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Public Bill Committee

PENSION SCHEMES BILL

Fifth Sitting

Tuesday 28 October 2014

(Morning)

CONTENTS

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Saturday 1 November 2014

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

The Committee consisted of the following Members:

Chairs: Mr Peter Bone, †Mrs Linda Riordan

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

Kate Emms, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 28 October 2014

(Morning)

[MRS LINDA RIORDAN *in the Chair*]

Pension Schemes Bill

9.25 am

The Chair: Before we begin, I should say that Members may remove their jackets because it is rather warm in here. It may be useful for those new to Public Bill Committees if I explain how the proceedings work. The selection list for today's sittings is available in the room. It shows the amendments selected for debate and those that have been grouped together for debate. Amendments grouped together are generally on the same or a similar issue. The Member who tabled the amendment moves it and makes an opening speech. Any other Member is then able to speak to the amendments in the group. Once all Members who wish to speak, including the Minister if appropriate, have done so, I will again call the Member who moved the amendment, and it would be very useful if they could indicate whether they wish to withdraw it or to seek a decision. The same applies to any other amendment in the group. Amendments are voted upon in the order they come in the Bill, although they may have been debated in an earlier group. I hope that provides some clarity.

Clause 1

INTRODUCTION

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

The Chair: With this it will be convenient to consider clauses 2 to 4 stand part.

The Minister for Pensions (Steve Webb): It is a pleasure to serve under your chairmanship again, Mrs Riordan. I will tend to keep my remarks relatively brief, but I hope you will allow me at the start of our debates to set the context of the Bill. As I am running through four clauses, there will be a bit more material to get through so I hope the Committee will bear with me.

By way of context, taken together with the Taxation of Pensions Bill, which comes before the House tomorrow, the Pension Schemes Bill introduces a radical reform of pensions. Giving people greater choice is at the heart of the reforms in the Bill: greater choice for businesses on the pensions they offer by encouraging and enabling defined ambition or shared-risk pension schemes and collective benefits; and greater choice for individuals on how they can access their pension savings through the new flexibilities announced in the Budget.

This is the right time to make these fundamental and radical changes to private pensions legislation, building on the major progress we have already made on pensions reform. The new state pension will provide a simplified foundation, making it easier for people to know what pension they will receive from the state, and provide a platform on which individuals can build their own private pension saving according to their wants and needs in retirement. Secondly, the introduction of automatic enrolment means that millions more savers are joining workplace pension schemes.

The Government are also taking forward other changes so that future private pensions deliver high quality, value-for-money savings for consumers. For example, from 2015 there will be a charge cap on the default funds of qualifying schemes used for auto-enrolment, and new requirements on independent governance committees and trustees to report on costs and charges. So the market is growing and employers in the pensions industry are already thinking about future pension provision. The Bill will build on the reforms, seeking to encourage a flourishing, private pensions market that provides greater choice for employers and individual savers.

I turn now to defined ambition pensions and the different definitions covered by clauses 1 to 4. Current legislation is broadly based on a binary structure of money purchase or non-money purchase benefits. While both these types of pension can be the right product for many, the Bill seeks to encourage pension designs that share risks so that neither the individual saver nor the employer takes on the full financial risk. I should first say something on the terminology "defined benefit" and "defined contribution". Salary-related pension schemes, sometimes known as defined benefit, have been in decline since the 1970s and the majority are now closed to new members. There has been a long-term shift to schemes commonly known as defined contribution, as many employers have found that the increase in costs and volatility of longevity and investment risk too heavy to bear. However, if defined-contributions schemes are the only alternative, outcomes for savers will be much less certain and more volatile than for earlier generations, making it much harder for future generations of savers to plan for later life.

The defined-ambition elements of the Bill are a reshaping of pensions legislation to ensure that it remains relevant for future generations, to reflect, recognise and reinvigorate innovation in consumer-focused product design and in shared-risk pensions.

The Bill introduces three new definitions; three categories of pensions scheme based on the type of promise that the scheme provides to savers during the saving phase about the benefits that will be available to them at retirement. This is in order to create a middle ground which we call defined ambition. It is described in the Bill as "shared risk", commonly "known as defined ambition", on the basis that shared risk is a slightly crisper explanation, but I am using defined ambition synonymously with shared risk. That is a middle ground between the more polarising money purchase and non-money purchase benefit definitions, to encourage innovation in pension design that provides for more certainty for individuals than DC pensions by sharing risks between employers, employees and third parties.

The Pension Schemes Bill will also enable collective benefits to operate in the UK. The collective benefit definition enables a new form of risk pooling. There is a distinction there between risk sharing between employer, employee and perhaps a third party such as an insurance company, and risk pooling among the members of the scheme. Risk pooling between scheme members provides greater stability in outcome for members. We have engaged extensively with stakeholders across the pensions industry and consumer groups, and found that there is appetite for legislation that allows for greater risk sharing and risk pooling.

The defined ambition and pensions flexibility reforms are about putting the saver first and addressing people's desire for greater certainty about income in both the saving and paying out phases. I should add that the defined ambition legislation will not restrict individuals in accessing the new Budget pension tax flexibilities. There will often be more than one type of benefit arrangements within a defined-ambition scheme, and our policy intent is that members will be able to access those arrangements in line with the new flexibilities. The fact that they are contained in a particular category of scheme will not have any impact on that access.

