrawn NC13

To move the following Clause—

“Scale of pension schemes

- (1) The fiduciary duty of pension scheme trustees shall include a duty to consider whether the scheme has sufficient scale to deliver good value for members.
 - (2) Where trustees take the view that the scheme has insufficient scale, they must consider whether merger with another scheme would be in the members’ interests.
 - (3) The Pensions Regulator shall have power to direct merger of pensions schemes where it would be in the interests of the members of each of the relevant schemes for merger to take place.
 - (4) The Pensions Regulator shall exercise this power in accordance with a methodology on which it has publicly consulted and which has been agreed with the Secretary of State.
 - (5) The methodology set out in subsection (4) shall be kept under regular review and revised when necessary, subject to further consultation and agreement from the Secretary of State.”
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Gregg McClymont

Negated on division NC14

To move the following Clause—

Pension Schemes Bill, *continued***“Fiduciary duty of trustees**

- (1) The Secretary of State may by regulations—
 - (a) require any pension scheme, which is not already overseen by independent trustees, to appoint a board of independent trustees; and
 - (b) set out the powers and duties of a board appointed under subsection (1)(a).
- (2) Regulations under this section—
 - (a) shall be made by statutory instrument, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (3) The board of independent trustees shall have a fiduciary duty towards members of the scheme overseen by them.
- (4) The fiduciary duty set out in subsection (3) shall take precedence over any duty to—
 - (a) the shareholders in, or
 - (b) other owners of,the operators of the scheme.
- (5) In relation to any matters of member interest, decisions of the board of independent trustees shall be binding on the board of directors or other analogous bodies.”.

Gregg McClymont

Negatived on division NC15

To move the following Clause—

“Decumulation

- (1) A qualifying money purchase scheme may not sell annuities directly to anyone who has saved with the scheme unless this is the recommendation of an independent annuity broker. A relevant scheme may provide an independent brokerage service itself. A self-provided annuity brokerage service will be considered independent for the purposes of this Act if the provision of its services is subject to the direction of independent trustees.
 - (2) Pension schemes shall ensure that any brokerage service selected or provided meets best practice in terms of providing members with—
 - (a) an assisted path through the annuity process;
 - (b) ensuring access to most annuity providers; and
 - (c) minimising costs.
 - (3) The standards meeting best practice for annuity brokerage services shall be defined by the Pensions Regulator after public consultation.
 - (4) The standards set out in subsection (3) shall be reviewed every three years and, if required, updated.”.
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Pension Schemes Bill, *continued*

NEW SCHEDULES

Steve Webb

Agreed to NS1

To move the following Schedule—

“AMENDMENTS TO DO WITH SECTION (*PENSION SCHEME FOR FEE-PAID JUDGES*)*Pensions (Increase) Act 1971 (c. 56)*

- 1 The Pensions (Increase) Act 1971 is amended as follows.
- 2 In section 19(2)(a) (extent to Northern Ireland)—
 - (a) after “or section” insert “18A or”, and
 - (b) after “section 10 of that Act” insert “or provision made under section 18A of that Act that is corresponding or similar to the provision that may be made by regulations under section 10 of that Act”.
- 3 In Schedule 2 (official pensions), after paragraph 4A insert—

“4AA A pension payable under a scheme made under section 18A of the Judicial Pensions and Retirement Act 1993, other than a pension payable under or by virtue of provision that is corresponding or similar to the provision that may be made by regulations under section 10 of that Act.”

Judicial Pensions and Retirement Act 1993 (c. 8)

- 4 The Judicial Pensions and Retirement Act 1993 is amended as follows.
- 5 In section 22 (application of the Pensions (Increase) Act 1971 to Northern Ireland), in subsection (2)—
 - (a) after “shall include” insert “—
 - (a) ”;
 - (b) at the end insert “; and
 - (b) pensions payable under a scheme made under section 18A above, other than pensions payable under or by virtue of provision that is corresponding or similar to the provision that may be made by regulations under section 10 above.”
- 6 (1) Section 28 (funding arrangements) is amended as follows.,
 - (2) In subsection (2) (benefits payable out of money provided by Parliament), after paragraph (a) (but before the “and” at the end) insert—

“(aa) any pension or other benefits payable under a scheme made under section 18A above;”.
 - (3) In subsection (7), for “section 10 above” substitute “—
 - (a) section 10 above, or
 - (b) provision made under section 18A above that is corresponding or similar to the provision that may be made by regulations under section 10 above.”
- 7 In section 28A (contributions in respect of Northern Ireland judges), at the end insert “or as a fee-paid judge in Northern Ireland (within the meaning given by section 18A)”.

