Public Bill Committee

PENSIONS BILL

Twelfth Sitting
Thursday 11 July 2013
(Afternoon)

CONTENTS

Clauses 35 to 40 agreed to, one with amendments.
Schedule 17 agreed to.
Clauses 41 to 48 agreed to.
New clauses considered.
New schedule considered.
Bill, as amended, to be reported.
Written evidence reported to the House.
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Monday 15 July 2013

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY FACILITATE THE PROMPT PUBLICATION OF THE BOUND VOLUMES OF PROCEEDINGS IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

**Chairs:** [Martin Caton](#), [Mrs Anne Main](#)

† Blenkinsop, Tom (Middlesbrough South and East Cleveland) (Lab)
† Bradley, Karen (Staffordshire Moorlands) (Con)
† Colvile, Oliver (Plymouth, Sutton and Devonport) (Con)
† Gilmore, Sheila (Edinburgh East) (Lab)
† Graham, Richard (Gloucester) (Con)
† Griffiths, Andrew (Burton) (Con)
† McCann, Mr Michael (East Kilbride, Strathaven and Lesmahagow) (Lab)
† McClymont, Gregg (Cumbernauld, Kilsyth and Kirkintilloch East) (Lab)
† Nash, Pamela (Airdrie and Shotts) (Lab)
† Pincher, Christopher (Tamworth) (Con)
† Reckless, Mark (Rochester and Strood) (Con)
† Reynolds, Jonathan (Stalybridge and Hyde) (Lab/Co-op)
† Selous, Andrew (South West Bedfordshire) (Con)
† Webb, Steve (Minister of State, Department for Work and Pensions)
† Wheeler, Heather (South Derbyshire) (Con)

Neil Caulfield, John-Paul Flaherty, Stephen McGinness, Committee Clerks

† attended the Committee
Public Bill Committee

Thursday 11 July 2013

(Afternoon)

[Mrs Anne Main in the Chair]

Pensions Bill

2 pm

The Chair: Before I call the Minister, may I remind the Committee that business will finish at 5 o’clock and any outstanding business will be voted on without debate.

Clause 35

QUALIFYING SCHEMES: ADMINISTRATION CHARGES

Amendment proposed (this day): 18, in clause 35, page 18, line 42, at end insert—

‘(3A) In this section “administration charges” shall be defined in regulations by the Secretary of State after public consultation and taking advice from the Financial Conduct Authority and the Pensions Regulator to ensure that the definition takes into consideration the Financial Conduct Authority’s definition of “ongoing charges”, and shall include annual management charges, legal fees, administrative fees, audit fees, marketing fees, directors’ fees, regulatory fees and other expenses.

(3B) Such charges, together with any transaction charges incurred by the funds in which qualifying schemes are invested, shall be declared to the Pensions Regulator, which shall maintain a public register thereof. The Secretary of State shall define “transaction costs” in regulations after public consultation and taking advice from the Financial Conduct Authority and the Pensions Regulator. The Secretary of State shall by regulation set the standards by which pension schemes must declare charges and transaction costs for the purposes of the register and for declaration to their members and their members’ employers. The standard shall be reviewed every three years. In addition, the Secretary of State shall have power to make regulations ordering other disclosure arrangements on charges.

(3C) Regulations under this section shall be laid down and approved by resolution of both Houses of Parliament.’.—(Gregg McClymont.)

Question again proposed, That the amendment be made.

The Minister of State, Department for Work and Pensions (Steve Webb): Good afternoon, Mrs Main. Welcome back to our proceedings. You may be slightly startled to realise that, following the time your co-Chair spent with us this morning, we are back where we started. Ninety minutes with no progress reminds me of the English bowling attack trying to take the last Australian wicket, although I gather that that has now been achieved, so perhaps we will now make some progress.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East brought to our attention something called the doughnut of charges. Unfortunately, a bit like a doughnut, his argument had a big hole in the middle—that is what we get when we have an hour at lunchtime to think about such things. I want to turn up to the Committee why the hon. Gentleman was building a whole edifice on a false premise. He was so far up the moral high ground that he was barely visible at some points.

The hon. Gentleman seemed to contend that, although between 1997 and 2010 the previous Government did little or nothing on charges, for the present Government to point that out misses the point. His line is, essentially, “I wasn’t there, it wasn’t me, and we didn’t get everything right”, which is an understatement. He seems to contend that since 2010, nothing much has happened on charges and that the only trigger for any action was when the leader of the Labour party—whom I think was in the previous Government’s Cabinet—discovered pension charges last year and shared his insights with a grateful nation, since when things have started to happen. I do not recall that that is what actually happened. I hope to clarify the action the Government are taking on pension scheme charges and why amendment 18 is both ineffective and unnecessary.

The amendment would define something called administration charges after consultation, which is always good; there is a review coming later. The Secretary of State would consult and take advice—always good things to do—and listen to various public bodies and then define administration charges. Then there is a list of things that would be counted, and there is an “and other” on the end of the list. The hon. Gentleman shared with us the doughnut of charges, which had a litany of pension scheme charges: the ways in which money can be taken out of people’s pension schemes.

I agree with the hon. Gentleman that the industry can be very creative when it comes to finding ways to get money out of people’s pension schemes. I entirely accept that point, and that is precisely why we need flexibility to act and to define charges broadly, rather than having half-lists. Legislation that is full of half-lists does not achieve its stated purpose. He mentioned a whole set of charges that are not in his amendment, and then said, “Not to worry—they are in ‘and other’”. It seems odd to say that these things should count and then—I paraphrase his amendment only slightly—“anything else we haven’t thought of”. That is an odd way to make law. There is either the purpose of being specific or being broad, but we should not try to be both in the same amendment, which is what his amendment does.

To be clear, our existing powers give us greater flexibility than those proposed in the hon. Gentleman’s amendment. I am sure he will be familiar with section 16(4) of the Pensions Act 2008, which effectively sets out that an administration charge—the phrase he uses in his amendment—is due whenever any payments are made to the scheme and any investment returns or the value of any rights under the scheme are used in any way that does not result in the provision of pension benefits, including in defraying administrative expenses and paying commission. So we already have a broad, general power to define charges. Amendment 18 is less flexible. It tries to put some things in, misses other things out and says, “Not to worry, we will just call them ‘other’”. It does not achieve what the hon. Gentleman set out.

So the existing power we have in section 16(4) of the 2008 Act—together with the powers in section 144 of that Act—to make different provision for different cases gives us wide flexibility to provide for different types of charges, including those listed in the amendment. The first part of the hon. Gentleman’s amendment is a noble stab at thinking off the top of his head of some things that might count, but as soon as we start listing these things in legislation, there is always a danger that someone
will invent a new way of taking money out of schemes, and what we need is a general power. The good news is, we already have a general power in the way that I have described, so his amendment does not really seem to help us very much.

**Mark Reckless** (Rochester and Strood) (Con): The Minister has ably dismissed the key substance of the amendment. Could he address one point which came up earlier: fees for stock lending? They are a revenue to the fund, rather than an expense, and the fund managers are using members’ assets. Are scheme members given proper account for those fees?

**Steve Webb**: I am grateful to my hon. Friend and I commend the assiduousness with which he has followed these proceedings, both at Second Reading and in Committee. He may be interested to know that the Kay review on equity markets had a specific recommendation on stock lending. Interestingly, recommendation 10 was:

“All income from stock lending should be disclosed and rebated to investors.”

The Government’s response said:

“The Government agree that stock lending activities should not bring about misaligned incentives for asset managers or other intermediaries, and therefore supports this recommendation.”

I will not read out the whole response, but the Government go on to say:

“We believe that the best way to address these problems is for asset managers and other intermediaries undertaking stock lending to disclose separately both the total income generated for their client from stock lending and any costs associated with undertaking the activity.”

That recommendation is reflected in the good practice statement for asset managers, which signals Professor Kay’s intention to improve behaviour through the development of industry good practice.

One issue that has come up is the extent to which one uses good practice guides, codes of practice and the like, or the letter of the law. We have tried to strike a balance between firm regulatory action where that was necessary and urgent—such as banning consultancy charges, as we have done—and legal frameworks that allow us to react to a constantly evolving market. Here, the Kay review has identified an important issue, as have my hon. Friend the Member for Rochester and Strood and others. The review has indicated that action is needed, and the Government have responded positively.

**Gregg McClymont** (Cumbernauld, Kilsyth and Kirkintilloch East) (Lab): On the point made by the hon. Member for Rochester and Strood, did the Minister say that there is now a good practice code but no teeth to stop such stock lending taking place?

**Steve Webb**: If I may refer the hon. Gentleman back to Tuesday’s discussion about the code of practice on incentivised transfer exercises, that has been an example of getting the industry together to sort its act out. It has been highly effective and has delivered the goods. Although we have taken reserve powers in the Bill to make sure that it happens, we anticipate not needing to use them because the industry has bought into the need for it to sort things out. Clearly, if the industry fails to do so, despite these issues being highlighted, we have the ability to take further action.

To spare the hon. Gentleman, I did not read the whole of the Government response, but it continues:

“The Government’s progress report in Summer 2014 will assess to what extent the investment industry has responded to this recommendation and what further action might be appropriate in the context of relevant EU policy developments in this area.”

I mention that because we are not legislating in a vacuum but in the context of an EU-wide single financial market. Again, it makes a great headline to say, “Ban this, cap this, regulate that”, but we are significantly constrained in that regard. Therefore, we are taking this measured approach, getting the industry on board and getting the code of practice in place, but monitoring carefully, willing to take further action should that prove necessary. We could keep the House sitting through this and every summer, and Christmas and Easter—there is always something else you can ban, cap, regulate or legislate for. The challenge is to strike the right balance between ensuring that people sort things out for themselves and make progress, and where that is not possible, legislating and regulating.

**Gregg McClymont**: It is interesting to hear the Minister set out his philosophy. Am I right in saying that, while he is consulting and bringing industry groups together, bad stock lending practice can continue?

**Steve Webb**: Just to be clear, the sort of situation the hon. Gentleman has been describing has been a feature of the industry from—to pick a random period—1997 to 2010. We are tackling these concerns systematically, wherever possible working jointly with providers, the industry and the trade bodies of whom I know he is a fan to try to ensure that good practice becomes the norm, while keeping the regulatory and legislative approach available. Indeed, we have used it quite promptly, as in the case of consultancy charges. I think he will see that I am not, as it were, a one-stick golfer, as the phrase used to have it. We will legislate where that is the quickest and best thing to do, as we have done, and work with the industry and monitor its performance where that is the best thing to do.

**Richard Graham** (Gloucester) (Con): The Minister is absolutely right. The truth about stock lending and the reason why the Government’s response to the Kay review is appropriate is that it was not actually a cost to anyone in a pension fund; it was an additional source of revenue for the asset manager. If, therefore, the Government’s response is effectively saying, “Should you generate any revenue from your stock lending, that revenue must be accredited to the holders of the units within the fund”, and if, for example, it was a unit trust, that removes a large part of the incentive for the asset manager to do the practice in the first place.

There is, of course, a risk to stock lending. It is not an enormous risk for much of the time, but in 2008, when credit lines suddenly dried up and one found that Lehman Brothers had ownership of the stock, there was potential risk and there would be no incentive for the asset manager to take that risk now if they are not going to generate the revenue themselves.

**Steve Webb**: I am grateful to my hon. Friend, who speaks from great knowledge of these dubious financial practices—from his study of them, I should say. He is
[Steve Webb]

quite right: stock lending is not just a pension fund issue but a wider investment issue, especially relating to hedge funds. We have to look at these things in the round and not just in the narrow pensions context.

Mark Reckless: May I challenge the assumption that there would be no incentive for the fund manager to undertake the dubious practice described if they were not allowed to take off a bit of money for themselves? Surely some of these fund managers seek to operate in the interests of their clients, and in some cases there may be a duty of care or fiduciary duty. Even where there is not, surely at least some will want to act in the best interests of the members.

Steve Webb: Yes; just to be clear, my reference to dubiousness was, first of all, not to my hon. Friend the Member for Gloucester, nor necessarily to stock lending. We are not proposing to ban stock lending, but the process should be transparent and the right person should benefit from it. My point was that the Kay review was concerned about a mismatch of incentives.

The first part of amendment 18 gives us this half-list of things that we can cap or ban, but we can already do all these things, so it does not really add anything. The second part says that the charges should be declared to the Pensions Regulator and that there should be a public register of these things. We should bear it in mind that a few sitting ago, the hon. Member for Cumbernauld, Kilsyth and Kirkintillock East told us that there are 40,000 of this sort of pension fund and 40,000 of that sort of pension fund, so I assume he is talking about a register of tens of thousands of schemes.

Gregg McClymont: I was referring to pension schemes, not pension funds.

Steve Webb: Okay; I am not entirely sure I follow the hon. Gentleman. Clearly, a substantial register is proposed that will presumably have to be routinely updated. Therefore, whenever the charges change or the way the scheme covers its costs changes, someone has to report to the Pensions Regulator and that there should be a public register of these things. We should bear it in mind that a few sittings ago, the hon. Member for Cumbernauld, Kilsyth and Kirkintillock East told us that there are 40,000 of this sort of pension fund and 40,000 of that sort of pension fund, so I assume he is talking about a register of tens of thousands of schemes.

Gregg McClymont: I was referring to pension schemes, not pension funds.

Steve Webb: As I shall demonstrate, the suggestion that we have done nothing on charges in three years is an extraordinary mischaracterisation of what has been going on. I gently point out to the hon. Gentleman that what has changed in the recent past is automatic enrolment.

We had the status quo, as it were, the stock of workplace pension provision which has been in long-term decline. The big change was eight months ago and the early signs are that people are, in general, being automatically enrolled into high-quality pension schemes.

The challenge for us first and foremost is to make sure that people are automatically enrolled in quality pension schemes—we are publicly consulting on that as we speak—and then to make sure that those standards are spread beyond automatic enrolment into qualifying schemes. The concept of qualifying schemes was invented before this Government came to office, but with staggeringly little quality standard. The last Government should be ashamed of setting up a system whereby employers put 10 million people into a pension scheme with almost no minimum quality standards.

If one were to take together all the amendments that the hon. Gentleman has tabled, it would be a litany, an apologia, a list of things that the last Government failed to do and things that we are now condemned for allegedly not having done in three years that they did not do in 13. A little humility on that point would not go amiss.

Gregg McClymont: Does the Minister accept that he has had three years to sort this out and has not done so?