Similarly, the policy intent is that members of schemes offering collective benefits will be able to cash out their collective benefits if they wish. Measures to provide for this will be considered in the future. While there may be different requirements on the scheme in terms of the advice or guidance that must be offered for different types of benefit arrangement within the scheme, the individual will have the choice of what to do with their savings. I hope that that is a helpful context to our debates.

Clause 1 introduces part 1 of the Bill, which provides a new framework for categories of pension schemes. It identifies the three categories defined in the subsequent clauses of part 1: defined benefit in clause 2; shared-risk or DA schemes in clause 3; and defined-contributions schemes in clause 4. It should be understood that the definitions of these categories apply only where legislation expressly states that they should, and do not apply, as clause 1 indicates, to public service pension scheme legislation.

Clearly, this whole reform agenda reflects our coalition commitment agreement to reinvigorate workplace pensions by providing for these new models. I stress that these categories, in the following three clauses, are scheme-level definitions. Existing benefit-level definitions still apply. To clarify, schemes are usually made up of particular benefit types, which are already defined in legislation. Part 1 does not change those benefit-level definitions or requirements that apply to benefit types. These scheme definitions are at a higher layer, above the benefit level.

Other parts of the Bill make sure that the current legislative requirements apply in the right way to the new categories and to new scheme designs that are possible within the shared risk space. These new definitions are necessary to support our vision for the future of private pension provision, to encourage innovation, customer-focused scheme categories and clarity for employers and providers. The definitions define the key characteristics of three mutually exclusive scheme categories at the highest level. These definitions do not prescribe new requirements on schemes or describe each and every specific benefit or scheme design.

Clause 2 covers what is meant by a defined-benefits scheme. Broadly speaking, under the terms of the Bill, such a scheme is one in which the member is promised—that is a key concept in the Bill—that all their benefits from the scheme relate to an income that is payable for life; that their income is predetermined from the outset, in so far as it is set at a rate that is calculated according to promised factors other than longevity, as stipulated in the scheme rules or other scheme documentation; that the scheme pension age cannot change, other than by a change to the scheme rules; and that the employer is, broadly, taking on all the risk in respect of provision for a promised pension in retirement. I stress that clauses 2, 3 and 4 contain three mutually exclusive definitions.

There is an important point about the impact on existing schemes. Our intention is that, taken along with other clauses in this part, the definition in clause 2 captures the majority of what are currently commonly referred to as final and average-salary DB schemes, but not those which share risks such as longevity, or which have other benefits in the scheme that share risk with the member. We will work with industry on any future regulations on disclosure and governance for shared-risk schemes to make sure there is no inappropriate application of any new requirements to existing schemes.

We are aware of augmentation powers and discretions in some such current schemes, which may mean they appear at first glance not to fulfil all the criteria. I will say a word when I speak to clause 5 about how we have taken account of that in order to enable those to be in the DB category.

Clause 3 deals with the new defined-ambition or shared-risk space. Our research found that more than a quarter of employers would be interested in offering a pension involving greater risk sharing between members and employer. That gives a sense of the demand. It is clearly not a model for everybody but it is an important addition to the spectrum of what is on offer.

Richard Graham (Gloucester) (Con): Does the Minister agree that, with the end of contracting out in 2016, it is important that any Government prepare ahead so that there is not a rush of final-salary or DB schemes charging into new individual schemes? Employers should have a range of options to enable them to provide better for their employees if they wish.

Steve Webb: My hon. Friend is quite right. With his deep knowledge of these issues, as chair of the all-party group on pensions, he puts his finger on a crucial timing issue. In April 2016 we end contracting out for DB pension schemes. That will be a further point at which many big employers will review the provisions of their schemes. We know that many have come closer and closer to closing those schemes over the years. It could be that that further trigger will lead more to close. The default option is often to go to individual DC, which, with a good employer contribution, can still provide decent pensions, but does transfer all the risk to the member. So we are very keen to ensure that there are alternatives available to such employers, so that they do not swing unnecessarily from one extreme to the other.

I want to be clear about the new shared-risk category of pension schemes. Clause 3 defines a shared-risk scheme, sometimes known as a defined-ambition scheme. A shared-risk scheme provides a pensions promise to each member of the scheme. The promise relates to at least some of the retirement benefits that members might receive, but it is not a defined-benefits scheme, as it says in clause 3(b). The promise must be offered to all

[Steve Webb]

members. Whether the member takes it up or not is not relevant; what is, is whether it is offered. That will ensure that schemes do not flip between different categories. The scheme does not qualify under the definition of shared risk if it offers a promise to only some of the membership of the scheme. So a scheme that closed a final-salary scheme and opened a new money purchase part without any promises, and in which only the new money purchase part is open to new members, would not be a shared-risk scheme. This is because there are members in that scheme who have no experience of certainty about what they will get from the scheme. That design is purposely excluded from the definition of shared risk and is catered for under the regulation-making powers in clause 6, to which I will speak later.

Let me say a word or two about what we mean by "pensions promise", which is dealt with in clause 5. We have to be clear about a pensions promise. What we want to do is to encourage innovation that provides some certainty for the member during the accumulation phase, but this space does not include schemes that have closed their DB offering to new members or, for example, only offer a promise to the executive board.