Pension Schemes Bill, *continued*

Steve Webb

Agreed to NS2

To move the following Schedule—

“PENSIONS GUIDANCE

- 1 The Financial Services and Markets Act 2000 is amended as follows.
 2 After section 333 insert—

“PART 20A

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PENSIONS GUIDANCE

333A Introduction and definitions

- (1) This Part is about the giving of pensions guidance.
- (2) “Pensions guidance” means guidance given for the purpose of helping a member of a pension scheme to make decisions about what to do with the cash balance benefits or other money purchase benefits that may be provided to the member.
- (3) In this Part—
 “cash balance benefits” has the meaning given by section 152(5) of the Finance Act 2004;
 “money purchase benefits” has the meaning given by section 152(4) of the Finance Act 2004;
 “pensions guidance” has the meaning given by subsection (2);
 “pension scheme” has the meaning given by section 150(1) of the Finance Act 2004.

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*Giving of pensions guidance***333B Treasury’s role in relation to pensions guidance**

- (1) The Treasury must take such steps as they consider appropriate to ensure that people have access to pensions guidance.
- (2) The Treasury may—
 (a) seek to increase awareness of the availability of the guidance;
 (b) undertake or commission research relating to the giving of the guidance.

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333C Giving of pensions guidance

- (1) The bodies listed in subsection (2) are to give pensions guidance in accordance with arrangements made with the Treasury.
- (2) Those bodies are—
 (a) the Pensions Advisory Service Limited;
 (b) the National Association of Citizens Advice Bureaux;
 (c) the Scottish Association of Citizens Advice Bureaux;
 (d) the Northern Ireland Association of Citizens Advice Bureaux.
- (3) The bodies listed in subsection (2) may give pensions guidance by arranging for it to be given by another person (including another listed body).

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Pension Schemes Bill, *continued*

- 40 (4) The National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux and the Northern Ireland Association of Citizens Advice Bureaux may jointly carry out their functions of giving pensions guidance.
- (5) The Treasury may by regulations repeal one or more of paragraphs (a) to (d) of subsection (2).
- 45 (6) Regulations under subsection (5) may make consequential amendments of this Act.

333D Financial assistance to bodies involved in giving pensions guidance

- (1) The Treasury may make grants or loans or give any other form of financial assistance to—
- 50 (a) the Pensions Advisory Service Limited;
- (b) the Northern Ireland Association of Citizens Advice Bureaux.
- (For the power to make grants to the National Association of Citizens Advice Bureaux and the Scottish Association of Citizens Advice Bureaux see section 40A of the Consumers, Estate Agents and Redress Act 2007.)
- 55 (2) Any grant, loan or other form of financial assistance under subsection (1)—
- (a) is to be made or given for the purpose of enabling the body to carry out its functions under section 333C(1), and
- 60 (b) may be made or given subject to such other terms as the Treasury consider appropriate.
- (3) Any expenses incurred by the Treasury under this section are to be met out of money provided by Parliament.

*Designation of guidance providers***65 333E Designation of providers of pensions guidance**

- (1) In this Part “designated guidance provider” means—
- (a) the Pensions Advisory Service Limited,
- (b) the National Association of Citizens Advice Bureaux,
- (c) the Scottish Association of Citizens Advice Bureaux,
- 70 (d) the Northern Ireland Association of Citizens Advice Bureaux, or
- (e) a person designated by the Treasury as someone who must, in giving pensions guidance, comply with standards set by the FCA under section 333G.
- 75 (2) Before designating a person under subsection (1)(e), the Treasury must—
- (a) consult the FCA,
- (b) notify the person to be designated, and
- (c) consider any representations made.
- 80 (3) The Treasury may revoke a designation under subsection (1)(e).
- (4) The Treasury must give notice in writing of a designation under subsection (1)(e) or the revocation of a designation under subsection

Pension Schemes Bill, *continued*

(3) to the person designated or (as the case may be) the person whose designation has been revoked.