Steve Webb: Absolutely not and I shall run the Committee through a good deal of what has happened over that period. Going back to the point in amendment 18 on the three-yearly review, we clearly need to move faster than that. It is no good saying that we will have another look in 2016 or whenever. Proposed new subsection (3C) in amendment 18 refers to regulations being approved by a resolution of both Houses. Again, that gives the impression of scrutiny and rigour, but it is essentially process. What the hon. Gentleman lays down for us is that every time we want to extend the list of what counts as a charge, we would need a 90-minute debate just to get Parliament to say that it was okay. This is not fleet-of-foot, lightning-fast reaction to new trends in the pensions industry. This is bureaucratic plodding, primary legislation driven, three-year reviews—the absolute opposite of what the hon. Gentleman urges us to do.
Steve Webb: The hon. Gentleman’s lack of experience in government shows ever so much. Coming up with affirmative regulations takes a teensy bit more than 90 minutes, I can assure him of that.

The amendment does not seem to add anything. It does not give us powers that we do not already have, and actually creates a half list, raising issues about why things are or are not on it. It requires a bureaucratic structure to allow a future Government to put new things on the list of charges that can be capped or regulated, which seems bizarre to us. It then has a rigid renewal structure.

Mark Reckless: The Minister has emphasised the amount of time that it takes—which he knows as a Minister—for the regulations to go through the positive resolution procedure. Is he suggesting that when they are by the negative resolution less time and attention is put into drafting them?

Steve Webb: It is more a matter of parliamentary procedure. Clearly we are meticulous in our drafting of regulations, whether they are affirmative or negative, as I am sure my hon. Friend would expect. I do not know the exact number of statutory instruments produced every year—I might be about to, but I do not know currently—but I suspect it runs into four figures. I imagine it is of that order. Only a tiny fraction of those are subject to the affirmative procedure, because they are the ones that really need a good looking over and that sort of scrutiny. The idea that adding a type of charge to a list of charges that we regulate needs the full-blown scrutiny of Parliament seems an absurdity.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asks what we are doing. We already have powers on disclosure, which are mentioned in the amendment. For example, section 60 of the Pensions Act 2004 gives us the power to make administrative charges registrable to the Pensions Regulator if we wish. Section 61 of the same Act gives us the power to make regulations to prescribe to whom that information may be provided. Section 113 of the Pension Schemes Act 1993 gives us the power to prescribe that information on charges be made available to scheme members or employers. The hon. Gentleman would reinvent statutory powers that are already there.

The hon. Gentleman mentioned various industry groups, including the National Association of Pension Funds, the Association of British Insurers, the Investment Management Association and others, which have worked together. I shall clarify for the Committee where we are on the matter. In January this year, the ABI launched an agreement on the disclosure of costs and charges to members of work-based defined contribution pension schemes; to date, 14 major providers have signed the agreement. What have they committed to do? They have committed to disclosing all charges that need to be disclosed at the outset to members of pension schemes will be developed over the first half of this year.

Steve Webb: That was a very prescient intervention, because I was about to tell the hon. Gentleman about the OFT inquiry. The OFT has put a notice on its website today, updating the public about where it is in its investigation. It is highlighting a number of issues about the DC workplace pensions market as being of concern; those concerns very much chime with the ones that I and other people have been raising.

The first thing the OFT mentions is governance, where there are clearly issues. The Department published its own consultation on quality in DC pension provision, and we are already consulting on governance. The OFT also raised the issue of active member discounts, a subject that I am certainly concerned about and that I know the hon. Gentleman is too.

That seems a natural point to pause and deal with the issue of active member discounts. In an exchange on Tuesday, the hon. Gentleman said that the use of active member discounts was typical. I intervened to give him some information from the DWP’s survey of charges, which indicated that it was far from typical. He replied, “Ah, but the DWP’s survey asked employers, and lots of employers don’t know what the charges are.” I entirely agree: it does and they do not. As it happens, our survey of charges is probably one of the best out there, and is run by an independent research organisation. We do not just talk to the employers; we also talk to the providers. We gather supplementary information, and not just from the schemes: we do research with leading pension providers, to provide context and deeper understanding of charging levels based on data for new schemes sold in the previous 12 months.

If we were to rely on the employers who said that they did not know what the charges were and just guessed at them, the hon. Gentleman would be the first to condemn us for using slightly dodgy data, so of course we only published data from people who said there is a huge amount going on. The January agreement did not get written over Christmas; it followed an awful lot of pressure, including pressure from the Government. It has led us to the point where now the trade bodies are almost outdoing each other in trying to improve clarity and practice on charges. I regard that development as entirely welcome.

We will look carefully at how far that commitment is delivering the sort of transparency and clarity we want. At the Office of Fair Trading, our colleagues—they are independent, obviously, of the Department for Work and Pensions—are working on the DC market. I point out that the Office of Fair Trading did not look into these matters under the previous Government; it is investigating them under this Government. The hon. Gentleman would be the first to accept that concerns about charges did not start in 2010; there have been perhaps even bigger concerns about what he calls legacy charges for a very long period, but it is this Government who are overseeing an OFT inquiry. I will tell the Committee a bit more about where the OFT has said it is in that inquiry.

Steve Webb: The moment has passed for what I was going to say. I am delighted to hear about the OFT inquiry from the Minister. I do not want to interrupt his flow.

Gregg McClymont: Surely a 90-minute debate takes 90 minutes?
that they knew what was going on. I do not dispute the fact that not enough employers know what the charges are in a scheme; that is not what is at issue between us.

It is not just our own survey. On one occasion, the hon. Gentleman tells me off for not using what he calls our survey, and then on another he tells me off for using our survey. To give him further evidence, an independent survey undertaken by Towers Watson this year on the FTSE 100 companies’ defined contribution pension schemes found that fewer than one in five employers operates a different charging structure for deferred members.

Gregg McClymont: I have a couple of points. First, the FTSE 100 employers are the biggest in the UK, but most people would agree that the big problem with charging is with smaller employers. Therefore, I am not sure whether that survey is convincing on the use of active member discounts. The Minister needs to consider that.

The Minister says that I was telling him off, I would never do that. I am not saying that he should look at one DWP survey and not another; I merely pointed out that the way he portrayed the statistics from the 2012 report could inadvertently give a misleading impression of the situation in terms of what employers know. I am delighted that the DWP undertakes those surveys, but as he recognises, until employers know what they are being charged, surveys will always come up against that problem.

Steve Webb: I do not think that there is a huge difference between us. The point I was trying to make by citing statistics from the survey—I accept that the survey is limited, as all surveys are—was that the hon. Gentleman’s assertion that active member discounts are typical is not correct; I do not think that there is any evidence for that.

Gregg McClymont: That may be the case, but if most employers are not aware of the charges on their schemes, will the Minister tell us how we know that is the case?

Steve Webb: To be clear, the Towers Watson survey was on the 100 biggest employers in the land and they cover a significant proportion of the work force. The hon. Gentleman may say that there are lots of small schemes, but the vast majority of people work for larger employers, not small employers. Therefore, by covering the largest schemes, we get a good picture from Towers Watson. The DWP survey, however, is more comprehensive; it covers the range of the market.

Gregg McClymont: Is that the case? My understanding of the UK economy is that the majority of employees work for companies outside the FTSE 100. Therefore, does the Minister agree that those companies do not give us a broad perspective on the practice of active member discounts?

Steve Webb: Just to clarify, it is the case that most firms are small; we know from automatic enrolment that there are in the order of 1 million small firms. However, there is quite a gap between the FTSE 100 firms and micro-businesses. I am not saying that everybody works for a FTSE 100 company.

The hon. Gentleman should bear in mind that many people who work for small firms have no pension provision at all; that is important. A third of the private sector work force are in workplace pension schemes; two thirds are not in schemes at all. Overwhelmingly, people who are in pension schemes work for bigger firms. Therefore, if we cover the biggest firms, we get a full picture of what is going on, so he should not make such assertions when he has no evidence for them.

However, that raises a wider point. Occasionally, Oppositions are accused of talking down the economy, but in this case there is a danger that the Opposition are talking down workplace pension provision. From long and bitter years in opposition, I know that it is ever so easy to get a headline by saying something extreme and outrageous—things such as “shocked” and “appalled”—about pensions and workplace pensions. However, every time another of those stories appears in the newspapers, someone decides to opt out of automatic enrolment because they hear people saying that such schemes are all a bit rubbish.

I encourage the hon. Gentleman, and, through him, the leader of his party, to focus on the real issues and to use real evidence and not take an extreme example, as his leader did, of a scheme that was wholly unrepresentative and would never be used for automatic enrolment.

Gregg McClymont: Will the Minister give way?

Steve Webb: I have not quite finished the sermon.

There is a real danger that what could be a success story—getting millions of people into quality workplace pensions—will be undermined if the reputation of workplace pension provision is sullied. That does not serve the public good. I simply urge the hon. Gentleman to be fact-based, rather than asserting that such charges are typical, for which he has no evidence, and to be measured about the scale of the issue. It is clear that charges are coming down. He suggested that only annual management charges were coming down, but it stands to reason that a major employer negotiating with alternative pension providers for automatic enrolment is not doing its job properly if it cannot drive a better deal for a much bigger work force.

2.30 pm

Sheila Gilmore (Edinburgh East) (Lab): Will the Minister give way?

Steve Webb: I will give way to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East first, but I am happy then to give way to the hon. Lady.

I caution the hon. Gentleman. I know that his heart is in the right place and that he wants what is in the public interest, but I ask him, before he presses send on his next press release, to ensure that he is assisting the public good.

Gregg McClymont: To be fair to the Minister, he shows great self-knowledge because his speech did become a bit of a sermon.
The problem for the Minister is that it is not just the Labour party saying such things, but a wide range of organisations and people, including members of the governing party and Mrs Thatcher’s favourite think-tank. That is the problem for the Minister. If it were just me, he would have more credibility and could traduce me to his heart’s content, but it is not just me. I am simply one person in a crowd of organisations who recognise that the market does not work effectively.

Steve Webb: I am grateful for the invitation to traduce the hon. Gentleman to my heart’s content, but first I give way to the hon. Lady.

Sheila Gilmore: Given that the Minister has concentrated in the last few minutes on the question of deferred member discounts and has suggested that their effect is not quite as great as people thought, is he suggesting that the strong recommendation from the Work and Pensions Committee is also wrong?

Steve Webb: I very much welcome the scrutiny from the Work and Pensions Committee, which was right to highlight concerns about pension scheme charges.

I was describing the things that the OFT has flagged in its note today. I have had a couple of meetings with its representatives just to touch base on how their work is going and I welcome the fact that they are flagging active member discounts. In a sense, I am not arguing to the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East that active member discounts are not a problem that we suspect we need to address, but rather I am arguing about the assertion that they are one of several typical issues. We have to get it right. It is ever so easy just to say that we should ban active member discounts, but we should always ask ourselves what is next. This is money that schemes are currently recovering from people who are not active members of the scheme. If we ban that, what will the schemes do? Will they simply recover the money from every member of the scheme? Will it just lead to a levelling of charges, with charges going up for active members and down for deferreds, as a result of which there will be no extra pension income at all? It might be that that is exactly what will happen and that might be fairer and right, but we need to think through the consequences.

That is why amendments, such as amendment 18, that risk pre-empting what the OFT is likely to conclude are premature. A respected organisation like the OFT is looking in detail and gathering just the sort of evidence that the hon. Gentleman says that we do not appear to have enough of, but he wants to pre-empt its findings. He says we should have done this stuff and that it all would have been done if he were the Minister. On the basis of what evidence that would have been done, I have no idea. The OFT is reporting later this year and we will take seriously what it has to say.

I have mentioned governance and active member discounts. The OFT is also concerned about the use of adviser commissions, which may not offer the best value for money in some auto-enrolment schemes. There is an issue of scale, which we raised in the consultation document that we have already published. The OFT also raised the presentation of charges, the need for comparability there and the issue of legacy schemes. We have raised a number of concerns and I am pleased to see that the OFT shares them and we look forward to its findings. My key point, in reference to amendment 18, is that we do not want to pre-empt those findings; we want to act on them. That is the difference. The hon. Gentleman wants a quick headline, but we want measured policy making that responds to evidence.

To clarify the point about where most people’s pension scheme membership is, the majority of people in a private sector DC pension scheme, which is what we have been talking about, are in ones with over 10,000 members, which is what classed as a large scheme. Amendment 18 would not achieve what the hon. Gentleman claims, as it would tie our hands. We already have the powers that he wants us to have.

Let me end on a note of relative consensus. We all want pension scheme charges to operate transparently. We want them to be reduced. The hon. Gentleman suggested that we have not been quick enough and that, had we been faster, the policy would have been better. I shared a platform with his favourite trade body, the National Association of Pension Funds, the chief executive of which is Joanne Segars, for whom I have the highest regard. More than a year ago, she said that pension scheme charges were hard to understand, and that we needed charges in “pounds and pence”. Her key message was pounds and pence, not percentages and basis points. The NAPF could not do that. It worked with the industry and tried to find ways in which to present charges that were simply in pounds and pence, but such a process defeated the best brains in the pensions industry.

When someone who is very knowledgeable tries with good will to do the right thing when it comes to pension scheme charges and transparency, but is then unable to do so, that illustrates that such action is far from a trivial task. Tempting though it always is to ask why the changes were not done quicker, our key priority is to ensure that people who are being automatically enrolled, a process based on inertia, receive good-value pensions. That must be the priority. The whole process would fall into disrepute if we do not do that. That is why we have focused on automatic enrolment and timing.

Automatic enrolment did not start in earnest until October last year. We are still in its first year. There is no significant evidence from large firms that people are getting bad value for money, although there is the potential for that to happen. We are, therefore, consulting on quality indications. We will learn from the OFT’s evidence-gathering and produce further proposals later this year. There is a hive of activity on pension scheme charges. Far from the suggestion that we are somehow asleep on the wheel, we are, in fact, ahead of the game and are making sure that, by the time we get to the smaller firms where the risks are greater, an effective regulatory regime is in place—something that the previous Government did not leave us.

Gregg McClymont: It is a pleasure to serve under your chairmanship, Mrs Main.

I listened closely to what the Minister said, and I found it to be one of his less convincing explanations of the Government’s position. Amendment 18 calls for transparency and disclosure of pension charges. In an intervention, the hon. Member for South Derbyshire endorsed full disclosure, but the hon. Gentleman said...
that such policy would tie the Government’s hands. He said that it was bureaucratic and restrictive. We must ensure, however, that Parliament keeps its eye on the ball. No one can doubt that this is an issue when Parliament needs to keep its eye on the ball.

The Minister described his contribution as a sermon, and I take what he said seriously except that it is not only me—the shadow Minister—and the Labour party who are so keen on full disclosure, but an enormous range of organisations, including those on the Conservative side of politics. They recognise that there is a real issue. I did not count the number of times during his response that the hon. Gentleman said “consultation” or “consulting”. That is fine, but consultation and consulting are not substitutes for action, and that is what we need on cost and charges.