It is clear that employers want new options. On the impact on existing schemes, the DA or shared-risk category under clause 3 will include some existing schemes, such as final salary schemes which share risk on longevity, cash balance schemes, and hybrid schemes. It is worth reflecting on the oral evidence that we heard last week, and whether this is an empty box or a category that no one would be interested in. In fact, shared risk schemes are out there now. One major supermarket chose the cash balance model for automatic enrolment. It said to its workers, "We will provide an amount of cash when you leave membership of the scheme. What pension that buys depends on annuity rates and how long you live. It depends on investment returns and inflation." The risk post-retirement is on the individual, but the risk in the accrual phase is on the employer. That is a DA shared-risk scheme, so such schemes do exist. We are merely trying to regularise the regulatory framework. That gives a sense of what we broadly mean by the shared-risk category.

Finally, on the defined-contributions scheme—clause 4 —the defining characteristic of such schemes is that they give no promise during the accumulation phase in relation to any of the retirement benefits that may be provided to members. The new definition results in a DC scheme being defined more closely to what its common meaning is often taken to be, and on the experience of the vast majority of group personal pension members who save in a DC pot with no promise and get certainty about the income only at the point when they buy an annuity. This definition, unlike the old money purchase scheme definition, includes schemes that, although they offer no promise in the accumulation phase, do offer a promise once the decumulation point is reached; for example, occupational schemes offering money purchase benefits in accrual, but making a promise at the point of retirement about income, sometimes referred to as self-annuitising schemes. This definition, unlike the old money purchase definition, does not include schemes in which benefits are subject to third-party promises. These are shared-risk schemes.

I apologise for a rather lengthy introduction—I shall be briefer in future—but that sets out the first four clauses of the Bill: the three mutually exclusive categories of scheme, what is meant in each case, the hard promises of DB, the elements of promise in DA, and the no promise in DC. I hope that that is helpful to the Committee in sensing where we are going with the Bill. I commend clause 1 to the Committee.

Gregg McClymont (Cumbernauld, Kilsyth and Kirkintilloch East) (Lab): Before he went on to the specificities of clauses 1 to 4, the Minister set out a framework in which the Government see the Bill sitting. He mentioned various aspects of Government pension policy, including the Taxation of Pensions Bill whose introduction is, I think, imminent. Since he has drawn the two pieces of legislation together, may I ask the Minister whether the Treasury will be providing the Committee with a memorandum, as suggested by Mr Bone in the Chair last week? It emerged in the Committee last week that there were linkages between the two Bills, and the Minister has just confirmed those linkages, so it would be useful to find out when the Treasury memorandum will be placed before us.

There are wider issues around the Minister's framing of the legislation. We would argue that some of the things the Minister mentioned are not quite as straightforward as he has suggested. Independent governance committees, for example, are neither independent nor are they governance committees, something that appeared to be confirmed by evidence last week from the Financial Conduct Authority, which confirmed under questioning from me that they are advisory, rather than governance committees. That is very important since governance is the absolute requisite of a well functioning pension scheme. As we go forward, we will pick the Minister up on such assertions, but I do not think a long discussion of those aspects is necessary at this stage.

9.45 am

If there are people watching this Committee—one is always surprised to find that people are tuning in—they will have been entirely nonplussed by the Minister's explanation of clauses 1 to 4. That is not the Minister's fault. Pensions can be complex, particularly around risk sharing, risk pooling, guarantees, targets and the like. They can be opaque to those outside and probably to some of us here, too. What does the Bill seek to achieve? As the Minister sets it out, there is an appetite among employers. He suggested that a quarter of employers surveyed by DWP are interested in at least some form of collective defined contribution.

There is a danger that, because we use so many different terms, it appears even more complicated to those outside. There is defined ambition, collective defined contribution, risk sharing and risk billing. The multiplicity of terms is an issue in itself. The Minister suggests that there is some appetite among employers for permissive legislation to allow collective defined-contributions schemes of some type—for there is more than one type—to be offered. The Opposition think that is sensible. The extent of the appetite among employers is limited at this stage; a quarter of those surveyed saying they are interested is not a huge number, given that saying one is interested does not mean there is an obligation. Given some of the issues around pension provision in the UK—most fundamentally, that defined-benefits schemes providing an absolute guarantee, inasmuch any guarantee can be absolute, of a guaranteed pension income have declined rapidly and, on the other hand, that individual defined-contributions schemes place all the risk on the individual—it seems sensible to try to find something that takes aspects of both those forms of pension schemes and offers something better.

There is an issue around savers' interest in these schemes. The Minister rightly mentioned employers, who are critical of this. The DWP did research that asked savers whether they were interested in some kind of collective defined contribution, particularly in shared risk leading to a guarantee, in which there was significant interest. However, no questions were asked about who would bear the cost of such a guarantee. When the Institute for Public Policy Research asked people whether they were keen on guarantees if they had to pay the cost of the guarantee, the enthusiasm waned somewhat. I am not criticising the DWP, but that is an important point: who is paying for the guarantee and what do we mean by shared risk? The Minister set out very clearly the definitions in clauses 2 to 4 in particular. However, there is a question about the definition of shared risk in clause 3 around describing a product with a guarantee as "shared risk" if the cost of the guarantee is met only by the saver. We will probably come back to that issue. Can the Minister confirm to the Committee whether that is covered in what is admittedly a broad definition?

There is an economy to the Minister's explanation of clauses 2 to 4 which is helpful. It might not seem economical to those outside the minutiae of pensions legislation, but the definitions in clauses 2, 3 and 4 seem economical to me. Inevitably, as always in pensions definitions, those outside this place may find that things are not encapsulated in those definitions. I have drawn attention to one point already. The Minister drew a distinction between risk sharing and risk pooling. It is very important—perhaps he can do a better job of this than me—to make that distinction clearer in Committee. My understanding of some of the difference is that risk pooling is where one tries to get a better return as an individual by paying into a larger pot, in terms of the investment fees, and that risk sharing is where everyone must take their share of the rewards or risks, but I am sure that the Minister has a more precise definition.