- 85 (5) The Treasury must send a copy of a notice given under subsection (4) to—
- (a) all other designated guidance providers, and
 - (b) the FCA.
- 90 (6) The Treasury must from time to time publish, in such manner as they consider appropriate, a list of the persons who are designated under subsection (1)(e).

*False claims when giving pensions guidance***333F Offence of falsely claiming to be giving pensions guidance under Treasury arrangements**

- 95 (1) It is an offence for a person who is not giving pensions guidance under arrangements made with the Treasury—
- (a) to describe himself (in whatever terms) as a person who is doing so, or
 - 100 (b) to behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is doing so.
- (2) For the purposes of subsection (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.
- 105 (3) In proceedings for an offence under this section it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (4) A person guilty of an offence under this section is liable on summary conviction—
- 110 (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
 - 115 (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.
- (5) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in
- 120 subsection (4)(a) to 51 weeks is to be read as a reference to 6 months.
- (6) In relation to an offence committed before section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (4)(a) to a fine is to be read as a reference to a fine not exceeding level 5 on the standard scale.

Pension Schemes Bill, *continued*

125 *Standards for giving of pensions guidance by designated guidance providers*

333G Standards for giving of pensions guidance by designated guidance providers

- (1) The FCA must from time to time set standards for the giving of pensions guidance by designated guidance providers.
- 130 (2) A failure by a designated guidance provider to comply with a standard set under this section is actionable at the suit of a private person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty.
- 135 (3) In subsection (2) “private person” has the same meaning as in section 138D.
- (4) Standards set under this section may provide for subsection (2) not to apply to a failure to comply with a specified provision of the standards.
- 140 (5) The procedural provisions of this Act in the first column of the table apply to the setting of standards under this section as if references in those provisions to the making of rules (however expressed) were references to the setting of standards and with the additional modifications in the second column.

<i>Procedural provisions of this Act</i>	<i>Additional modifications</i>
145 Sections 138G and 138H	Treat the references to a rule-making instrument as references to a standard-making instrument.
150 Section 138I	Treat— <ul style="list-style-type: none"> (a) subsection (1)(a) as if it were omitted; (b) subsection (2)(d) as if it referred to an explanation of the FCA’s reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.
160 Section 138L	Treat the reference in subsection (1) to consumers (as defined in section 425A) as a reference to recipients of pensions guidance from designated guidance providers.
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Pension Schemes Bill, *continued***333H Monitoring of compliance with standards by designated guidance providers**

- 170 (1) The FCA must maintain arrangements for monitoring compliance by designated guidance providers with the standards set under section 333G.
- (2) Sections 165 and 167 apply for the purpose of enabling the FCA to monitor compliance but as if—
- 175 (a) references to an authorised person or a former authorised person were references to a designated guidance provider or a former designated guidance provider;
- (b) section 165(7)(b) to (d) were omitted;
- (c) the reference in section 167(5A)(b) to the FCA or the PRA were a reference to the FCA.
- 180 (3) Section 175 applies as if a power that the FCA or an investigator has by virtue of subsection (2) were a power under Part 11.
- (4) Section 177 applies as if a requirement imposed by virtue of subsection (2) were a requirement imposed under Part 11.
- 185 (5) References in a provision of Part 11 to section 165, 167, 175 or 177 include the relevant section as applied with modifications by this section.

333I Failure by designated guidance providers to comply with standards: FCA recommendations

- 190 (1) If the FCA considers that a designated guidance provider has failed to comply with a standard set under section 333G the FCA may—
- (a) recommend steps that the designated guidance provider might take to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure, and
- 195 (b) having made such a recommendation, recommend that the Treasury give a direction under section 333L.
- (2) The FCA must publish a recommendation made under subsection (1)(b) unless the FCA considers that to do so—
- (a) would be against the public interest, or
- (b) would be inappropriate for some other reason.
- 200 (3) If the condition in subsection (2)(a) or (b) is satisfied in relation to a recommendation but would not be satisfied if the FCA published part only of the recommendation, the FCA may publish that part.