Steve Webb: Is the hon. Gentleman suggesting that he would have acted without consulting?

Gregg McClymont: The Minister has been in post for three years. He has made progress in other areas but, although he defended the progress that the Government have made on the cost and charges issue, it is not one of those policies on which the necessary progress has been made. That is why The Daily Telegraph, the Daily Mail, members of his own governing party and those from the Centre for Policy Studies have all outlined what measures should be place. In the end, we must remember that we are concerned with the saver. If savers do not know what they will be charged, how will they have confidence in the system going forward?

The Minister referred to headlines and press releases. We could have a cheap, political discussion about who said what—when, why and how? I am not interested in that in this context. He said that auto-enrolment was under way, and that we cannot have 10 million people being enrolled into schemes that are not high quality. I absolutely agree. However, the Minister could have taken action when he came into Government to ensure that the quality criteria were in place before auto-enrolment began. He has been in post three years, and he has not done enough on this.

I would like to take the Minister up on another important point. A thread throughout these discussions has been the difference between large and small employers. Large employers will get a better deal. They have the muscle, the resources, the expertise and the bargaining power to get an excellent deal. The Minister referred to the FTSE 100 survey and said that only one fifth of FTSE 100 companies with a DB or DC scheme have active member discounts. First, that is a fifth; a fifth cannot be dismissed, [Interruption.] The Minister says that is not typical, but that is the FTSE 100. How many employers are there in the UK?

Mark Reckless: The Minister gave us figures in a previous sitting on the applicability of the active member discounts, which we consider misnamed. I think the figures he gave were rather higher than this 80%. That might suggest that this would go the other way and that FTSE companies on average might be getting a slightly less good deal on that aspect.

Gregg McClymont: The hon. Gentleman is right that it is clear in the DWP survey the Minister referred to only 140 out of more than 500 employers were aware that there were any charges as a percentage of the fund. Therefore, it is very hard to work out how many active member discounts have been practised when most employers do not appear to be aware that there are any charges as a percentage of the fund. My point is not to go back and have a go at the Minister. The point I keep reiterating is that in this field is a market where we do not know what is going on. We actually do not know what is going on. That is an extraordinary situation. That is why there is a broad mass of opinion saying that the Government need to get cracking on it. For those reasons, I will press for a vote.

Richard Graham: This is an extraordinary situation. The shadow Minister has spent nearly three hours so far today saying that not enough has been done on pension charges. I can appreciate that he is striving to position himself as the people’s champion on the issue. However, his position is deeply undermined by the fact that he has consistently confused charges with costs with additional revenue. His list in the amendment is not comprehensive and almost certainly inaccurate. What we have seen in his revised clause 35 is yet another call for a triennial review of which there are at least 19 so far. That is not the way to go forward and help the people.

The Chair: Order. I am sure that hon. Members will phrase their interventions as questions in future.

Gregg McClymont: So convinced am I by the intervention from the hon. Member for Gloucester that I will push the amendment to a vote.

Question put. That the amendment be made.

The Committee divided: Ayes 4, Noes 8.

Division No. 6]  

AYES

Blenkinsop, Tom

Gilmore, Sheila

McClymont, Gregg

Nash, Pamela

NOES

Bradley, Karen

Colville, Oliver

Graham, Richard

Griffiths, Andrew

Pincher, Christopher

Reckless, Mark

Selous, Andrew

Webb, Steve

Question accordingly negatived.

2.45 pm

Gregg McClymont: I beg to move amendment 19, in clause 35, page 18, line 42, at end insert—

‘(3A) For the purposes of section 16, the definition of active member discounts, which we consider misnamed, I think the figures he gave were rather higher than this 80%. That might suggest that this would go the other way and that FTSE companies on average might be getting a slightly less good deal on that aspect.’
The hon. Member for Gloucester, who is leaving the room, will be delighted to know that this does not involve a review. [Interruption.] Ah, he has popped his head back to celebrate that fact.

The justification for the amendment is that, as drafted, the powers in the clause to cap charges do not appear to apply to current stranded pots and schemes with active members, or to pots in closed-book schemes in which all the pots are stranded. Our amendment would bring in both groups.

As the Bill stands, any cap would not apply to current stranded pots and schemes that are qualifying schemes because they have other active members. Under the Government proposals, the cap will only apply to pots that become stranded after Royal Assent. That oversight should be corrected. It is particularly necessary for savers that it is corrected, because DWP publications on pots follow member indicate that the Government intends that current stranded pots should be exempt from automatic transfer rules, which we discussed at length the other day. Stranded pots are often subject to particularly high charges, which brings us back to the point about deferred member penalties, although the issue is not just about deferred member penalties.

We know the Which? evidence about the impact that active member discounts can have on stranded pots, but the problem is not just with active member discounts. There is a tendency for the AMC—vis-à-vis the active member discount—to double for someone whose pot is stranded. We know that because of the power of compound interest, over a 40-year period that can really eat into somebody’s pension pot. We have had surveys from the TUC, Which?, NAPF and others that say that up to a quarter of a pension pot can be eaten up if the AMC doubles. I would like the Government to consider bringing current stranded pots into the Bill in this way, so that the cap that the Government might or might not put on could apply.

The second group is closed-book schemes with only deferred members. There are no official figures of the number of people with pots in schemes in which all the pots are stranded. Specialist pensions press estimates that the number of people in such schemes is between 2 million and 6 million. That aspect raises again the issue that we just reflected on: in this market it is often unclear what is going on. Generally, it is not clear how many people are in closed-book schemes—by “closed-book”, I mean schemes that are not open to new members; they are closed book and do not take on any more members. We actually do not know the number, which says something about the opacity in the market more generally. To the extent that one is given, the justification for very high charges in those closed-book schemes—again, we do not know precisely, but throughout the pension market it is widely understood that there can be very high charges in the schemes—is that members benefit from guarantees. For example, closed-book schemes might have very high charges, but there is a guarantee of how much the pension must pay out. As one comes to retirement, there might be a guarantee about the level of annuity that one has to take out, which is not the case under most current annuity offers. However, we do not know. We hear that; I hear that and I am sure that the Minister hears that. The Minister might have more information than me, but we simply do not know precisely what is going on. We need to find it out very quickly. What we do know is that the highest percentage that any provider has claimed for the number of such people on guarantees is around 20% of its members.

There is a big issue with closed-book schemes. This amendment would bring current stranded pots, active schemes and pots in closed-book schemes in which all the pots are stranded inside the power to cap charges. I commend the amendment to the Committee.

Steve Webb: Clearly, the hon. Gentleman is right to be concerned about the position of people whose money is in a scheme that they are not a member of anymore, or a scheme that is closed or frozen in some way. However, his amendment will not achieve what he wants it to achieve. Just to be clear, we agree entirely that deferred members should be protected from high or unreasonable charges in the same way as active members.

That is why the Government took a power in the Pensions Act 2011, which the hon. Gentleman’s predecessor shadowed, to cap charges for deferred as well as active members. We have, again, filled a gap in the powers that the previous Government had in place, and so used the 2011 Act that this Government brought in to give us the power to cap charges for deferred as well as active members. Clause 35, to which this is an amendment, will cover deferred members too whatever the circumstances of their deferral.

The problem with the hon. Gentleman’s amendment is that it does not have any specific legal effect. The definition of a qualifying scheme is not in any case confined to schemes with active members only, and so adding this does not help because we do not define qualifying schemes as only those with active members. Instead it creates some confusion. Qualifying schemes are defined in section 16 of the 2008 Act, but the hon. Gentleman is trying to put something into what I hope will be the 2014 Act. This creates both confusion and complexity because someone who wanted to understand what a qualifying scheme was would expect the 2008 Act to deal with it, but there would be some other bit stuck into the 2014 Act that had no cross-reference. Accepting his amendment would not help the clarity of the law and would not have any direct effect.

To clarify the substance of the issue that the hon. Gentleman raises about a scheme that does not have any active members, the provisions in clause 29 and schedule 16 allow for deferred members to be protected where the scheme is required to be an automatic transfer scheme. A scheme that has received or may receive an automatic transfer will need to meet the requirements of being an automatic transfer scheme. That helps us to deal with that issue under those powers. In particular, the existing drafting of the current section 16 of the 2008 Act already enables deferred members to be protected in qualifying schemes—those were our 2011 changes. The changes proposed in clause 35, as amended, also enable deferred members to be protected in qualifying schemes. Clause 35 removes the specific reference to “former active members” and replaces it with “other prescribed persons”. This broader definition that we are proposing includes former active members, but it could go wider if necessary.

In short, we accept that there are issues about people who are no longer members of schemes and about frozen and dormant pots and so on. However, the way
the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East proposes to address this is, we believe, deficient. We have powers to address the position of deferred members and to use the automatic transfer powers and that gives us the powers that we need, so we do not believe that amendment 19 is required.

**Gregg Mc Clymont:** The key thing in what the Minister said was that he considers our amendment deficient, but in defending the Government’s drafting he said it could go wider if necessary. This is about the Opposition wishing to clarify, and to place the Government in a position where they must do certain things, and the Minister wanting to leave his options open. We think it is so important that these two categories of pension pot must be brought into the Bill.

**Steve Webb:** The hon. Gentleman says “This matters so we’ll have a vote anyway.” But surely he is not content to try to insert deficient amendments into the Bill when I have explained why it does not actually do what he wants? He is welcome to assert that this is an Opposition wishing to clarify, and to place the Government in a position where they must do certain things, and the Minister wanting to leave his options open. We think it is so important that these two categories of pension pot must be brought into the Bill.

**Gregg Mc Clymont:** That would be true if I accepted the Minister’s assessment of the amendment, which I do not do. That is why I will be pushing this to a vote.

**Question put**, That the amendment be made.

The Committee divided: Ayes 4, Noes 7.

**Division No. 7**

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**Question accordingly negatived.**

**Question proposed**, That the clause stand part of the Bill.

**Steve Webb:** We have covered a lot of this territory in amendments 18 and 19, but I take this the opportunity to clarify for the benefit of the Committee what the clause does as unamended. Clause 35 extends the existing power in the Pensions Act 2008 to cap administration charges in qualifying schemes used to fulfil an employer’s duties under part 1 of the Pensions Act 2008, which is the Act that paved the way for automatic enrolment. However, it broadens the existing power in the Pensions Act 2008, giving greater flexibility to allow the nature of any limitations on charges to be set out in regulations. Flexibility is an important word; I know the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East opposite wants to constrain us, but we want flexibility.

The clause permits the Secretary of State to restrict the kinds of charges that may be made by qualifying schemes, and it also enables the details of how any restrictions and limits would work in practice to be set out in statutory guidance. Again, we have another tier here. There is a very rigid primary legislation, which comes once every few years at most. Then we have regulations with varying degrees of scrutiny and then statutory guidance, because we need to be able to issue guidance with statute behind it that would enable us to respond quickly where we identify that there are problems.

Why is clause 35 necessary? Obviously, automatic enrolment makes it all the more important for us to ensure that people are enrolled into schemes which offer charges that are both transparent and good value for money. The scope of charges covered by the existing power is very broad, but only enables charges to be capped at an amount to be prescribed in regulations. This clause ensures that we are able to regulate effectively to cover different types of charge structure, for example if we decided to implement a cap. It also enables us to prevent particular types of charges altogether. I cannot help observing in passing that the hon. Gentleman accused us of inactivity on charges. It is less than eight weeks since we banned consultancy charges. All right, it is a fair cop: it is eight weeks since I banned anything. I plead guilty to that. However, I think we have taken some pretty strong and effective action where necessary.

The point about clause 35 is that it allows us fully to protect members of qualifying pensions schemes from excessive charges, whilst responding effectively to market developments. We have already announced our intention to use our existing powers in section 17 of the Pensions Act 2008 to lay before Parliament regulations banning consultancy charges in automatic enrolment schemes. This power allows us to lay regulations banning consultancy charges in all qualifying schemes. This is an important point, which is relevant to what the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East was saying a moment ago.

There is a danger that, if we regulate only for automatic enrolment schemes, there will be an awful lot of legacy. There is the use of existing qualifying schemes so that people do not have to be auto-enrolled, because they are already in a qualifying scheme. If we do not apply the standards to qualifying schemes but only to automatic enrolment schemes, there is a set of people who are not covered. Clause 35 allows us to legislate for these quality standards, for example by banning consultancy charges, in all qualifying schemes. Obviously, as we said earlier, we will consult on options for taking action on charges, including the possibility of a charge cap on default funds in qualifying DC schemes in the autumn.

I hope that the Committee will agree that it is this Government who have enhanced their legal power to take action on charges, through this legislation and through the 2011 Act, and that we have already used those powers effectively as recently as about eight weeks ago. This is an effective and substantive response to the issue of charges, filling gaps in the very holey legislative regime that we inherited. I commend clause 35 to the Committee.

**Gregg Mc Clymont:** When the Minister mentioned “holey”; I thought he was going to give us another sermon. One can feel the Minister’s desire for the
approbation of the Committee. He said that it is a fair cop and that he has banned consultancy charges, and isn’t that a good thing? Yes, it is. I congratulate the Minister on doing that. However, I think the Minister was struggling to find any other example where he has taken legal action on charges. He refers to giving themselves the powers. We on this side would like to see him use those powers more effectively. I thank the Minister for his explanation of the clause. We will not divide on clause stand part.

Question put and agreed to.

Clause 35 accordingly ordered to stand part of the Bill.

Clause 36

Automatic enrolment: transitional period for hybrid schemes

3 pm

Steve Webb: I beg to move amendment 4, in clause 36, page 19, line 21, at end insert—

(i).

The Chair: With this it will be convenient to discuss Government amendment 5.

Steve Webb: It would make sense if I also addressed clause 36, to which amendment 4 applies, because we have to understand why the clause is there in order to understand why it needs to be changed.

Clause 36 corrects an error in the Pensions Act 2008, which allowed certain sorts of pension schemes—essentially, defined benefit or hybrid pension schemes—to defer automatic enrolment. It was sensible to allow them to do that, partly because they are generally higher quality schemes, so, as an easement for firms providing higher quality pension provision—those firms were at the end of the queue when it came to automatic enrolment duty—that seemed to be a perfectly proper thing to do.

The other reason was that the phasing up of the 1%, 2%, 3% employer contribution did not make a lot of sense in the context of a DB pension scheme. A DB pension scheme has to be funded at the level of the employee contribution, whatever that is, plus the employer contribution to make up the shortfall. Saying that the minimum contribution is 1%, 2% or 3% does not make much sense in the context of DB or hybrid schemes. The principle of deferring DB and hybrid schemes to the end of auto-enrolment, when the full 3% had come in, seems entirely unobjectionable.