Again, in terms of signposting where some of the discussion in this Bill Committee might take place, the Minister very clearly said that there is no impediment to individuals taking advantage of the reforms coming through. That relates partly to the Taxation of Pensions Bill, but certainly to this Bill, because amendments have been laid referring to the guidance guarantee.

There are issues with collective defined-contributions schemes, which I think we will discuss in Committee. What do the pension freedom and flexibility options and reforms mean for the operation of CDC schemes? How will any tensions therein be reconciled? This was raised in the witness sessions: how would a CDC scheme deal with either adverse selection in entry—that is a bit of jargon, admittedly—or exit at 55-plus? That is easier to understand. If people go into a CDC scheme and then decide to exit at 55 to take advantage of the ability to get their hands on their pension cash, how does that affect the strategies that a CDC scheme can undertake? How does it fit the investment profile? How do we get shared risk when, by the age of 55, people could be leaving the scheme? At least one witness felt that that was not a problem. Again, that will have to be teased out.

More generally, the Opposition's view of the Government's permissive legislation allowing collective defined contributions is that it should be welcomed. Anything that encourages a discussion about the advantages of larger, more collective pension schemes is in our opinion a good thing, and not necessarily because we believe that collective action is in itself better in all circumstances and all spheres, but because in relation to pensions there really is a strong case for saying that well governed, larger pension schemes with the ability to share investment risk and involving the pooling of assets are likely to produce greater returns. That is not optimism based on sentiment. The evidence from around the world appears to be that those types of scheme do manage to produce better returns. Big really can be better in pensions. Again, some of that was evident in the witness sessions. It is in that spirit that we constructively approach the Bill

Richard Graham: Clearly, there are cases in which big is better and, generally speaking, costs can be driven down by having more people in a larger pension scheme. There is no doubt about that, but I would be interested to hear the shadow Minister's evidence as to why investment returns are necessarily better from bigger organisations and how nimble, small investment management companies looking after pension schemes have performed relative to, say, some of the large insurance companies, where returns have in some cases been dismal, and to know what proof he can show in general that governance is necessarily better in a big scheme than in a small one.

Gregg McClymont: The hon. Gentleman raises a very good point. That argument has to be teased out. No doubt there are examples of, as he put it, nimble, small and highly efficient investment management outfits. I do not think that there was any doubt about that. He raised the issue of governance. I was going to come to that finally. The governance is key. He is absolutely right. Big is not better per se if the other prerequisites are not there. Big can be, in these circumstances, better if the governance is right. That now has to be trust-based. There is no doubt that there will be examples of effective small investment management firms.

I do not want to stray too far from the clause, and perhaps we will discuss this at a later stage, but I will just say that we have to recognise where we are starting from. The UK private pensions market has generally been focused on the higher earning sections of the population, where a more active investment management approach can be justified if people have sufficient assets to allow more risk to be taken in the hope of getting a greater return. My view is that if we are trying to construct a mass pensions system in the workplace, a starting principle must be the recognition that low management charges and passive investment strategies will be a big part of the architecture.

Richard Graham: Where I think the shadow Minister and I—and perhaps others in the Committee—would agree is that as auto-enrolment moves forward, new

[Richard Graham]

small pension schemes will find huge advantages to grouping together under the National Employment Savings Trust and the other large providers. The shadow Minister might also agree that for existing pension schemes that are considering moving to a shared-risk concept, although they may not be huge, their own experience may mean that they do not necessarily benefit from going into a large scheme.

Gregg McClymont: Again, that is a fair point. I guess that it depends on what we think is necessary to clear a space for a new mass pensions market. A better way to put it might be to ask: what are the principles on which that is built? In Australia, which is a classic example, there is now discussion about how a more active approach with higher charges follows from that investment strategy, because the system has a mature book with a large auto-enrolment asset base. Australia has won the argument on scale. The Australian system achieved scale and got to a place where charges were pretty low, but now there is a discussion about whether that must be complemented by the kind of approach that the hon. Gentleman is indicating has merit. That might be one way to see where there is a similarity or where our views meet. One is not better than t'other in all circumstances.

We are trying to construct a mass system, so we need a clear understanding of the advantages of scale—the hon. Gentleman suggested that those advantages exist—and as the system matures, there must be a conversation about the appropriate balance between passive and active, and between lower charges and higher charges but with potentially greater returns.

I think that that conversation will emerge, but the starting point has to be a system that encourages a passive investment approach, low charges, economies of scale and administration and the advantages that can be gained from master trusts. The hon. Gentleman suggested entirely fairly that there might be schemes that do not benefit from such arrangements, but as a rule—there are, of course, always exceptions to rules—the advantages of scale in pension schemes are pretty well evidenced. I remember speaking to the architect of the Australian reforms, who said that in Australia the argument about scale was over. The concern in the country is now that it does not have enough scale relative to Canada, which is the world leader in large-scale pension scheme arrangements.

Let me address the hon. Gentleman's point, which was absolutely right. It does not matter what scale a scheme is pitched at; the governance has to be absolutely correct. That issue will emerge during our discussions. Permissive legislation is welcome, but unless we get the governance arrangements right for such reforms, even if there is an appetite among employers and employees, it is unlikely to succeed in the fashion that we all wish for.