333J FCA policy on making recommendations under section 333I

- 205 (1) The FCA must prepare and issue a statement of its policy with respect to the making of recommendations under section 333I.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.
- 210 (4) The FCA may issue a statement under this section only with the consent of the Treasury.

Pension Schemes Bill, *continued*

(5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

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(6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

333K FCA policy on making recommendations under section 333I: procedure

(1) Before issuing a statement under section 333J, the FCA must—

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(a) consult the Treasury, and

(b) publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.

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(2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.

(3) Before issuing the proposed statement, the FCA must have regard to any representations made to it within the specified time.

(4) If the FCA issues the proposed statement it must publish an account, in general terms, of—

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(a) the representations made to it within the specified time, and

(b) its response to them.

(5) If the statement differs from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.

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(6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).

(7) This section also applies to a proposal to alter or replace a statement.

333L Failure by designated guidance providers to comply with standards: Treasury directions

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(1) If the Treasury consider that a designated guidance provider has failed to comply with a standard set under section 333G the Treasury may direct the provider to take such steps as the Treasury consider appropriate—

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(a) to prevent the continuance or recurrence of the failure;

(b) to make redress to those affected by the failure.

(2) The Treasury may give a direction under subsection (1) only if the FCA has made a recommendation under section 333I(1)(b) (although the terms of the direction need not be the same as that recommended by the FCA).

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(3) The Treasury must—

(a) give notice in writing of a direction under subsection (1), and

(b) send a copy of the notice to the FCA.

(4) The notice must inform the designated guidance provider that representations about why the direction should not be published may be made to the Treasury within a specified time.

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Pension Schemes Bill, *continued*

- 260 (5) Once the time specified under subsection (4) has elapsed, the Treasury must publish the direction unless—
- (a) the Treasury consider that to do so would be against the public interest;
 - (b) having considered representations made by the designated guidance provider within the specified time, the Treasury consider that it would be inappropriate to do so for some other reason.
- 265 (6) If the condition in subsection (5)(a) or (b) is satisfied in relation to a direction but would not be satisfied if the Treasury published part only of the direction, the Treasury may publish that part.
- 270 (7) A direction under subsection (1) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

333M Directions to designated guidance providers under section 333L: relationship with power to revoke a designation

- 275 (1) The power conferred by section 333L(1) is exercisable in addition to, or instead of, the power conferred by section 333E(3) to revoke a designation.
- 280 (2) If the power in section 333E(3) is exercised before the power in section 333L(1) the reference in section 333L(1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.
- (3) Subsection (1) does not limit the grounds on which the power in section 333E(3) may be exercised.

*FCA's duties and power to give guidance***333N FCA's duties**

- 285 (1) The FCA must discharge its general pensions guidance functions with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.
- 290 (2) In discharging its general pensions guidance functions the FCA must have regard to—
- (a) its strategic and operational objectives in section 1B(2) and (3), and
 - (b) the regulatory principles in section 3B.
- 295 (3) In this section the FCA's "general pensions guidance functions" means its functions of—
- (a) setting standards under section 333G,
 - (b) issuing statements under section 333J,
 - (c) giving general guidance under section 333O (see section 333O(9)),
 - (d) making rules under section 333P, and
 - 300 (e) determining the general policy and principles by reference to which it performs particular functions under this Part.

Pension Schemes Bill, *continued*

333O Power of the FCA to give guidance

- 305 (1) The FCA may give guidance consisting of such information and advice relating to its functions under sections 333G, 333H, 333I, 333J and 333P as it considers appropriate.
- (2) Subsection (3) applies where the FCA proposes to give guidance to designated guidance providers generally, or to a class of designated guidance providers, in relation to standards set under section 333G or rules made under section 333P.
- 310 (3) Where this subsection applies, subsections (1)(b), (2)(e) and (3) of section 138I apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of recipients of pensions guidance from designated guidance providers.
- 315 (4) The FCA may—
- (a) publish its guidance,
 - (b) offer copies of its published guidance for sale at a reasonable price, and
 - 320 (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
- (5) On giving any general guidance, the FCA must give written notice to the Treasury without delay.
- (6) If the FCA alters any of its general guidance, it must give written notice to the Treasury without delay.
- 325 (7) The notice under subsection (6) must include details of the alteration.
- (8) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.
- (9) In this section “general guidance” means guidance given by the FCA under this section which is—
- 330 (a) given to persons generally, to designated guidance providers generally or to a class of designated guidance provider,
 - (b) intended to have continuing effect, and
 - (c) given in writing or other legible form.