However, unfortunately, it was pointed out to us that the 2008 Act, passed under the previous Government, was deficient. It does not work as intended, because the existing provision does not work properly where both money purchase and defined benefit pensions are payable under a single hybrid scheme. If the legislation is left uncorrected, job holders who are eligible only to be enrolled into the money purchase arrangement under a hybrid scheme will lose the benefit of pension contributions from their enrolment date until the end of the DB transitional period.

To translate that into English, if a pension scheme has a DB section and a DC section, the fact that it has a DB section enables the scheme to defer automatic enrolment. However, there might be an individual who cannot be enrolled into the DB section because it is not open to new members. They might only be able to have a DC pension, but they will not get the benefit of auto-enrolment until the end because somebody elsewhere in the scheme is in a DB pension. That does not seem right to us, so clause 36 deals with that problem. It corrects the error and ensures that members of hybrid schemes are treated correctly under the transitional arrangements. Or, it would have done, but we did not get it quite right, which is why amendments 4 and 5 are necessary.

To clarify, clause 36 brings in people who are in a hybrid scheme where they can go only into the DC section. However, we would still have a problem because the clause does not cover individuals with historically defined benefits in a scheme who would only be eligible to accrue money purchase benefits in the future. These are people who are actually members of the DB bit of the scheme, but cannot build up new DB rights. The first correction, in clause 36, means that just being in a scheme where somebody is in DB does not mean that the firm does not have to auto-enrol that person. Amendments 4 and 5 say that even if someone has DB rights under the scheme, they must still be auto-enrolled if they cannot build up new DB rights. In a sense, the intuition is fairly clear. If a person can build up only DC pension rights, regardless of who else is in the scheme or what other rights that person happens to have, that person should not have to wait to be auto-enrolled. Clause 36, as amended by amendments 4 and 5, delivers the policy intent that I think the drafters of the 2008 Act probably always intended. Hopefully, the 2014 Act, which I hope the Bill will become, will deliver.

Mark Reckless: If someone is not accruing further DB benefits because they have already reached their maximum pension entitlement—perhaps half of their salary—would they be auto-enrolled into the DC section or not?

Steve Webb: The situation would be where a firm has had a DB scheme in the past, the individual who was a member of it has accrued rights, and the company has closed the DB section not just to new members, but to accrue new accrual. It is not that anyone has hit a limit, particularly.

Mark Reckless: That was not the example I was giving. I was taking the example of someone with quite long service in the scheme who has already built up enough accrual so that their pension would be, say, half of their pay, for which reason they are not accruing any more. Would that force auto-enrolment into a DC scheme on them?

Steve Webb: Obviously other clauses would allow us to exempt certain categories of people from the auto-enrolment duty, such as people who have exceeded the lifetime tax limits. If someone is simply not eligible under the rules of the scheme to build up any more pension under the section of which they are a member, the employer will still have a legal duty automatically to enrol them into something of the employer’s choice. Sadly, such cases are very rare. We are trying to ensure through the amendments that, where somebody cannot...
[Steve Webb]

be enrolled into a DB or a hybrid scheme and build up rights under that scheme, they are enrolled into something. That is the point of the amendments.

Amendment 4 agreed to.

Amendment made: 5, in clause 36, page 19, line 22, leave out from ‘scheme’ to ‘are’ in line 23 and insert ‘and

(ii) all the benefits accruing in respect of his or her membership’.—(Steve Webb.)

Clause 36, as amended, ordered to stand part of the Bill.

Clause 37

PENALTY NOTICES UNDER SECTIONS 40 AND 41 OF THE PENSIONS ACT 2008 ETC

Question proposed, That the clause stand part of the Bill.

Steve Webb: I will explain the purpose of this relatively short clause to the Committee. The Pensions Regulator has the power to issue notices under section 72 of the Pensions Act 2004 requiring persons to provide them with information or documents. Failure to comply with such notices without reasonable excuse constitutes a criminal offence punishable under section 77 of the Pensions Act 2004 by a possible liability to a fine of up to £5,000 and/or imprisonment for up to two years.

Sections 40 and 41 of the Pensions Act 2008 gave the regulator an alternative sanction of financial penalties for failure to comply with section 72 information notices. Section 40 fixed penalties are £400, and section 41 escalating penalties are between £50 and £10,000 per day.

The clause corrects two minor errors in the Pensions Act 2008. It is almost like part 5 tidying up the bits that the previous Government got wrong before. The clause corrects two minor errors in the 2008 Act at sections 40 and 41 and at section 61, which inserted section 72(1A) into the Pensions Act 2004. The first of the errors inadvertently opened the possibility of 2008 Act penalties into the Pensions Act 2004. The first of the errors corrects two minor errors in the 2008 Act at sections 40 and 41 and at section 61, which inserted section 72(1A) into the Pensions Act 2004. The second of the errors amends the Pension Schemes Act 1993, so that if an employer becomes insolvent, protection is available to workers and agency workers as well as to employees. This protection allows schemes to make claims for payment from the National Insurance Fund of pension contributions that remain unpaid in the 12 months leading up to the employer’s insolvency. To explain: at the moment if one is an employee of a firm that becomes insolvent, there is a mechanism by which the National Insurance Fund can pay pension contributions that should have been paid—and were not—in a period up to insolvency. But the way that “employee” is defined excludes the growing number of agency workers and others who are not employed earners.

In the context of automatic enrolment, which brings in many people who do not currently have workplace pension provision—such as many agency workers—it is important that they have the same rights as employed earners in the event of insolvency.

Oliver Colvile (Plymouth, Sutton and Devonport) (Con): Is my hon. Friend willing to say whether the Maxwell pensioners would have been safeguarded in this matter?

Steve Webb: Clause 38 amends the Pension Schemes Act 1993, so that if an employer becomes insolvent, protection is available to workers and agency workers as well as to employees. This protection allows schemes to make claims for payment from the National Insurance Fund of pension contributions that remain unpaid in the 12 months leading up to the employer’s insolvency. To explain: at the moment if one is an employee of a firm that becomes insolvent, there is a mechanism by which the National Insurance Fund can pay pension contributions that should have been paid—and were not—in a period up to insolvency. But the way that “employee” is defined excludes the growing number of agency workers and others who are not employed earners.

In the context of automatic enrolment, which brings in many people who do not currently have workplace pension provision—such as many agency workers—it is important that they have the same rights as employed earners in the event of insolvency.

Steve Webb: It would be nice to think so. What we are trying to do with clause 38 is extend existing protection for employed earners to other categories of earners. There is a long list of what was wrong with Maxwell—theft was on the list—so it went far broader than the provisions of this clause. This is quite a narrow provision, as I am sure my hon. Friend appreciates. It is designed to recognise the modern labour market, the nature of employment relationships and to make sure that temporary and other workers are included.
If we did not do this, there is a possibility that existing legislation could be considered to be in breach of article 8 of the insolvency directive, whereas amending the existing legislation mitigates this risk. So clause 38 provides consistency of treatment for scheme members in the event that an employer becomes insolvent. Without extending this protection, two people doing similar or identical work for an employer, who are both automatically enrolled into a qualifying workplace pension scheme, could receive different treatment under the existing legislation, depending on whether they were classified as an employee or a worker or agency worker. I hope that the Committee will agree that we want to make sure that these provisions are applied in a fair and equal manner. Clause 38 makes an important contribution to that and I commend it to the Committee.

Question put and agreed to.
Clause 38 accordingly ordered to stand part of the Bill.

Clause 39

Power to require pension levies to be paid in respect of past periods

Question proposed, That the clause stand part of the Bill.

Steve Webb: We are in that ominous section of the Bill marked “Other”, which will get the pensions aficionados going. Clause 39 affects only one pension scheme in the land. It is relatively unusual to pass legislation that affects only one pension scheme, but this one does. It relates to the BT pension scheme. There is some complexity attached to the BT pension scheme, relating to the fact that BT was privatised and to the role of a Crown guarantee in a privatised pension scheme. Given that BT pensions are subject to a Crown guarantee, one might then assume that Pension Protection Fund arrangements should not apply, because if BT became insolvent the pensions were protected anyway. So why should BT pay a Pension Protection Fund levy?

Not surprisingly, BT took the view that it should not have to pay this levy. But the European authorities looked at the issue and said that BT, compared with other telecom providers at home and abroad, might be seen to be favourably treated. That is because another telecom provider in the same market has to pay a PPF levy. The Government are therefore extending this protection, two people doing similar or identical work for an employer, who are both automatically enrolled into a qualifying workplace pension scheme, could receive different treatment under the existing legislation, depending on whether they were classified as an employee or a worker or agency worker. I hope that the Committee will agree that we want to make sure that these provisions are applied in a fair and equal manner. Clause 38 makes an important contribution to that and I commend it to the Committee.

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In the end, the judgment was that BT did not have to pay the levy at the time, but that was then challenged. The clause brings about compliance with the EC decision that it was unfair that BT did not have to pay the levy. It affects only the BT pension scheme and allows PPF levies to be paid for the periods that were in dispute. That is a slightly informal account of what went on, but I hope it has helped the Committee to get a sense of the background to the clause.

3.15 pm

I shall clarify what the clause does—suffice it to say that this is an area in which there has been a good deal of litigation, so a measure of precision on my part might not go amiss. The clause provides for regulation-making powers to enable recovery of the PPF levies—the protection levy and the administration levy—as required by the decision of the Commission of 11 February 2009. The outstanding levies are for the years 2005-06 to 2008-09 for the pension protection levy and 2005-06 to 2009-10 for the administration levy. It is respect of the levies for those years that the Government need to legislate.

The main purpose of the clause is to ensure full compliance with the Commission’s decision. As the Committee will know, there are two levies: the protection levy, which is largely risk based and goes towards PPF compensation, and the administration levy, which meets the PPF running costs. In its decision of 11 February 2009, the Commission ruled that the exemption, arising from a Crown guarantee, of the BT pension scheme from payment of levies to the PPF constituted an incompatible state aid and must cease.

The PPF, the BT pension scheme trustee and BT plc reached an agreement in respect of the PPF risk-based levy from 2005-06 to 2008-09 through the setting up of an escrow account—a blocked account containing only the maximum amount of levies that could be due in respect of each levy year, up to and including 2008-09, plus the applicable recovery interest—pending the outcome of BT plc’s appeal against the Commission decision. That arrangement was agreed by the Commission.

Regulations were introduced in March 2010 to ensure future compliance on the PPF protection risk-based levy and in July 2010 for compliance on the PPF administration levy. The Government are therefore compliant with the Commission’s decision, apart from the recovery of the levies between 2005-06 and 2009-10. The clause will enable the Secretary of State to make regulations to recover those moneys and ensure full compliance.

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

Question put and agreed to.
Clause 39 accordingly ordered to stand part of the Bill.

Clause 40

Prohibition and suspension orders: directors of corporate trustees

Question proposed, That the clause stand part of the Bill.

Steve Webb: We are covering a wide range of issues today. The clause deals with prohibition and suspension orders for corporate trustees.

Clearly, the role of trustees is important—I am sure that the shadow Minister takes a similar view—and we want good, trustworthy and honest people to be pension
they become a corporate trustee. On that basis, I commend a framework or defraud pension schemes. If an individual loophole for those seeking to circumvent the legislative therefore we believe that it is right to close a possible risk of fraud in pension schemes. There are about the risk of fraud in pension schemes. There are very large amounts of other people's money around. To run through the clause slightly more precisely, it prohibits a company from being a corporate trustee if one or more of its directors has been prohibited by the Pensions Regulator. There are not vast numbers of people who have been prohibited, but there are enough for us to want to make sure that there is no abuse of the provisions on trustees. Under the clause, the prohibition on the company is immediately removed if the director who has been prohibited from being an individual trustee leaves the company board. In addition, the company is allowed to apply to the Pensions Regulator for the prohibition to be waived. Clauses 43 and 44 correct an anomaly, whereby under the Pensions Act 1995 an individual trustee can be suspended, whereas corporate trustees cannot.

The key point is that this measure closes a loophole in the current prohibition regime which could be exploited by those not fit and proper to be trustees to continue to act in this capacity through a company directorship and thus potentially have control over significant occupational scheme assets. Many of us are concerned about the risk of fraud in pension schemes. There are very large amounts of other people's money around. Therefore we believe that it is right to close a possible loophole for those seeking to circumvent the legislative framework or defraud pension schemes. If an individual is prohibited, that status should continue to apply if they become a corporate trustee. On that basis, I commend the clause to the Committee.

Question put and agreed to.
Clause 40 accordingly ordered to stand part of the Bill.

Schedule 17

Prohibition orders: consequential amendments

Question proposed, That the schedule be the Seventeenth schedule to the Bill.

Steve Webb: Schedule 17, as it says in clause 40(6), contains amendments consequential to that clause. It is given effect by clause 40. It delivers consequential amendments to sections in the Pensions Act 1995 and the Pensions Act 2004 dealing with four things: the removal or suspension of trustees: consequences; the removal and appointment of trustees: property; functions exercisable by the determinations panel of the regulator; and the register of prohibited trustees. In brief, the consequential changes in schedule 17 are necessary so that actions and consequences, which already occur where the regulator suspends and prohibits a trustee, are also available when it prohibits a company from being a trustee under the new powers given effect by clause 40. Clause 40 is about closing a loophole in the current prohibition regime which could be exploited by those not fit and proper to be trustees to continue to act in this capacity through a company directorship and thus have control over significant occupational scheme assets. I imagine schedule 17 will not be the most contentious issue in the Bill, and I commend it to the Committee.

Question put and agreed to.
Schedule 17 accordingly agreed to.

Clause 41

Preparation of guidance for pensions illustrations

Question proposed, That the clause stand part of the Bill.

Steve Webb: We move on now to an area that is of considerable public interest, which is the guff you get from your pension scheme. I use the technical legal jargon at this point. We all know that people get telephone directories' worth of paperwork from their pension schemes. This is designed to be informative and so often it is not. I have here the Financial Reporting Council’s guidance on what are called SMPIs—statutory money purchase illustrations—and there is a lot of guidance on what is included and how it should be done. I have here—I had better put my thumb over the company—an annual pension statement, which runs to 13 pages. There are fund values, lows, mids and highs, a long list of management charges, frequently asked questions, your attitude to risk, financial education, growth rate assumptions, other assumptions and, bizarrely, two pages intentionally left blank. Imagine, in the world of small pots before we sort out auto-transfers, getting perhaps 11 or 12 of these over your working life. I suspect nobody reads any of them. We need to move to transparent, straightforward communication of pensions information.