10 am

Finally, the definitions in clauses 1 to 4 raise the question of who regulates what. I understand why the Minister did not mention this. We have two regulators, the Pensions Regulator, which deals with trust-based schemes, and the FCA which deals with contract-based pension schemes. Depending on where the balance lies in a risk-sharing scheme, it is not clear to me who regulates what. It would be useful for the Minister to clarify where he envisages the regulation of collective defined-contributions schemes to lie and whether he thinks, in the end, they will be trust-based—in which case with the Pensions Regulator—contract-based or a mixture of the two. Our view is very clear. The evidence, such as it is, is that trust-based, on the whole, is the better option. The Minister's exchange with the head of the Pensions Policy Institute was interesting, where he was keen to get the witness to agree that, in some circumstances, contract-based might operate better. The head of the PPI, asked a leading question, gave that answer. However, he then reiterated that, in his view, the international evidence is that trust-based governance works better. That matter will also come into our discussions.

Nigel Mills (Amber Valley) (Con): Does the hon. Gentleman agree that the management, supervision and regulation of a shared-risk scheme may be harder than a defined-benefits scheme, because at least in a defined-benefits scheme we can work out what is owed and therefore what extra money we need? For shared-risk schemes, we have the variable of what we owe, what of that sum we reduce through our scheme members, or what we try to get from our scheme sponsors. That is a harder thing to manage and regulate.

Gregg McClymont: That is a fair point. The hon. Gentleman on this Committee and more widely makes very interesting and acute observations. This is where governance becomes so key, because the duties on those governing such pension schemes will be all the greater.

The hon. Gentleman's point was that there will be pressure on those in charge of the pensions schemes not to take the tough the decisions that might be necessary—something that the Minister understandably did not mention. In one form of collective defined contributions scheme, we might be looking at cuts in pension payments—something that we have wide experience of in the UK—and the pressures on those governing the schemes will be even more acute than under current pension arrangements. That makes getting the governance right all the more important.

We look forward to discussing the Bill in a spirit of constructive engagement. It is a good thing that permissive legislation is coming forward in this regard. One cannot see that it does any harm. There are questions about the appetite, but we know that things can change. There are big questions about the relationship of this Bill to the pensions tax Bill, but they will emerge during our discussions. We have no objection to clauses 1 to 4.

Steve Webb: I am grateful to the hon. Gentleman for his support for the principle of the Bill. He asked one or two questions, to which I hope that I can respond helpfully. He asked about the issue that arose during the oral evidence sessions on the implications for the Exchequer of the measures in the pensions tax Bill. While that is not specifically a matter for the Committee, Mr Bone, the co-Chair, indicated that he would find a memorandum to the Committee helpful. I have been in contact with colleagues at Her Majesty's Treasury to see what further information they can supply on the fiscal implications of that Bill. I will forward that as soon as I have it.

The hon. Gentleman raised terminology, and he is quite right that it can be confusing. I find it helpful to think in terms of a rectangle with three columns and two rows. I am not sure anybody else will find this helpful, but I do.

Gregg McClymont: You have lost me already.

Steve Webb: I am going to persevere with this if it kills me. The three columns are DB, DA and DC—the three mutually exclusive categories of pension scheme—and the rows are collective and not collective. So every scheme will be DB, DA or DC. Within each of those categories, benefits can be collective or not. So, for example, there is individual DC, such as NEST, or there is collective DC, where risks are pooled. There is individual DA—individual shared-risk schemes—and there is collective DA. There is individual DB. What there is not, is collective DB, because the DB promise is hard-wired and does not depend on anyone else in the scheme. So there are three mutually exclusive columns and then the benefits can be collective or not, and in that language, shared risk is DA. It is the same thing. The Bill says, "shared risk, commonly known as DA". It is not collective DC. That is in a different quadrant of the rectangle. I hope that that is extraordinarily transparent.

The hon. Gentleman asks a question about who pays for the risk and is it risk sharing or risk pooling and so on. Risk pooling is among the members of the scheme. The members of the scheme are pooling the risk among one another. It is not about pooling risk with an employer or an insurance company or somebody else. The idea is reduced volatility of outcome for the member. With risk pooling, there is no promise. There is only a target.

With risk sharing—for example, between the employer, the employee and perhaps a third party—the idea is that there is more certainty and more of a promise. I mention cash balance as an example where the employer promises the member that there will be a pot of money of a certain value when they leave the scheme, but the individual then has the risk, once they have that pot of money, on what they get with it. There is a hard-wired promise in a risk-sharing scheme, whereas in risk pooling, there is no hard promise. I hope that is a helpful clarification.

The hon. Gentleman asked whether the Budget freedoms were compatible with collective DC. I will say repeatedly in Committee that we have not simply cut and pasted another country's model on to the UK. We will need—I hesitate to say this—British CDC schemes for British workers, as the famous soundbite goes. We will need a regulatory regime that works for us. Those who run CDC schemes in this country will know that people can cash out at 55. Many people may not do so, but those who run the schemes will need to allow for that. We actually think CDC could happen in decumulation. There is much to be said for being in with other people for potentially a 20-year or 30-year retirement, rather than buying an annuity. We see these two as entirely compatible.