Funding of pensions guidance

335 **333P Funding of FCA’s pensions guidance costs**

- (1) For the purpose of meeting the FCA’s pensions guidance costs the FCA must make rules requiring designated guidance providers, or any specified class of designated guidance provider, to pay to the FCA specified amounts or amounts calculated in a specified way.
- 340 (2) Before the FCA publishes a draft of the rules it must consult the Treasury.
- (3) The amounts to be paid under the rules may include a component—
- (a) to cover the expenses of the FCA in collecting the payments;
 - (b) to enable the FCA to maintain an adequate reserve.

Pension Schemes Bill, *continued*

- 345 (4) In this section the “FCA’s pensions guidance costs” means the expenses incurred, or expected to be incurred, by the FCA in connection with the carrying out of the functions conferred on it by this Part other than by section 333Q.

333Q Funding of Treasury’s pensions guidance costs

- 350 (1) The Treasury must, from time to time, notify the FCA of the amount of the Treasury’s pensions guidance costs.
- 355 (2) Having been so notified, the FCA must make rules requiring authorised persons, or any specified class of authorised person, to pay to the FCA specified amounts or amounts calculated in a specified way with a view to recovering the amount notified under subsection (1).
- (3) The amounts to be paid under the rules may include a component to cover the expenses of the FCA in collecting the payments (“collection costs”).
- 360 (4) Before the FCA publishes a draft of the rules it must consult the Treasury.
- (5) The rules may be made only with the consent of the Treasury.
- (6) The Treasury may notify the FCA of matters that they will take into account when deciding whether or not to give consent for the purposes of subsection (5).
- 365 (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
- (8) The FCA must pay to the Treasury the amounts that it receives under rules made under this section apart from amounts in respect of its collection costs (which it may keep).
- 370 (9) The Treasury must pay into the Consolidated Fund the amounts received by them under subsection (8).
- (10) In this section the “Treasury’s pensions guidance costs” means the expenses incurred, or expected to be incurred, by the Treasury—
- 375 (a) in giving pensions guidance or arranging for it to be given by designated guidance providers,
- (b) in meeting the expenses of designated guidance providers incurred in connection with the giving of the guidance (including expenses incurred by virtue of sections 333G(2), 333L and 333P), whether by means of the power conferred by
- 380 section 333D or otherwise,
- (c) in providing services to designated guidance providers to support them in giving the guidance,
- (d) in increasing awareness of the availability of the guidance,
- 385 (e) in undertaking or commissioning research relating to the giving of the guidance, and
- (f) otherwise in connection with the carrying out of its functions under section 333B.
- (11) The Treasury may by regulations amend the definition of the
- 390 “Treasury’s pensions guidance costs” in subsection (10).”
- 3 In section 1B (the FCA’s general duties), after subsection (7) insert—

Pension Schemes Bill, *continued*

“(7A) The FCA’s general functions do not include its general pensions guidance functions (see section 333N(3)).”

4 After section 137FA insert—

“137FB FCA general rules: disclosure of information about the availability of pensions guidance

395

(1) The FCA must make general rules requiring information about the availability of pensions guidance to be given by the trustees or managers of a relevant pension scheme to members of the scheme with a right or entitlement to cash balance benefits or other money purchase benefits.

400

(2) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—

- (a) the Secretary of State, and
- (b) the Treasury.

405

(3) In determining what provision to include in the rules, the FCA must have regard to any regulations that are for the time being in force under section 113 of the Pension Schemes Act 1993 concerning the giving of information about the availability of pensions guidance to members of pension schemes with a right or entitlement to cash balance benefits or other money purchase benefits.

410

(4) In this section—

“cash balance benefits” has the meaning given by section 152(5) of the Finance Act 2004;

“money purchase benefits” has the meaning given by section 152(4) of the Finance Act 2004;

415

“pensions guidance” means pensions guidance given by virtue of Part 20A;

“relevant pension scheme” means a pension scheme set up by a person with permission under this Act to establish—

420

- (a) a personal pension scheme within the meaning of an order under section 22, or
- (b) a stakeholder pension scheme within the meaning of such an order.”