There is some suggestion that it is the Government’s fault. Many things are the Government’s fault, but this is not. Pension schemes are well able, if they wish, to send simple, clear information. I have here a two-page version of what we think is enough to satisfy the law. Therefore, we are very keen for providers not to gold-plate what Government require of them, but just to give people simple, clear information. We are working with the industry on that, and I hope we are making some progress.

Production of these statutory—and they are statutory—money purchase illustrations is overseen by the Financial Reporting Council. Clause 41 relates to the activities of that body. To explain more precisely what the clause does, it amends section 16 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 so that it is explicit that a body may receive a grant for the production of guidance used in pension Illustrations. This amendment ensures that the body may benefit from the exemption from liability for damages in section 18, which applies in relation to “section 16(2) activities”. That also enables grants to be made to the body, even if it does not carry out any of the other activities listed in section 16(2).
Why are we doing this? At present, the relevant body is the Financial Reporting Council—the FRC. It produces guidance; a technical memorandum: TM1. The clause makes clear that the FRC (or any other body) may benefit from the exemption from liability for damages in relation to this activity. We are protecting the FRC, to make sure that, if in good faith they produce guidance for schemes, they are not subject to damages as a result. It makes the position consistent with the approach for the other things that the FRC does on accounting and actuarial matters. It will enable the FRC to exercise its statutory functions, limiting the risk to its own financial position and to its becoming involved in disputes between pension providers and pension scheme members over the content of illustrations.

While we assess the risk of claims being made against the FRC to be low, we still feel it is important to put the matter beyond doubt, especially with the expected increase in volumes of SMPIs. Let us bear in mind that there will be far more of these dropping through letter boxes in the coming years with automatic enrolment. Our colleagues at the FRC do an important job and we wanted to make their legal position clear. That is the purpose of the clause.

*Question put and agreed to.*

Clause 41 accordingly ordered to stand part of the Bill.

**Clause 42**

**PENSIONS REGULATOR’S OBJECTIVES**

*Question proposed,* That the clause stand part of the Bill.

Steve Webb: We have an hour and a half or so left to scrutinise the rest of the Bill. To be honest, the clause warrants that time.

3.26 pm

* Sitting suspended for a Division in the House.

3.41 pm

*On resuming—*

Steve Webb: As the record will show, I was about to observe that the clause could do with at least an hour and a half of debate, and we have just lost 15 minutes. The clause is about a very serious issue. It is the Government’s response to the concerns of British industry about the way in which defined benefit pension schemes are regulated. It is a profound and important issue. Unfortunately, because of the way in which the Opposition have chosen to allocate their time, with speeches running to nearly two hours on some amendments, it seems likely that we will have to whizz through some of this stuff if the Opposition are to reach their new clauses and a whole range of other important stuff. I hope that it will not be suggested that we have not allowed enough time for proper debate. I will try to do justice to the clause in the limited time that has been left to me.

Clause 42 relates to the Pensions Regulator, whose role includes—but not exclusively—overseeing defined benefit pension schemes. Many of them are now closed, but they still have to be properly funded to ensure that employers get their benefits, which, of course, are liabilities that can run many decades ahead, because they benefit not only the people who are in the schemes now, but their surviving spouses and in some cases dependants, so it is a long-term issue.

The regulator has to strike a balance to make sure there is enough money in the pension fund to pay out all the liabilities, but not to place those duties on sponsoring employers so onerously that it is to their detriment and they are not able to continue as sponsoring employers, because the financial pressures are too severe and we therefore—to use a colloquialism—kill the goose that laid the golden egg. In other words, there is a balance to be struck. We all want company pension funds to have enough money in them to pay out pension liabilities as they fall due, but we must strike a balance between that and not placing such heavy duties on sponsoring employers that the pressure being put on them is counter-productive.

The Pensions Regulator, it is important to place on record, already shows a great deal of flexibility in the way that he implements his duties. He currently has statutory objectives, one of which is to protect the Pension Protection Fund. If the regulator is not tough enough—if he allows a scheme to be underfunded for too long and then an insolvency event occurs—that scheme, if it is not sufficiently funded, can end up in the Pension Protection Fund. That is a lot better than when there was not a Pension Protection Fund, but it is still bad news for employees who might not get all the pensions they were expecting, and it is bad news for the remaining employers paying the Pension Protection Fund levy, because every time someone goes into the fund, that means more liabilities for the Pension Protection Fund, and that means the schemes that are still with open or legacy DB have to pay more PPF levy. That could, in extremis, lead to a downward spiral whereby the levies become particularly onerous, other firms cannot meet them and they go into the PPF, and we clearly do not want to be in such a position. So there is already flexibility in the system to try to strike a balance between the pressure on the sponsoring employer to invest and to do their job and to put adequate amounts into their pension fund.

In recent years, growing representations have been made to the Government that that flexibility was not quite right. One of the reasons is that, with discount and gilts rates being at historically low levels, measured pension fund deficits were getting larger. There was a school of thought, which said that that was not a real phenomenon, and that it was not really going on in the pension fund because such liabilities stretch decades into the future. It said that the current interest rates were atypical and, in a few years’ time—however long that might be—interest rates will go up, discounts will go up and that means that the discounted value of future liabilities will go down. Measured deficits will go down and, if British employers were required to shovel money in now just because the numbers were artificially low, we may regret it. It may damage British industry when economic times are hard to pay liabilities that might, to some extent, disappear if we went back to more normal times in respect of interest rates. The argument was made, understandably by employers, that action was needed.

3.45 pm

There was an argument that no action was needed because of the considerable flex in the system. I shall explain that briefly. When employers have a deficit in their pension funds at a valuation, it would generally happen that a recovery plan would be agreed between
the trustees of the scheme and the sponsoring employer. It will specify a period over which the deficit has to be filled, and a schedule of deficit recovery payments in addition to regular payments into the scheme.

That process is a negotiation, so there is already flexibility in the system for how long the recovery period should be and what should be the profile of the repayments. For example, the Pensions Regulator recently allowed an employer a two-year payment holiday, recognising that it was most important that the sponsoring employer had the cash to invest now, as the best way in which to get the pension deficit scheme filled was to make sure that the scheme-sponsoring employer prospered and did well. That is one example of the flexibility in the system.

Another example of the flexibility in the system is the length and end point of recovery plans. If someone had a valuation or a plan agreed in 2010 for a 10-year recovery plan, taking them to 2020, it is not uncommon for the 2013 triennial process to identify another 10-year plan so, rather than say that it is three years into the 10-year plan and we still have to finish dead on 2020, the flexibility in the system allows a new 10-year agreement to run to 2023. Some would say that that is unduly lax: if a 10-year plan is agreed in 2010, it should finish in 2020 and, in 2013, it should be a seven-year plan and, in 2016, it should be a four-year plan. However, it is common for the end point of those recovery plans to roll later into the future. That is a second flexibility in the system. I have mentioned the profile of payments and the length of the recovery plan.

A third flexibility is that the discount rates used can vary. It is not the case that schemes just have to use a gilts rate. Although gilts rates might be low—some would say artificially low, although knowing the future of interest rates is beyond most of us—the assumption that gilts rates are artificially low does not mean that they have to be used in the valuation. When examining a distribution of the discount rates used in scheme valuations, there is quite a considerable variation. There are many other aspects of the flexibility, but the Government had to think about whether a new additional change to the regime was necessary, given the considerable flex that is already and quite rightly being demonstrated by the Pensions Regulator.

The Government consulted on two essential options earlier this year in response to such concerns. One was called the “smoothing of discount rates”. The argument was that we would not just use current gilts rates or some variant rates on current gilts rates, but look at gilts rates or discount rates over several years. If the current situation was atypical, but it was not a few years ago nor will it be a few years hence, and a moving average was used over a number of years, the impact of what might be a temporary current aberrant discount rate would be muffled. It would be diminished. The point of the exercise would have been to give measured deficits lower than the current mechanism is producing potentially, and therefore reduce the pressure on firms to put money in.

We consulted on that proposition, and there was not much support for it. There were those who suggested that it was a bit of a fudge or a fiddle, but people generally recognised that there is already flexibility on discount rates and that the challenge is to use the number that the usual method gives, interpret it sensibly and not fudge the number when it does not produce the anticipated answer. I have some sympathy with that point of view—funnily enough because it is the Government’s position. The basic idea was that we would not go down that route, not least because perhaps as interest rates rose there would be an asymmetry. When interest rates were falling, everyone said, “Let’s use an average going back into the past so that we can use some higher interest rates,” but as soon as rates started rising, everyone would say, “Why are we using these old historical interest rates from years ago? They are not accurate. We need to increase the discount rates.” To do something asymmetric would have shouted “fiddle” and people would not have trusted the numbers. Having credible measures of pension fund deficits is important. That approach to such pressures was therefore rejected.

The second approach, which forms the basis for clause 42, was to see whether the Pensions Regulator’s remit should be extended to include an explicit growth objective. As clause 42 states, the additional remit added to the exercise of its functions under part 3 of the Pensions Act 2004 is “to minimise any adverse impact on the sustainable growth of an employer.” That is not a wholly new concept in pension regulation. I imagine that the Committee is already familiar with the Pensions Regulator’s regulatory code of practice 03, “Funding defined benefits”, which states at paragraph 102:

“When considering the structure of a recovery plan and the contributions required, the trustees should take into account the following matters: the employer’s business plans and the likely effect any potential recovery plan would have on the future viability of the employer.”

The language of the existing guidance closely mirrors the language of clause 42. This is not a step change or a radical departure or about just looking after the firm rather than the pension plan; it is a much more nuanced change. It makes explicit what was in paragraph 102 of the existing guidance. The idea behind it is that in the delicate negotiation between the trustee and the firm, the firm is able to say to the trustees, who of course want the pension scheme gap filled as quickly as possible, “If we go to the regulator with our plan, the regulator is allowed explicitly in statute”—assuming the legislation goes through—“to say that where the employer is coming from is acceptable because it might be a slower recovery plan than you wanted, but it is the best way to ensure that the firm is still here in years to come.” We would all agree that the best way to ensure that pensions are properly funded is to ensure that the sponsoring employer is still around to pay the pensions.

There is a very delicate balancing act. We do not want to allow firms not to put money into pension schemes when they could do so without an adverse impact on the employer. There has been some suggestion that many firms are at the moment relatively cash rich, so it was quite a balanced judgment. We do not want to overdo things, because more pension funds would be underfunded for longer and insolvency events would just happen—we can try to guess when, but they do just happen—and that would mean that when firms become insolvent and go into the PPF, they go in with bigger deficits. That means more people with more shortfalls on their pensions, because they went into the PPF, but more particularly, the levy payers, which are the remaining firms with DB pension liabilities, would then face increased costs and would rightly object.
I hope that I have emphasised what a delicate balancing act all of this is. When we concluded—the Chancellor announced it in the Budget—that we were not going ahead with the smoothing proposal, but that we were going to change the regulator’s remit and add this additional remit, we were striking the right balance.

Just to be clear, we issued a call for evidence that originally asked people to consider the long-term affordability of deficit-recovery plans to sponsoring employers—the original language we consulted on—but we have refined it for the Bill. When we consult, we also listen and amend our proposals, and employers who responded to our consultation generally wanted a new objective that went wider than just affordability of deficit recovery plans in order to draw out the flexibilities in existing funding legislation. They felt that would help to support the long-term health of sponsoring employers and, in turn, promote growth and protect members’ benefits. We recognise that the importance of sponsoring employers in this manner is in line with our wider objective to support private sector-led economic growth.

I hope it was helpful to canter through the rather long and detailed process of trying to come up with the right balance. Because every recovery plan is the result of negotiations between trustees and employers, all of whom will have different relationships and different bargaining strengths, we have to be very careful.

One final question that the Committee might be wondering about, is that this is obviously not yet the law of the land, so what are we doing to make sure that the regulator is not pushing firms too hard as we speak? I assure the Committee that the regulator produces an annual document setting out his approach to DB regulation. Over the last couple of years those documents—particularly this year’s document, which has recently been produced—are much stronger on the importance of making sure that trustees think about the position of a sponsoring employer. I spoke to an employer earlier today who said not only how helpful the new legislation would be, but also the new guidance that came out earlier in the year from the Pensions Regulator.

Finally, clearly just passing a law is, as ever, only the start of a story. We need to monitor the effect of the change. For example, we will need to disseminate to trustees and others the new statutory duty that we are placing on the regulator. We need trustees to know that the regulator is looking for recovery plans that respect the sustainable growth of an employer. We can have discussions in these Committee Rooms, but Britain’s many thousands of trustees will not know about them unless we tell them and they will only change their behaviour if we tell them. The regulator is talking about having roadshows going around the country and making sure that pension schemes are aware of the changes. We will be monitoring to see that the new statutory framework actually changes things. We are not just putting clause 42 in the Bill for the goodness of our health; we really want the recovery plans and the relationship between trustees and employees to be incrementally changed. It is meant to tilt the balance to make sure that proper weight is given to the sustainable growth of an employer.

I hope that the measure will give the right foundation for the regulation of occupational pension schemes. At a time when we are all keen to promote growth, I hope that we get the right balance between protecting members’ benefits, protecting the Pension Protection Fund and ensuring that sponsoring employers are around in the medium to long term to pay the pension benefits that we would all like to see them pay. On the strength of that, I commend clause 42 to the Committee.

Gregg McClymont: I thank the Minister for that explanation. He got into his stride as he went on, but I was a little puzzled by his opening. It seemed to be along the lines of complaining once again about the intense scrutiny to which the Minister’s pot follows member proposal was exposed under clause 29, and he certainly seemed to be cautioning against the sort of future press release that he always seems to be anticipating, on the basis that somebody must always be out to get him.

The Minister is right: the issue is complex, but the difference between this clause and, say, clause 29 is that we do not think that the Government are in the wrong place. In speaking to the clause, the Minister set out some of the complexities in the balance that he had to strike, and I am of the view that the balance has been reasonably well struck. The whole country would applaud the Government if they extended their growth objectives to the economy as a whole, and not just to the Pensions Regulator; that would be to the benefit of us all. The Minister has done an excellent job of setting out the different things that had to be balanced, and on that basis I have no intention of dividing the Committee.

Steve Webb: I will not detain the Committee. I sense that the hon. Gentleman’s second point may have been partisan, but he raises a serious issue. The Government are indeed extending the growth duty to a whole range of regulators apart from the Pensions Regulator. Although we are doing it in this Bill just for our regulator, the Government as a whole are bringing the growth objective to a whole range of what I think are called non-economic regulators. In future, Government regulators will have to have far more regard to growth, which is not what the hon. Gentleman meant, but it is actually a relevant response.