We will come back to good governance and trust versus contract in the debate on a later amendment, but the hon. Gentleman said something very interesting: he suggested that, on the whole, trust-based is the better option. In his later amendments, however, he does not take that view. His later amendments say that CDC may not be run under anything other than trust. I agree that, on the whole, trust may well be better, but we should not preclude other models. So I agree with what he says now, but do not agree with what he will say later.

My hon. Friend the Member for Amber Valley made the interesting point about governance of shared-risk schemes. When you have a target, and not a promise, it certainly raises a whole raft of different issues, such as the communications and the way that is corrected when the target is not going to be hit. The only thing that I would say is slightly easier in a shared-risk scheme is that there is flexibility. In a DB scheme, there is a hard promise that must be met, and if it cannot be met, the employer might have to stump up more, or the scheme might close or close future accruals. The promise is hard-wired. At least with shared risk, those who govern on the interests of the scheme members have options and flexibilities that should make it more attractive to employers compared to a hard-wired DB scheme.

I hope that I have responded to the points made by my hon. Friend and others, and I commend clause 1 to the Committee.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clauses 2 to 4 ordered to stand part of the Bill.

Clause 5

Meaning of "pensions promise" etc

Steve Webb: I beg to move amendment 41, in clause 5, page 3, line 4, after "circumstances" insert "and meets any other requirements that may be specified in regulations"

Under clause 5(6), discretions to vary the benefit which are only capable of being used for reasons related to a member's individual circumstances are disregarded when establishing whether or not there is a full pensions promise. This amendment allows the Secretary of State to specify in regulations other requirements that must be met in order for these discretions to be disregarded.

I shall explain what clause 5 does, and I hope that we will not need a separate stand part debate. The clause's heading—"Meaning of 'pensions promise' etc"—is a central concept in the definitions. It will astonish the Committee if I say that, in this section, "promise" carries its ordinary meaning. In other words, when a scheme contains a promise, it contains a commitment to the member that they will receive a certain pension from the scheme.

Our existing legislation operates to ensure that scheme funding and capital adequacy requirements will apply, so that such commitments are appropriately backed. There is the possibility, of course, of a funding shortfall, such as where the employer becomes insolvent in a DB scheme. In those cases, members may not receive the full amount that was promised to them and would instead have compensation from the PPF. It does not make it any less of a promise, even though there can be circumstances when that promise did not end up being delivered. So the word "promise" has been chosen with great care in drafting the Bill to convey that a commitment has been made that goes beyond an intention or an expectation on the part of the person or scheme making it. Although legislative protections are in place to minimise the risk of the promise not being met, it does not in itself provide a complete cast-iron guarantee to the member. I hope that what I mean is clear.

Subsection (1) specifies that for the purpose of a DB scheme definition there is a "full pensions promise" provided to members if

"at all times before the benefit comes into payment,"

there is a promise

"about the level of the benefit"

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that will be received. I stress that

"the level of the benefit is to be determined wholly by reference to that promise in all circumstances."

Subsection (2) states that for the purpose of shared risk in DC scheme definitions a pensions promise is provided if there is a promise to members at some point during the accumulation phase about the level of benefit that will be received. The level is the rate of income or the amount of the lump sum.

To be clear about what we mean by "pensions promise", subsection (3) specifies what a reference to a promise about the level of a retirement pension does and does not include. Subsection (3)(a)

" includes a promise about factors, other than longevity, that will be used to calculate the level of"

retirement benefit—for example, how long someone has been in the scheme or whether it is linked to a member's salary—but the promise does not include longevity factors, because the effect would be to allow longevity risk sharing in a DB scheme, which is not our intention. To be clear, there are occupational pension schemes at the moment—big household name employers—where the pension age at which someone will draw the pension they are building up varies according to the latest data on life expectancy. That can change, obviously, as new data come forward. So we would regard that as a risk-sharing scheme, not a DB scheme, because of that element of risk sharing on longevity improvements between the employer and employee.

Subsection (4) makes provision for a promise if the scheme sets out the promise, or it is obtained from a third party. For example, an employer might pay an insurance company to underpin some of the scheme benefits. This enables a pension scheme to be defined on the basis of a pensions promise regardless of who pays for it, whether the accountability sits with the scheme itself, the employer, or a third party. The scheme categorisation therefore depends on what the scheme offers to members, not on whether individual members take that up.

Subsection (6) deals with what happens when there is discretion to vary the benefit. This is where amendment 41 comes in. Subsection (6) sets out certain discretions that may be present in schemes without affecting whether the scheme contains a full pensions promise. For example, many schemes allow ill health early retirement. That is a discretion, so it can mean that someone gets something different from what was expected at the start, but we do not regard that as undermining its being a DB scheme with a hard pensions promise. So the fact that the scheme has discretion to pay the money early would not be regarded as undermining its being a DB scheme. An example would be to make provision for ill health early retirement. Because those discretions are exercised only on an individual basis, they are different from discretions that are applied at the scheme level. We have therefore set out that the discretion for individual circumstances does not constitute a failure of the test in subsection (1)(a). In other words, it could still be a DB scheme.

10.15 am

I will say a word on Government amendment 41, and I hope that the Committee can see why I had to explain clause 5 before turning to it. The amendment will add a regulation-making power under which discretions that are capable of being used only for reasons relating to a member's individual circumstance would have to meet any other requirements that might be specified in regulations. We have tabled the amendment as a result of conversations we have had with the industry on the definitions and how various scheme designs would be categorised. We will use the regulation-making power to prevent abuse of the discretion exclusion. It will allow us to prescribe in regulations that the exclusion of such discretions may apply only if certain other requirements are met. I hope that that clarifies the purpose of Government amendment 41 and clause 5.