5 In section 138I (rules: consultation by the FCA)—

425

(a) in subsection (6) (exemption from requirement to carry out a cost benefit analysis), after paragraph (a) insert—

“(aa) section 137FB;”;

(b) in that subsection, after paragraph (c) insert—

“(ca) section 333P;

430

(cb) section 333Q;”;

(c) in subsection (10) (rules to which requirement to consult the PRA does not apply), after “apply to” insert “—

(a) rules made by the FCA under section 137FB, 333P or 333Q, or

435

(b) ”.

6 In section 139A (power of the FCA to give guidance), after subsection (1) insert—

“(1A) The FCA may not give guidance under this section relating to its functions under sections 333G, 333H, 333I, 333J and 333P (see

Pension Schemes Bill, *continued*

- 440 section 333O for provision about the giving of guidance relating to these functions).”
- 7 In section 140A (competition scrutiny: interpretation), in subsection (1), in paragraph (a) of the definition of “regulating provisions”—
- 445 (a) in sub-paragraph (ii), after “section 139B(5)” insert “or 333O(9)”;
 (b) after sub-paragraph (iv) insert—
 “(v) standards set under section 333G;
 (vi) statement issued by the FCA under 333J;”.
- 8 In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (2)(a), after “section 24(1)” insert “or 333F”.
- 450 9 In section 429 (Parliamentary control of statutory instruments), in subsection (2) (regulations subject to the affirmative resolution procedure), for “or 262” substitute “, 262, 333C or 333Q”.
- 10 In Schedule 1ZA (the FCA), in paragraph 8 (arrangements for discharging functions)—
- 455 (a) in sub-paragraph (3) (legislative functions that must be exercised by the FCA acting through its governing body), in paragraph (c)(i), for “or 312J” substitute “, 312J or 333J”;
 (b) in sub-paragraph (3), after paragraph (d) insert—
 “(e) setting standards under section 333G.”
- 460 (c) in sub-paragraph (4), after “section 139B(5)” insert “or 333O(9)”.
- 11 In that Schedule, in paragraph 11 (annual report), in sub-paragraph (1) (matters to be covered in the report), after paragraph (ha) insert—
 “(hb) how, in its opinion, it has complied with its duties in section 333N.”.
- 465 12 In that Schedule, in paragraph 23 (fees)—
- (a) in sub-paragraph (1), in the opening words, after “of this Act” insert “other than sections 333P and 333Q”;
 (b) in sub-paragraph (1)(a), after “functions” insert “, other than its excepted functions;”;
 470 (c) in sub-paragraph (2)(a), after “(ca)” insert “but not its excepted functions”;
 (d) after sub-paragraph (2) insert—
 “(2ZA) The “excepted functions” of the FCA are—
 (a) its functions under sections 333E to 333P, and
 (b) its functions under section 333Q so far as relating to the collection of payments.”
- 475 13 In section 85 of the Financial Services Act 2012 (relevant functions in relation to scheme for investigating complaints against FCA and other regulators), in subsection (4) (legislative functions of the FCA that are excluded)—
- 480 (a) in paragraph (c)(i), for “or 312J” substitute “, 312J or 333J”;
 (b) in paragraph (e), after “139B(5)” insert “or 333O(9)”;
 (c) after paragraph (e) insert—
 “(f) setting standards under section 333G of FSMA 2000.”
- 485 14 (1) For the purpose of the exercise of a function conferred by a provision listed in the first column of the table, a consultation requirement listed in the corresponding entry in the second column may be satisfied by things done before the day on which this Act is passed.