In the hon. Gentleman’s opening comment, I think he may have mistaken length for scrutiny. It is quite possible to scrutinise us rigorously but his new clauses cover issues like NEST, independent trustees and scaled accumulation, and we have one on the PPF. One of my concerns is that they will all receive inadequate scrutiny because earlier today he mistook length for proper scrutiny.

4 pm

Gregg McClymont: The Minister is rather keen to determine the proceedings of the Committee. I suggest that he let the Opposition do their job of scrutinising the legislation and he stick to his side of the table, so to speak. The desire to frame our proceedings in a way that is most beneficial to the Minister and the Government is understandable but it is not in the spirit of scrutinising legislation, which is our job.

I say again that I have no intention of dividing the Committee on the clause.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.
Clause 43

**Maximum period between scheme returns to be 5 years for micro schemes**

*Question proposed,* That the clause stand part of the Bill.

Steve Webb: Clause 43 is a deregulatory measure, as are so many of the measures we have brought forward in this Parliament. The Committee may be aware that we have something that used to be called “one in, one out”. In other words, the Government have decided that, whenever a Government Department passes a regulation that applies, say, a £1 million regulatory burden on British business, it cannot do so without identifying £1 million of deregulation to offset that. The DWP was the exemplar par excellence—I think one can be, and we are—of a deregulatory Department with a substantial “one in, one out” balance at the end of last year.

However, the Government decided they were not being deregulatory enough and have introduced “one in, two out”. In other words, for every £1 million of regulatory burden I might wish or feel obliged to put on British business, I now have to identify £2 million of deregulation to undertake.

Clause 43 is one small measure in the spirit of “one in, two out”. I strongly expect that “one in, three out” might be around the corner. The point about “one in, two out” is that it ensures that, within the scope of the regulations counted in the exercise, this Government will be the first ever to be a net deregulator.

Sheila Gilmore: Does the Minister really believe that this is simply an arithmetical exercise? Does it have nothing to do with the quality of the regulation? One could end up taking away things when it would be quite dangerous to do so.

Steve Webb: The road to hell is paved with good intentions. What has tended to happen over the years is that successive Governments have legislated and regulated and added more costs and burdens, without particular regard for the implications for jobs and competitiveness.

Each regulation was seen to be good in its own lights. The Committee may be aware that we have something that used to be called “one in, one out”. In other words, the Government have decided that, whenever a Government Department passes a regulation that applies, say, a £1 million regulatory burden on British business, it cannot do so without identifying £1 million of deregulation to offset that. The DWP was the exemplar par excellence—I think one can be, and we are—of a deregulatory Department with a substantial “one in, one out” balance at the end of last year.

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Steve Webb: The road to hell is paved with good intentions. What has tended to happen over the years is that successive Governments have legislated and regulated and added more costs and burdens, without particular regard for the implications for jobs and competitiveness.

Each regulation was seen to be good in its own lights and worth while. Accumulated together, they have often been counter-productive. The welcome discipline I have been under for the past three and a bit years has been, each time the instinct has been to put in a new cost, burden or regulation, to think, “Hang on. How does this compare with the stock of regulation? Is there less cost-effective regulation already in place that could be removed?” That has led on a number of occasions to the Government not regulating, in that there is a list of regulations that were never passed and by definition will never appear.

Clause 43 will be on the credit list of the things we have been doing, albeit at the margins; we do not always count some of the relatively small ones. Clause 43 relates to micro pension schemes—those that have between just two and four members. At the moment, they have to produce a scheme return to the Pensions Regulator every three years, and we are relaxing that rule to every five years. The Pensions Regulator is provided with the flexibility to alter the frequency with which it requests scheme returns from DC micro-schemes. That saves a third of a million pounds for very small pension schemes. In the grand scheme of pensions, that is not a huge number, but it reduces the regulatory burden.

An important point about the Pensions Regulator is that its job is to be risk-based. Many of those very small pension schemes are closed to the owners of the firm and are actually quite well scrutinised. They are not where the bulk of the large-scale risks are. That is why we have taken the view that requiring those very small schemes to be regularly producing scheme returns is unnecessarily bureaucratic. Many of those two to four member defined contribution schemes are what are called tax wrappers, so they often do not move up and down the size category. We thought about including the slightly larger, five to 11 member schemes in the five-year return category, but as schemes get larger, members may have less influence over and knowledge about them, so they require more regulatory scrutiny, especially if they are used for automatic enrolment. The rules for schemes with 12 or more members are different again, and warrant a more regular scheme return. We judged that the savings made by including schemes with five to 11 members would be disproportionate to the increased risks we might run, but that we could do more for those with two to four members, and the clause provides that flexibility.

*Question put and agreed to.*

Clause 43 accordingly ordered to stand part of the Bill.

**Clause 44**

*Question proposed,* That the clause stand part of the Bill.

Steve Webb: The Committee will be reassured that we are now on part 5 of the Bill, which is headed “Final provisions”. I am sure we will all miss our deliberations.

Under the clause, the Secretary of State or the Treasury may make consequential, supplementary or incidental amendments relating to any provision in the Bill by primary or secondary legislation. Such amendments would largely be to align existing legislation with the Bill’s provisions, so that they function as Parliament intended. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will be pleased to hear that the power has to be exercised by affirmative order if it amends or repeals primary legislation.

To revert to our discussion about statutory instruments, I am reliably informed that more than 3,300 were laid last year, of which only a tiny fraction—some 5%—were subject to the affirmative procedure. The suggestion made earlier that we should use that procedure to add a charge to a list is therefore disproportionate, but it is only proper that changes that amend or repeal primary legislation should be subject to an affirmative order.

Whenever we pass a Bill, we identify all consequential amendments. Committee members will have noticed that schedule 12 alone amends 17 different Acts. Such a provision is necessary because, rather than having to introduce new primary legislation to make a consequential change, the clause allows us to make amendments needed for the proper operation of the Bill’s provisions,
including to ensure that they interact properly with social security and pensions law and with other Departments’ legislation.

In case the power appears to be unusual, I should add that a similar one in the Pensions Act 2008 was important in the smooth implementation of the ending of contracting out from defined contribution schemes, after operational requirements came to light late in the delivery process. That might arise again with the ending of contracting out from defined benefit schemes. Although the provision allows us to use secondary legislation to amend primary legislation—known as a Henry VIII power—we believe that it is appropriate.

I hope that I have reassured the Committee by setting out the limited circumstances in which we would seek to use such a power, and the fact that if we did so, it would be subject to the affirmative procedure. On that basis, I commend the clause to the Committee.

Question put and agreed to.

Clause 44 accordingly ordered to stand part of the Bill.

Clause 45

REGULATIONS AND ORDERS

Amendment proposed: 15, in clause 45, page 23, line 36, after ‘section 3’, insert ‘17(5)’.—(Gregg McClymont.)

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 8]

AYES

Blenkinsop, Tom
Gilmore, Sheila
McCann, Mr Michael

NOES

Bradley, Karen
Colville, Oliver
Griffiths, Andrew
Pincher, Christopher

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Steve Webb: When we get to what are marked as “final and other provisions”, it is normally assumed that they are the inconsequential bits at the end of the Bill, but clause 45 is important. As Opposition Members have pointed out, quite a lot of the detail in some parts of the Bill remains to be filled in. The clause specifies which statutory instruments will be subject to the affirmative procedure and which to the negative procedure. I will say a word or two about those that we believe should be subject to the affirmative procedure.

Regulations under clause 3 will deal with the single-tier start rate, which is pretty important. The uprating thereafter will be the statutory minimum, but the start rate is not set out in the Bill, so we think that an affirmative procedure debate is appropriate. Regulations under clause 18(5) will amend the minimum qualification requirement for a deferral payment as specified in clause 17(2). They will amend primary legislation, which is why we have chosen the affirmative procedure. Regulations under clause 27 for bereavement support payment will be subject to the affirmative procedure because we entirely acknowledge that a good deal of detail has been left to regulations, so we think it only right that the House should have a proper debate on that without having to seek one.

The first set of regulations made under clause 10, which deals with the inheritance of graduated retirement pension under single tier, will be subject to the affirmative procedure. Although they apply primary legislation, we regard them as very technical so we think that further debate on minor tweaks should not be necessary. Similarly, with regulations under clause 20, on overseas pensions under single tier, the issue is important but minor subsequent exercise of the power—[Interruption] I hope that that is news of a wicket falling. [HON. MEMBERS: “No!”] Actually, I do not hope that. I had forgotten that England are batting.

Gregg McClymont: I was enjoying the Minister’s remarks so much that I thought I would start a party.

Steve Webb: I am delighted that the hon. Gentleman is getting into the groove of the debate. Just in case the Committee missed that, the first set of regulations under clause 20 will be subject to the affirmative procedure because the basic issue is important, but minor changes thereafter need not be debated. Orders under clause 44—the Henry VIII power that we discussed a moment ago—and regulations under schedule 16 for automatic transfers will be subject to the affirmative procedure because of the amount of detail that is left to the regulations.

I would like to clarify something that I said in an earlier debate. I said that Parliament would debate the protected persons regulations, but they are actually subject to the negative resolution procedure. I apologise if I gave an inaccurate impression about that. As with all statutory instruments subject to the negative procedure, if the House wishes to debate those things, the usual process of prayer against a regulation will trigger a debate. I am happy to give the assurance that if we lay those regulations and they are prayed against, we will use our good offices to ensure that such a debate takes place.

I hope that that is helpful in clarifying the thinking behind which secondary legislation will be subject to the affirmative procedure, and which to the more standard negative procedure.

Question put and agreed to.

Clause 45 accordingly ordered to stand part of the Bill.

Clause 46

EXTENT

Question proposed, That the clause stand part of the Bill.

Steve Webb: The clause specifies the territories of the United Kingdom to which the legislation will extend. On enactment, the substantive parts of parts 1 and 3 will extend to England and Wales and to Scotland; my notes say that they are commonly referred to as Great
Britain—just in case I was not sure. The substantive provisions of part 4 will also refer to Great Britain only. However, there is an exception. Clause 41, which we discussed a few moments ago, in amending an enactment that extends to Northern Ireland, will also extend to Northern Ireland, but I can confirm that a legislative consent motion was passed on 1 July 2013. I hope that that is helpful in clarifying the scope of the Bill.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clause 47

COMMENCEMENT

Question proposed, That the clause stand part of the Bill.

Steve Webb: As is apparent, the clause sets out when the provisions in the Bill will commence. Subsections (1) and (2) provide that the Bill will come into force on a date the Secretary of State specifies by order. Subsection (3) provides that part 5 of the Bill will come into force on the day when the Act is passed. If clause 47 were not brought into force on the day of Royal Assent, we would not have the power commenced to bring it into force by order, because it would not be in force. I hope that that makes sense.

Subsection (4) specifies that the following will commence two months after the Act receives Royal Assent: part 2, relating to pensionable age; sections 30 and 31, which relate to incentives to transfer pension rights; section 37, which is the penalty notices; sections 41 and 42, which are the statutory money purchase illustrations and the regulator’s objectives; and paragraph 30(2) of schedule 13.

4.15 pm

For the avoidance of doubt, subsection (5) provides that the single-tier pension will come into force on 6 April 2016, unless it, or any provision of it, has already been brought into force by the Secretary of State under subsection (1). Under subsection (6), the Secretary of State can amend subsection (5) to change the start date and specify a later date instead, and amend references to April 2016 in part 1 of the Bill.

Most transitional provision has been drafted into the primary legislation, but we may need some provision on commencement; for example, if, as we suspect may be the case, bereavement benefits are to be changed a year later than single-tier comes in. The Bill was originally drafted on the premise that both would happen at the same time, but, if not, we may need transitional provision to account for the interim treatment of category B pensions. Subsection (7) gives the Secretary of State the power to make such provision.

I hope that that helps to clarify the different start dates and different sections of the Bill. I commend it to the Committee.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clause 48 agreed to.
but simply because they had worked for the firm for a long time. Furthermore, someone who works for a firm for pretty much all their working life is unlikely to have any other pension, so any cap that applies to their PPF pension essentially caps their whole income as well as their widow or survivor's pension. Some of these workers and other firms that people have come to see me about felt that the cap was having a disproportionate effect on a very small group—people who had been members of a scheme for a long time and who had had little or no opportunity to make up the shortfall from other sources.

New schedule 1, which is grouped with this new clause, inserts a new definition of the compensation cap into schedule 7 of the Pensions Act 2004. This is the schedule that deals with the calculation of compensation. It brings in a new compensation cap, which essentially will be based on an enhanced level for people who have served for more than 20 years. There is a figure for the cap which can be actuarially reduced for people who take early retirement. That will be increased and we envisage this to be by 3% for each year of service beyond 20. It is very much focused on those who have relatively high pensions. We are not talking about people on very low pensions, but about people who have worked for a firm for a long period and who have expectations about their pensions.

This new definition deals with members who will become entitled to compensation after the legislation comes into force. It provides for a standard cap to apply to anyone with 20 years’ service or less. I will give the Committee the figure: the standard cap applies to everyone at present and is £34,867 at the age of 65, but is reduced for earlier years. So where a person has been in a scheme for 21 years or more, the standard cap will be increased by 3% for each full year of service, to a maximum of double the standard cap. To clarify: we will bring forward further amendments to extend the scope of this.

The amendments before us now enable the Committee to consider this measure, which deals with those who come into the scheme after this legislation is in force. We also plan to pick up the people in the PPF already such as, I think, some of the Visteon workers. It will not be retrospective in the sense that we will not go back to all the past years and say: “We will increase the cap now. Had that rule been in force then you would have got a bigger pension”. But it will be prospective even to people already in the PPF and have had their pensions capped. So the new capping rules will be applied when this comes into force—our best estimate would be April 2015.

This change has been warmly welcomed. Dr Ros Altmann, who gave oral evidence to the Committee, said:

“IT is only right the Government ensures better protection for long-serving members’ pensions.”

Tom McPhail, from Hargreaves Lansdown, whom the hon. Gentleman quoted, said:

“This will help to bolster confidence in the promises of under-funded final salary schemes and will reduce the risk of long-serving employees suffering catastrophic losses.”

Heather Wheeler (South Derbyshire) (Con): I congratulate the Minister on bringing in this new clause. I have had constituents who have been severely affected by Bmibaby and we do not know what will happen with UK Coal going into administration. So this is great news for my constituents. Thank you very much.