Nigel Mills: This is the nub of the question about how defined-ambition or shared-risk schemes work. I am trying to work out exactly how a scheme member knows the difference between a promise, a target, an intention, an aspiration, a hope and perhaps, in some cases, a dream. I might think that I have been given a promise that I will receive two thirds of my final salary, when I have actually been given a target of two thirds of my final salary. If that turns out not to be affordable, I might only receive 60%, and the employer might take some of the extra risk.

There may be many scenarios in which an employee has been given a promise through a defined benefit scheme, but if the promise looks to be wholly unaffordable for the employer, the scheme rules might be changed following consultation with members, who all agree, for example, to retire a year later or to receive a lower percentage of their final salary. At that point, what would happen? Would the employee still be in a defined-benefits scheme but with a new promise, or would they somehow have moved into a shared-risk scheme? It strikes me that the former would be true, because they would still have a promise; it would just not be the promise that they had had before. If, however, a scheme has to keep redoing that process and saying, "Sorry, that thing that we did last year is still unaffordable, so we need to do it again," could it accidentally become a shared-risk scheme because the promise keeps changing? Or would an employee in such a situation always be in a defined-benefits scheme?

The other area of confusion is where defined contribution becomes shared risk. Last week, I received an annual pension statement that told me that if I kept going at the same rate, I would have £20,000 in my pot and my annual income would be, if I remember correctly, £536. That implies that I have some indication of what my annual income will be from that pot, but that is clearly not a promise or a target; it is simply a guide to what that £20,000 would provide. The problem is that if I did not know that, I might think that it was some kind of promise or target, and I might think that I had something.

If I were in a shared-risk scheme, what more would I have? I assume that I would have a set of complicated rules that would tell me that that £536 was not quite a promise but was more than a hope and a bit more than an expectation; it was what the scheme would try to deliver to me, and as long as the scheme could roughly afford it, I ought to get that. Perhaps the range on which I would not get that would be slightly protected, so if the scheme could only afford £500, I might still get £536. If the scheme could only afford £250, however, there might be a wholesale reconsideration.

It strikes me that there are real problems about how the system will work in practice. How will people know, in clear language, exactly what kind of scheme they are in? From the language used in the annual statement, it is quite hard to work out what is a promise and what is not, or what is a target and what is an indication. That must be clear to make the whole thing useful. I think that the regulator will have to put a lot of effort into working out exactly what flexibility shared-risk schemes are allowed when they give a promise that is not a promise, and exactly what ranges they will be allowed to operate under. Where would they be expected to meet a promise that is not a promise? Where would the pension scheme trustees or governance committee or whatever else be expected to say, "This promise we are making is not realistic. Even if it was a range of promise; even if we say you will get £450 to £550, we know that we cannot meet that now. Should we move the range down at this point?"

We really need to think through how much flexibility we will allow shared-risk schemes in working out what their promise is, how they communicate it, when they change and what assumptions they make. Otherwise I suspect we will end up in a horrible mess. We will not have any kind of promise in a shared-risk scheme. There will be a hope or a dream that will just fly around every year with changes and annuity rates or changes in stock market years or whatever else. It will not be quite as useful as we all hope this will be.

I think what we want is, "Look, Mr Mills, you will get two thirds of your final salary. We are working to get to that. The employer will fund the scheme on that basis. In reality it is only if we really, really cannot afford to get anywhere near that two thirds of your final salary that we will have to change that. Here are the situations where we would do that and this is how we would go about doing it." I think that is what we are hoping for, but I am not totally sure that we quite achieve the clarity we need in these definitions.

Steve Webb: I am grateful to my hon. Friend, who raises understandable concerns about promises that are not promises and whether they are really worth the paper they are written on. I hope that I can offer him some reassurance, but I want to take him back to my three columns and my two rows. Shared risk, which was a phrase he used a lot, is defined ambition. It is the one in the middle where there is a promise on an element of the provision. The example I have given is a big supermarket which has done a cash balance scheme and has promised that for each year an employee works they will get some percentage of their salary as a cash amount when they retire. The supermarket cannot change its mind about that. It is backed by law. It has to fund for it; it is a promise.

It is shared risk because nobody knows what pension someone will get for that pot of money; nobody knows how long they will live, what inflation will be in retirement and what annuity rates will be. There is some risk for the individual, but in general terms there is a bit that is promised and then there is the bit that is subject to uncertainty as faced by the individual. The shared risk space—the column in the middle—is exactly as we would expect it to be. The scheme is clear what it is promising and what it is not promising. My hon. Friend rightly said that good governance and good communication are vital to all of that. Scheme members need to know what it is they are being promised.

My strong suspicion is that someone in that sort of pension scheme—I described a cash balance, but that is just an example—will know what they have got. They will have a guaranteed pot that they have been promised. They will get a statement each year and what has already been promised cannot be taken away from them. It is there. I stress again that there are plenty of legal protections for pension promises which have already been made. The scheme can change things for the future but it cannot just say, "We promised you that last year but we have changed our mind."

Nigel Mills: I am not familiar with the scheme the Minister talks about, but I assume that for that promise to be meaningful annual contributions must go up by inflation. To be deliverable that promise must rely on investment returns keeping pace with what was expected so that when someone reaches retirement age their pot will be worth x. If investment returns fell through the floor the scheme might have to say, "Well, actually we cannot get near the cash target that we thought you would get" and so would have some flexibility in changing.