Pension Schemes Bill, *continued*

	<i>Provision conferring function</i>	<i>Consultation requirement</i>
490	Section 137FB of FSMA	Sections 137FB(2) and 138I(1) of FSMA
	Section 333E(1)(e) of FSMA	Section 333E(2) of FSMA
495	Section 333G(1) of FSMA	Section 138I(1) of FSMA as applied with modifications by section 333G(5) of FSMA
	Section 333J(1) of FSMA	Section 333K(1) of FSMA
	Section 333O(1) of FSMA	Section 138(1)(b) of FSMA as applied by section 333O(3) of FSMA
500	Section 333P(1) of FSMA	Sections 138I(1) and 333P(2) of FSMA.
	Section 333Q(2) of FSMA	Sections 138I(1) and 333Q(4) of FSMA
505	(2) Where before the day on which this Act is passed the Financial Conduct Authority publishes a draft of proposed standards for the giving of pensions guidance by designated guidance providers—	
	(a) the consultation requirement in section 138I of FSMA may be treated as satisfied by virtue of sub-paragraph (1) even if the draft is not accompanied by—	
510	(i) a cost benefit analysis, or	
	(ii) an explanation of the Financial Conduct Authority's reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers, and	
515	(b) if it is, any resulting standards published under section 138G(4) of FSMA must be accompanied by—	
	(i) a cost benefit analysis within the meaning of section 138I of that Act even if the conditions in subsection (5) of section 138I are not satisfied, and	
520	(ii) an explanation of the Financial Conduct Authority's reasons for believing that setting the standards will secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.	
525	(3) References in sub-paragraph (2) to provisions of sections 138G and 138I of FSMA are to those provisions as applied with modifications by section 333G(5) of that Act.	
	(4) Where before the day on which this Act is passed the Financial Conduct Authority publishes a draft of proposed rules requiring information about the availability of pensions guidance to be given by the trustees or managers of a relevant pension scheme to members of the scheme with a right or entitlement to cash balance benefits or other money purchase benefits, the consultation requirement in section 137FB(2) of FSMA may be treated as satisfied by virtue of sub-paragraph (1) even if the only consultation before publication was with the Treasury.	
530		
535	(5) In this paragraph—	

Pension Schemes Bill, *continued*

“consultation requirement” includes—

- (a) a requirement to publish a draft;
- (b) a requirement under section 333E(2)(b) or (c) of FSMA;

540

“FSMA” means the Financial Services and Markets Act 2000.

- 15 Expenses incurred by the Financial Conduct Authority before the day on which this Act is passed in anticipation of the conferral of functions on it by virtue of the amendments made by this Schedule are to be treated as if they had been incurred on or after that day.”

As Amendments to Steve Webb’s proposed New Schedule (NS2):—

Nigel Mills

Not called (a)

Line 21, after “Treasury’s”, insert “and the Department for Work and Pensions”

Nigel Mills

Not called (b)

Line 22, after “Treasury”, insert “and the Department for Work and Pensions”

Nigel Mills

Not called (c)

Line 24, after “Treasury”, insert “and the Department for Work and Pensions”

Nigel Mills

Not called (d)

Line 36, after “(3)”, insert “subject to the condition in subsection (3A)”

Nigel Mills

Not called (e)

Line 38, at end insert—

“(3A) The following people may not give pension guidance—

- (a) persons set out in section 154(1) of the Finance Act 2004;
- (b) persons whose main business is the operation or management of pension schemes;
- (c) persons whose main business is the provision of products or other arrangements that provide or are capable of providing income for persons in retirement;

(3B) A person shall not be excluded by subsection (3A) solely for the reason of providing a Pension Scheme for the employees of that Person.”

Nigel Mills

Not called (f)

Line 72, after “(e)”, insert “Subject to the condition in subsection (1A)”

Nigel Mills

Not called (g)

Line 74, at end insert—

“(1A) The following persons may not be designated under section (1)(e)—

- (a) persons set out in section 154(1) of the Finance Act 2004;
- (b) persons whose main business is the operation or management of Pension Schemes;

Pension Schemes Bill, *continued*

- (c) persons whose main business is the provision of products or other arrangements that provide or are capable of providing income for persons in retirement;
- (1B) A person shall not be excluded by subsection (1A) solely for the reason of providing a Pension Scheme for the employees of that person.”

Nigel Mills

Not called (h)

Line 129, at end insert—

“(1A) The standards in subsection (1) must include—

- (a) a guidance session provided by a designated guidance provider should in general be planned to have a duration of at least 30 minutes;
- (b) individuals in receipt of guidance should be provided with joining instructions at least 14 days prior to the guidance session which sets out the information needed to make the session effective, including the preparation by the individual of a statement of their financial affairs and sources of income in retirement.”

Bill, as amended, to be reported.