Steve Webb: I am grateful to my hon. Friend. As she says, a number of coal employees will have their pensions paid by the PPF. In due course a small number of them could potentially benefit from this measure, so I am grateful for her intervention. A point worth making is that this does not apply where schemes wind up outside the PPF. So if the scheme has, for example, gone through its PPF assessment process and ended up outside it because it was funded to above PPF levels, then the fact that PPF levels are now slightly bigger will not bring the schemes back in and there will not be payments from the PPF to those folk. I appreciate that this is a difficult position for them to be in, but it is very hard to see how we could pay PPF benefits to people who are not in the PPF.

To conclude: this has turned out to be pretty complicated to legislate on. It sounds as though all we are doing is changing the law on the cap, but because the PPF rules feed through into the whole priority order on winding up, it has turned out to be quite a complex legislative process. Therefore we have to legislate carefully.

To reply to my hon. Friend—I have suddenly become ludicrously well-informed—we think that 7,000 members of the UK Coal scheme will be eligible for compensation from the PPF. If there any capped members in the scheme, they will indeed be assessed on the same basis as anyone else. So if they meet the criteria for the improved cap, they will in due course benefit from it.

We have seen a practical example of the way in which the enhanced cap will help people who, while most would not say were poor, are certainly getting a pension well below what they had expected and are disproportionately affected because of their long service. I hope that the Committee will agree that this new clause and new schedule help to deal with those concerns.

Heather Wheeler: On that very point, it is not about just the pensions for the people who will be retiring immediately. It also has a knock-on effect on widows’ pensions, so it is hugely helpful. Thank you very much, Minister.

Steve Webb: I am grateful to my hon. Friend. When an hon. Member came in with a constituent, I was struck by their saying, “It is not just my pension. I thought I had provided a certain standard of living for my wife should I predecease her, and it will now be much lower than I had thought.” I took that message to heart. Hopefully we have been able collectively to do some good this afternoon, and I commend the new clause and schedule to the Committee.

Gregg McClymont: The Minister will be delighted to learn that I too, and those on this side of the Committee, think that he and the Government are doing the right thing here. If I have said that the Minister was seeking the approbation of the Committee, I think that on the new clause he has it—it is unreservedly welcomed. Alongside that, however, I note that the Minister in earlier discussions repeatedly referred to the previous Labour Government, and I am sure he would accept
that one of the most significant things that the Government did was to create the Pension Protection Fund. We welcome the Minister taking it on further in this fashion.

Tom Blenkinsop (Middlesbrough South and East Cleveland) (Lab): This is the first intervention I have made during the Committee, but I thought I would make it now. The Pension Protection Fund was fought for and won in the European Court of Human Rights by a Community trade union campaign, of which I was happy to be a part.

Gregg McClymont: I am sure that the Committee is delighted to have that on the record.

As I was saying, I think that the Minister has done the right thing here, and the Opposition certainly have no intention of opposing the new clause.

Steve Webb: I am grateful to the hon. Gentleman.

Question put and agreed to.

New clause 9 read a Second time, and added to the Bill.

New Clause 1

**REVIEW IN RELATION TO WOMEN BORN ON OR AFTER 6 APRIL 1951**

‘The Government shall conduct a review to determine whether all women born on or after 6 April 1951 should be included within the scope of the new state pension arrangements established by this Act. Such a review shall be conducted within six months of Royal Assent of this Act and a report thereof laid before Parliament.’.—[Gregg McClymont.]

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 8.

Division No. 9

AYES

Blenkinsop, Tom
Gilmore, Sheila

McClymont, Gregg
Nash, Pamela

NOES

Bradley, Karen
Colvile, Oliver
Griffiths, Andrew
Pincher, Christopher

Reckless, Mark
Selous, Andrew
Webb, Steve
Wheeler, Heather

Question accordingly negatived.

New Clause 2

**REVIEW OF PHASING THE TRANSITION OF A 35-YEAR FULL PENSION REQUIREMENT VIA AN INTERIM REQUIREMENT OF 30 YEARS**

‘The Government shall conduct a review to determine the costs and benefits of phasing the transition to a 35-year full pension requirement via an interim requirement of 30 years. Such a review shall be conducted within six months of Royal Assent of this Act and a report thereof laid before Parliament.’.—[Gregg McClymont.]

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 8.

New Clause 3

**REVIEW ON GRADUAL TRANSITION FROM CERTAIN BENEFIT ARRANGEMENTS BASED ON AGE.**

‘(1) In relation to women without a national insurance contribution record who relied on a husband’s national insurance contributions and would under existing arrangements have accrued a benefit based on such spousal contributions, the Government shall conduct a review to determine the costs and benefits of permitting women within 15 years of state pension age as at 6 April 2016 to retain their accrued rights. Such a review shall be conducted within six months of Royal Assent of this Act and a report thereof laid before Parliament.

(2) The review shall also consider whether similar provision should be made in relation to sections 9 and 10 of this Act.’.—[Gregg McClymont.]

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 4, Noes 8.

New Clause 4

**NATIONAL EMPLOYMENT SAVINGS TRUST TRANSFERS**

‘(1) In relation to NEST, the Government must by 31 December 2013 notify the European Commission that it wishes to lift the ban on transfers and the contribution cap.

(2) The Secretary of State must make a statement to Parliament within 14 days of the Government notifying the European Commission in accordance with subsection (1).’.—[Gregg McClymont.]

Brought up, and read the First time.

4.30 pm

Gregg McClymont: I beg to move, That the clause be read a Second time.
New clause 4 refers to NEST, which has been in the news because, as your fellow Chair pointed out to us on Tuesday morning, Mrs Main, the Minister has announced in a written ministerial statement that the Government intend to legislate now to lift the contribution limit on NEST from 2017. The statement also says:

"Therefore we intend to lift the restrictions on individual transfers in and out of NEST to coincide with the start of the 'pot-follows-member' regime."

On the one hand, therefore, the contribution limit will be lifted from 2017 by legislation; on the other, the restriction on individual transfers in and out of NEST will coincide with the beginning of the “pot follows member” regime.

One way to characterise the measures new clause 4 would enact is that they urge the Government, once more, to hurry to get the restrictions on NEST lifted. The Government’s decision to legislate now but not lift the restrictions until 2017 and not lift the ban on transfers in and out until “pot follows member” begins—whenever that might be—is a problem; let me say a little as to why. Specifically, there is a problem with how the decision to lift the restrictions and take off the cap interacts with the ability to transfer in and out.

As things stand, the Minister’s view is that he will legislate now for the cap to come off in 2017 and the restrictions on transfers will be lifted when “pot follows member” gets under way. Without putting words in his mouth, it would seem that his view is that legislating now gives employers clarity that, by 2017, the restrictions will be off, which is useful for any employer who is thinking about using NEST for auto-enrolment. He would also seem to hold the view that the contribution cap relative to the percentage contribution is so high that it will not put any of those employers off.

The problem comes when that situation is put alongside the continuing ban on transfers in and out. In my judgment, the ban means that any employer who is thinking about using NEST and currently has a pension scheme of any type will be discouraged from using NEST, because they cannot transfer their current pension assets in. The Minister’s view is that, although the restrictions do not come off until 2017, they will not bite any employer wishing to join NEST between now and then. That is right; the problem is that an employer with an existing pension scheme cannot transfer in their employees’ existing pension assets. The Government are encouraging employers to use NEST, but by not lifting the ban on transfers in and out right away they are discouraging those employers who currently have a scheme.

Let me explain a little more why that is the case. The income cap will not be such a problem up to 2017; I agree with the Minister about that. The problem lies in the continuing ban on transfers in and out. DWP research has found that over 80% of employers want one provider, which is understandable. The ban on transfers in, however, means that NEST is stuck: until it is lifted, NEST will be unable to sign up employers who already have a pension scheme.

The DWP anticipated that problem last week by saying that 54% of employers with fewer than 250 employees provided no workplace pension so would not be affected by the continuing ban on transfers in. However, recording that based on employers is not a good proxy for employees. Of course, NEST’s duty is to serve employees on low and medium incomes and companies of all sizes, not just SMEs. Has the Minister fully considered that?

New clause 4 obliges the Minister to notify the European Commission of his desire to lift the ban on transfers in and out and to lift the cap on NEST. Specifically, the new clause remains important because, although the Government take the view that announcing the lifting of the restrictions now, even if it does not bite until 2017, encourages employers to go into NEST, the problem lies with employers who currently have a pension scheme but who would like to take their employees into NEST. While there remains a ban on transfers in and out, those employers cannot use NEST or can only use NEST by leaving those existing pension pots in a stranded place. Has the Minister considered that aspect of his decision on NEST and how it pertains to our desire in new clause 4 for him to go ahead and get the restrictions lifted before 2017?

Steve Webb: I am pleased to have the opportunity to discuss the future of NEST, which has been a real success story. There is a misapprehension that the only measure of NEST’s success is the number of members that it attracts. We still think that NEST will attract well over 2 million members, so it will be a very big pension scheme, but it is one of those strange things that NEST benefits not only its members but people who are not members. We have seen that in a number of ways. Relating to our earlier discussions on charges, the fact that NEST has a charge equivalent to 0.5% has led to a lowering of charges. In other countries where, for example, charge caps are talked about, one of the arguments against such caps is that people will level up to a higher figure. With NEST in the market, we have a constant benchmark.

We think that NEST is crucial and that it has been a success. One of the reasons why it has been a success is that it has had to do what other pension providers have not had to do, which is concentrate on a target market. The target market is particularly lower and middle earners and people who work for small firms, which are the groups that have historically been poorly served by the private pensions market. Having a provider that caters for that market is good, and the previous Government’s decision to constrain NEST was right—this is another classic example of where the hon. Gentleman has spent the past year or so demanding that I undo what the previous Government did. I agree that the previous Government’s decision was right, because it has forced NEST to focus on the target market. How have we seen benefit from that? First, annuitisation.

I do not know whether we will get to new clause 7, but we agree that annuitisation is an important issue. NEST has, for example, essentially set up an annuity bureau or broking service so that its members, when they reach pension age—in the early days, they will reach pension age, or the age at which they want to draw their pension, with relatively small pension pots—will be able to find someone who will give them a good deal. NEST is assisting its scheme members in doing that, including through providers who will provide annuities for very small amounts. Frankly, the market tends to turn its nose up at some of the amounts involved. NEST has innovated in supporting its members in that way.
The second way that NEST has innovated because of its constraints has been on language. It will shock the Committee to know that not everyone understands pensions language, and NEST has come up with a vocabulary of things that work. One of its no-no words is “vesting,” which is a pensions jargon word that people should not use because nobody knows what it means. Unfortunately, it turns out that “pension” is a bit of a no-no, too. Apparently the word does not help people very much. I have suggested to the Prime Minister that I might be renamed the Minister with responsibility for retirement solutions, but I have not yet had a reply to that letter. We certainly need to think about language that works effectively because, in a sense, NEST is dealing with the previously un pensioned, which is an important phrase in response to the hon. Gentleman’s question on bulk transfers. NEST was not set up primarily to provide pensions to people who already have them. I will come back to that point, but it is relevant to his point on bulk transfers.

NEST is trying to communicate with people who do not do pensions, and it has encouraged the industry. NEST is not the only company that has thought about language; other providers and the Department have worked very hard on that, too. The consequence is that something that people thought was impossible—getting 20-somethings to save in a pension—has proved far easier than we thought. The early signs from automatic enrolment are that the opt-out rates are stunningly lower than was thought, and that young people are no more likely than their older peers—indeed, slightly less likely—to opt out.

Thanks to NEST and automatic enrolment, 20-somethings are saving in pensions. I have heard from a number of employers that because the lower age limit for automatic enrolment is 22, 21-year-olds and 20-year-olds working for firms have demanded to know why they have been missed out, and have insisted on being put into the pension scheme. Getting to a situation where 20-year-olds are demanding to be put in a pension scheme means that something must be going right. NEST deserves a lot of credit for that.

NEST has also worked on how small businesses think and operate. For example, a sole proprietor or the owner of a small business with only a few employees might do their books on the kitchen table of an evening. When the phone goes, they will answer it and then come back to the website. NEST has set up its website so that when users go back into it, they go back to where they had got to, rather than having to go through all the process again. Those are just some examples of how the constraints on NEST, about which we made our announcement this week, have performed an important function.

Six months into automatic enrolment, it seems odd to us, the constraints having worked, to lift them immediately.

Sheila Gilmore: In reaching his conclusion, did the Minister look carefully at the special report prepared by the Select Committee, which recommended that the restrictions be lifted without delay?

Steve Webb: Indeed I did. I am coming to that point, as I think that that is her colleague’s position.

Given that the constraints on NEST were a good thing, as I have just explained, it is not clear why we do not want them to go on being a good thing. We have not yet got to the section of the market that NEST was primarily designed to serve. So it seems odd, having set up a provider to focus on a particular section of the market and meet its needs, to lift the constraints that were designed to ensure that it served that section of the market before we get to that section of the market. It is very odd to do it at that time, rather than when we have had the first phase of auto-enrolment.

Sheila Gilmore: One reason why the Select Committee recommended what it did was the evidence that we had before us, which was that take-up of NEST by the largest employers had been lower than expected. That was thought to be potentially due to the difficulty of blending the various schemes.

Steve Webb: I do not think that that explanation is correct. It is true that take-up of NEST by the largest employers has been slightly lower than was originally modelled, but NEST membership is accelerating. I believe that it is at about 250,000 already and is rising rapidly. However, it is important to say that many major employers, such as BT and the BBC, if I remember rightly, have combined NEST with their existing offer. To be honest, running two schemes together is not a substantive challenge to the giants of British industry that have been enrolling so far.

What has happened, which is welcome, is that there has been fierce competition. Other providers have recognised that once they get in, they are likely to be there for the long haul. On the whole, firms do not churn their pension provider; there are big costs to doing so. Some providers have struck really good deals for employers. NEST obviously was not at liberty to compete in quite the same way, but I am encouraged by how its projections and numbers are looking. As I said, we still expect them to be within the 2 million to 4 million range that we estimated when we first started.

To be clear, we not only listened to what the Select Committee said, we undertook our own review, “Making Auto-Enrolment Work”, which included representatives of employers and the industry and economists. We had a call for evidence on the NEST review, because evidence was in slightly short supply. A lot of people had opinions; a lot of people thought they knew what was going on. However, the evidence that we found on the NEST constraints was that, although in theory the contribution limit could be an issue, for as long as the statutory requirement was 2% of a band of earnings, someone would have to be earning £250,000 and pay contributions on the whole lot to hit the limit.

4.45 pm

Obviously, people on £250,000, on the whole, have pensions. It was not an actual issue for many firms; it was a potential issue when the contribution rate rose to 5% and 8%. That is why we have announced now, in the document to which the hon. Gentleman referred, that before the statutory contribution rate rises to 5% and then 8%, the contribution cap will be lifted. That seems to strike the right balance between giving certainty to people now, because, without this announcement, we would have had a review in 2017—I cannot remember
which Government legislated for it; it might have been in 2008—with more uncertainty, and we wanted to give certainty so that a firm today can decide to use NEST.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asked about bulk transfers. If a firm has an existing pension scheme, existing employees can already be in it—therefore satisfying the auto-enrolment requirements, assuming it is an adequate scheme—and the unpensioned employees can be auto-enrolled into NEST. In 2017, if a firm wants to, it can do a bulk transfer into NEST. I do not see any problem with that. Any employer who wants to do that will be able to do so, so I do not accept the hon. Gentleman’s point.

It is a rare thing in the pensions world to be able to unite the TUC and CBI in support of what we have done. Although the TUC would have liked an immediate lifting of the constraints, Frances O’Grady generously said:

“We warmly welcome Steve Webb’s announcement that the restrictions will go...Despite the strong lobby to keep NEST restrictions...the minister has come down on the side of consumers.”

I am grateful to her for those comments. The CBI stated that:

“the Government made a sensible decision by sticking to its original timeline.”

I must quote the ABI:

“This is a sensible way forward which will command the support of the industry.”

The NAPF stated:

“There might have been a case for lifting these barriers earlier, but doing so from 2017 provides the clarity and certainty that employers, savers and the pensions market all need.”

I have a long list of similar quotes. Given that we were trying to strike a balance between making sure NEST focused on its target market, but making sure that as many people as possible could benefit, I am heartened by the generous responses that we have received.

I think the hon. Gentleman’s position is that we should announce that we are lifting the cap now. I am sure he will intervene if I am misrepresenting his position, but that is my understanding. There is a problem with that. Paradoxically, that would create uncertainty and limbo. Imagine a pension provider had come into the market to compete, and then after entering the market and perhaps incurring set-up costs, the Government changed the rules in favour of the state-subsidised provider. I think there is a risk that that might have been challenged, possibly by the European Commission.

If the decision that the hon. Gentleman wants to take had been challenged by the European Commission, we could not have lifted the constraints. We would have been in limbo for nine months—who knows how long? We might have lost and then the constraints might have been with us for ever. Even if, at the end of the day, we had been successful, we would have had a nine-month or 12-month limbo when no firm would have wanted to choose NEST, because of the uncertainty about constraints. I do not know why the hon. Gentleman shakes his head. Unfortunately, we have to make decisions in the real world where we face legal challenge if we do not make the decisions properly.

Imagine a NEST salesman or saleswoman going out and trying to persuade a company to sign up for NEST, and it has just been announced that the European Commission is investigating the Government’s decision prematurely to lift the constraints. The salesman cannot tell the firm whether there will be constraints or whether they will be lifted. If we are worried about the take-up of NEST by firms so far, that sort of hiatus could have been devastating for NEST. Although it would have got me a nice cheap populist headline on day one that said how nice I am—NEST is good; everyone should be able to get into NEST; I’m lifting the restrictions and aren’t I great?—on day two I would not have been quite so popular. The people who would have lost out would have been the people who could otherwise have gone into NEST and got a good value low-cost pension scheme.

I hesitate to describe the hon. Gentleman as seductive; I do so only metaphorically. Although his arguments are seductive, there is a suppressed syllogism, which is: NEST is good; everyone should have access to good things; therefore, lift the constraints. Unfortunately, the real world is a bit more complicated than that. Therefore, in response to the call for evidence in the past week or so, we have published a measured and reasoned response to the constraints that were rightly put in place by the previous Government.

In a sense, precisely because NEST is succeeding and doing its job, we want it to carry on, but we also want to remove uncertainty from the market. The 2017 review date was already in law, but rather than wait until 2017 and then have a further period of uncertainty while we waited for the review to complete, we felt that, as many stakeholders have said, resolving that uncertainty now was the best thing to do.

Finally, the hon. Gentleman asked about bulk transfers. We need a bit of perspective here. There are 1.2 million small and medium-sized enterprises. We estimate that only around 1% of those 1.2 million have a scheme that could be transferred in bulk. They can transfer the scheme after the April 2017 date, but it is critical that NEST and the industry concentrate on the crucial next stages of automatic enrolment. It has been a success story so far, partly thanks to a huge amount of effort, partly thanks to employers’ high-quality communications. It has been a success thanks to the Government’s very successful “I'm in” campaign in collaboration with excellent trade bodies such as the NAPF and the ABI.

We do not want NEST, which was not set up to take bulk transfers until 2017, spending time getting its systems ready for bulk transfers now. We want NEST to be focused on getting people auto-enrolled, not on moving people who already have pensions from one scheme to another, which they can do in a few years’ time anyway. I hope that the hon. Gentleman will reflect on the fact that the seductively simplistic approach is not always best. That is perhaps a moral—if I may return to that tone—that he may want to reflect on more widely.

Gregg McClymont: Another sermon from the Minister, who edged towards being patronising there. For the first time, apparently, I do not live in the real world but the Minister does. I reject that analysis wholeheartedly, and I will tell him why.

First, the Minister referred to the fact that good offers are now available under auto-enrolment. Let us be clear: by the time the NEST restrictions are lifted by the Government, according to its timetable, auto-enrolment
will be complete. The staging dates will be completed. What he is actually doing with his decision on NEST is ensuring that the restrictions on it remain until every employer has staged. That is an important fact.

The Minister also tends to conflate SMEs with low and medium earners. NEST is supposed to deliver for all low and medium earners, not just those who work in SMEs. He also referred to the success of NEST, and gave credit to a number of institutions and bodies, but I note that he did not mention the previous Government, who created NEST. If he was in a more generous frame of mind, I am sure that he would have mentioned that both auto-enrolment and NEST were created by the last Labour Government.

The Minister referred to the restrictions that that Government put in place. I agree with him that there was a good case for having restrictions before it was clear how the market was progressing. The insurance industry said, fairly, that it did not know how competition would work in the new auto-enrolment marketplace, and that we had to be careful that the new state-backed scheme did nottake all the business. That was a perfectly fair position, but the point is that the auto-enrolment market is well under way and NEST has not taken all the business. The market is very competitive, and the restrictions have meant that NEST has been able to get less of that low and medium-earning segment than it otherwise would.

Steve Webb: Does that mean that the hon. Gentleman is in the unusual position of disagreeing with the TUC, which said that “the minister has come down on the side of consumers”?

Gregg McClymont: I am surprised that the Minister mentioned the TUC, because I assumed from his previous comments that the NAPF was my greatest friend. My view is that the restriction should be lifted now, and I am going to continue to make that argument. The Minister does not mention his rather unconvincing argument from a year ago, although he touched on it, which was that he might face a legal challenge. What is the difference between the situation now and in 2017? If a provider thinks it is unfair under law to lift the restrictions on NEST now, why would it not be unfair in 2017?

Steve Webb: I cannot speak for providers, but clearly any provider considering legal action also thinks about its corporate reputation. While challenging us now if we had lifted the restrictions four years early, lifting them when everybody thought they were going to be restricted anyway, would be regarded as unexceptional.

Gregg McClymont: Deeply unconvincing. The Minister’s grasp on European law strikes me as less strong than his grasp of aspects of the pensions system. The fact is that if these restrictions were considered by law to be necessary, and to lift them would be unfair, that would be the situation 2017 as it is in 2013. Accepting the Minister’s argument for a moment that there would be a challenge—and I do not accept that for a moment; that is just the Minister’s opinion—the idea that the Government should make their decisions based on—

Richard Graham: Will the hon. Gentleman give way?

Gregg McClymont: I will give way in a moment when I have finished my point.

The idea that the Government should proceed in decisions like this on the basis that they might, without providing any evidence, face a legal challenge is, again, unconvincing. The Minister first described it as seductive, in a metaphorical sense, and I am pleased that he added that important disclaimer or caveat, and then suggested that perhaps I did not live in the real world. First, and I repeat the point, the Minister thinks that by announcing the intention in legislating that the restrictions will be lifted in 2017, no employer who wishes to use NEST will be put off. The problem is that the Minister says that it is not part of NEST’s job, but it is to serve all low and medium earners. If there is a business that is interested in using NEST and it has any kind of current pension scheme, it cannot now transfer into NEST without leaving stranded pension pots behind. That is a very important point.

Finally, the Minister mentions the figures, but the number of employees excluded from going into NEST as a result of the ban on transfers in is more than 11 million employees.

Steve Webb: Rubbish.

Gregg McClymont: The Minister says “Rubbish” from a sedentary position; suddenly my hearing has improved. It is 11 million employees and I say to the Minister that I remain wholly unconvinced and intend to put new clause 4 to a vote.

Question put, That the clause be read a second time.

The Committee divided: Ayes 5, Noes 9.

Division No. 12

AYES

Blenkinsop, Tom
Gilmore, Sheila
McCann, Mr Michael
Nash, Pamela

NOES

Bradley, Karen
Colvile, Oliver
Graham, Richard
Griffiths, Andrew
Pincher, Christopher
Reckless, Mark
Selous, Andrew
Webb, Steve
Wheeler, Heather

Question accordingly negatived.

New Clause 10

REVIEW OF SECTION 29 PROVISIONS AND REGULATIONS

“The Secretary of State must review the effect of section 29 and any regulations made under it within three years of Royal Assent.”

Mr McCann.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 5, Noes 9.
Division No. 13]

AYES
Blenkinsop, Tom
Gilmour, Sheila
McCaan, Mr Michael

NOES
Bradley, Karen
Colville, Oliver
Graham, Richard
Griffiths, Andrew
Pincher, Christopher

5 pm
Proceedings interrupted (Programme Order, 25 June).

The Chair put forthwith the Question necessary for the disposal of the business to be concluded at that time (Standing Order No. 83D).

New Schedule 1
PENSION PROTECTION FUND: INCREASED COMPENSATION CAP FOR PEOPLE WITH LONG SERVICE

PART 1

THE NEW COMPENSATION CAP
1 Schedule 7 to the Pensions Act 2004 (pension compensation provisions) is amended as follows.
2 In paragraph 26 (the compensation cap), for the definition of “the compensation cap” in sub-paragraph (7) substitute—
   “the compensation cap” has the meaning given by paragraph 26A;”.
3 After paragraph 26 insert—

26A (1) This paragraph gives the meaning of “the compensation cap” for the purposes of paragraph 26.

(2) The amount of the compensation cap for a person depends on the person’s age and length of pensionable service at the time when the person first becomes entitled to the relevant compensation.

(3) “The compensation cap” for a person who has 20 or fewer years of pensionable service at that time is the standard amount.

(4) “The compensation cap” for a person who has more than 20 years of pensionable service at that time is—

(a) the standard amount, plus

(b) for each additional year, an amount found by multiplying the standard amount by 3%.

(5) A person has an “additional year” for each whole year of pensionable service that exceeds 20 years of pensionable service.

(6) If the total amount calculated under sub-paragraph (4)(b) would exceed the standard amount, it is to be treated as being equal to the standard amount.

(7) In sub-paragraphs (3) and (4) “the standard amount”—

(a) for a person who is 65 years old at the relevant time, means the amount specified by the Secretary of State by order, and

(b) for a person of any other age at the relevant time, means the amount specified under paragraph (a) as adjusted in accordance with actuarial adjustment factors published by the Board.

(8) In any case where the Board is satisfied that, under the admissible rules, a person is entitled to benefits that are not attributable to a particular period of pensionable service, the Board may for the purposes of this paragraph treat the person as having a length of pensionable service to reflect those benefits (which is in addition to any other pensionable service that the person has).

(9) In any case where the Board is satisfied that it is not possible to identify the length of some or all of a person’s pensionable service under the admissible rules, the Board may, having regard to those rules, determine its length for the purposes of this paragraph.

(10) Other expressions used in this paragraph have the same meaning as in paragraph 26.

PART 2

CONSEQUENTIAL AMENDMENTS TO DO WITH THE NEW COMPENSATION CAP
4 The Pensions Act 2004 is amended as follows.
5 In section 316(2)(s), for “paragraph 26(7)’ substitute “paragraph 26A(6)’.

6 (1) Schedule 7 is amended as follows.
(2) In paragraph 26(9), after “this paragraph” insert “and paragraph 26A”.
(3) In paragraph 27(2), for “sub-paragraph (7) of paragraph 26” substitute “sub-paragraph (6) of paragraph 26A”.

Brought up, and added to the Bill.

Steve Webb: On a point of order, Mrs Main. Before we conclude our proceedings, I thank you and your fellow Chair for the expert handling of our proceedings. I apologise that we will have bored you by repeating things you already knew about the pensions system. I hope that was for the benefit of the rest of the Committee.

I thank the Clerks to the Committee and my borrowed PPS, who has been a fount of amazing amounts of wisdom during the course of past two weeks. I thank my colleague the silent Whip who has kept me and everyone else in order, and my hon. Friends for their constructive and well-informed contributions. As you will know, Mrs Main, a Bill like this does not come about without a huge amount of behind-the-scenes work by policy officials, analysts, lawyers and so on. Any other erudition displayed over the past fortnight was theirs, and all errors mine and mine alone.

Finally, the Committee’s proceedings were generally conducted in good humour and I thank the Opposition for their contribution to that. The high point was the discussion of the etymology of fandabbydozy, which turned out to have something to do with a Scottish comedy duo. I cannot think why that seemed apposite, but I thought I would mention it. I thank the Opposition for their support on a number of measures, particularly the single-tier pension.

I hope, Mrs Main, that we will look back on this fortnight as a time when we all made a real difference to the quality of life of our constituents.

The Chair: I thank the Minister for those kind remarks on behalf of everybody. I add my thanks to the staff and the Clerks on the Committee for all the support they have given me, as I am not an expert. Good afternoon to everybody.

Bill, as amended, to be reported.

5.2 pm
Committee rose.
Written evidence reported to the House
PB 52 Katherine Worsfold
PB 53 Hogan Lovells International LLP
PB 54 Hazel Douglas
PB 55 B&CE
PB 56 CBI
PB 57 William Harry Plant
PB 58 Ms Constance M Turner
PB 59 George Morley
PB 60 Group Trustees of the Manweb Group of the Electricity Supply Pension Scheme
PB 61 Mike Goodall
PB 62 Sarah Pennells of SavvyWoman.co.uk
PB 63 Neil Watson
PB 64 Aljosa Popovski
PB 65 ShareAction
PB 66 Dr Pauline Worrall
PB 67 Ian Pottle
PB 68 NASUWT
PB 69 Cynthia Morton
PB 70 Helen Lewis
PB 71 Prospect
PB 72 Association of Electricity Supply Pensioners
PB 73 Andrew Robertson-Fox
PB 74 PCS
PB 75 Partnership Assurance