Steve Webb: No. The risk of that bit of the pension promise is on the employer. They have made a promise. They have promised a pot of money. They cannot come back a few years later and say, "Well, the stock market has not done very well so we have changed our mind." It is a pension promise. Under the Bill, that sort of thing is a promise which has to be honoured. They can say, "Guys, we cannot afford this scheme for the future and therefore we will make a less generous promise or no promise at all for the future." However, hard pension promises have to be kept. I think the sort of scheme my hon. Friend was more worried about was a collective defined-contributions scheme, which is my third column and the collective bit.

Mr Michael McCann (East Kilbride, Strathaven and Lesmahagow) (Lab): The Minister has suggested that if a company went into liquidation or something as drastic as that that promise could clearly not be kept even if it was for a previous year. Surely the hon. Member for Amber Valley has got a point.

Steve Webb: I think that I have dealt with that point. We use the word "promise" in the Bill rather than "guarantee", because if it was guaranteed, it would have to happen and, as the hon. Gentleman says, the one circumstance in which it does not happen is when a company goes into insolvency, because there is then no one to fulfil that promise. That is the only distinction. Funds go in, a promise is made and, for as long as the company exists, it is expected to honour its promise. It seems reasonable that promises can be kept only by things that exist, as it were.

However, CDCs are a different model. First, there are no promises. It is not that there is a promise that is not a promise; there ain't no promise in the first place. There is, however, a target that the scheme will have a probability of reaching. I will come back to probabilities and ranges later on, but a scheme, for example, might fund

[Steve Webb]

with a 97.5% probability of meeting its target. Therefore, in one in 40 years it would not work, but it would do in 39 of 40 years. In general, the target will be met based on the funding levels going in but, in extremis, it might go outside that probability range or funding target. In such circumstances, a process will be in place in which either the firm or individual puts more money in, or the target or the pensions in payment are reduced. There will be a lot of flex when things go wrong, but no promise to begin with.

My hon. Friend the Member for Amber Valley is right that we must make clear to members of the scheme what is being promised, what is just a target and what happens when a target is not met. For example, if a target will not be met, will it be the workers or the retired members who bear that, or both, and what is the process for doing all of that? Arguably, what went wrong with the Dutch scheme was that while the employers knew—or their lawyers did—that a promise was not a hard promise but a target, the scheme members thought that they had a promise. That is why there has been conflict in the Netherlands: the members never had a promise, but that was not properly communicated to them. As we are starting this from scratch, we need to establish on day one what is a promise and what is not.

To reiterate, on the extreme example of DB that my hon. Friend gave, a DB pension promise cannot be ripped up. If the scheme has promised a DB, whether that is two thirds of final salary or whatever, that must be met; it cannot decide to pay, for example, 60% for past service. The scheme has to be funded and the regulator will require a recovery plan. Therefore, a promise really is a promise, but some schemes in the Bill will not offer promises and the members need to be told about that.

There will be targets, which are better than nothing. My hon. Friend's DC pension will not have a target. It will have a guess, described as a forecast or an estimate, but next year he might get a piece of paper with a very different number on it. That is how DC works. With CDC, however, there will be a target, which people will be told about, and a specific effort will be made to aim for that target. I hope that that is a useful distinction.

Amendment 41 agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6

TREATMENT OF A SCHEME AS TWO OR MORE SEPARATE SCHEMES

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

The Chair: With this it will be convenient to discuss clause 7 stand part.

10.30 am

Steve Webb: The clause deals with a particular issue where, to give an example, a defined-benefits pension scheme—a final salary scheme of the type that we have been familiar with for decades—also has a pot-of-money section for additional voluntary contributions. The question is, where does that fit in the Bill? Bearing in mind that my columns are mutually exclusive, do we say it is DB, because it is a final salary-type scheme, or do we say it is DC, because there is a pot of money that will get whatever it gets? The short answer is clearly: "Or is it shared risk, because it is a bit of both?" When we talk about shared risk we do not mean schemes that have very clearly defined sections where one bit is DB and one bit is DC. Clause 6 allows for a scheme to be split for those purposes into two or more separate schemes. There is a set of DB regulations that applies to the final salary part and a set of DC regulations that applies to the ABC part. That is intuitive: everyone knows what the regulatory regime is for the DB part and the DC part. We are not trying to create some new category of regulation for schemes that have bits of both: we simply apply the right regulations to the right parts of the scheme.

Clause 6 provides for regulations so that a scheme can be treated as two or more separate schemes, first, to make sure that schemes that do not fall within the categories can be treated as more than one scheme for the purposes of categorisation, each of which fits into the categories, and secondly to enable regulations to be made to provide for other circumstances in which a scheme can be treated as if it were two or more separate schemes. The categories have been designed to be mutually exclusive and to provide full coverage across the current and potential new scheme designs. However, we are aware of schemes that make different offers to different members. We would not want such schemes to fall within the shared risk category. Instead, we have made provision in this clause to ensure that we treat such schemes as two separate schemes so that, in line with the policy, the member experience drives the definition.

That is the key throughout the Bill: how does the member experience it? The clause provides for any such scheme that falls outside the categories. As I say, we have created the categories taking the member experience as the starting point. For example, if new members go into a DC section and are bearing all the risk of saving for retirement, from their point of view the scheme they are in is not sharing risks, so categorising it as a shared-risk scheme, when the existing members are in DB, would be meaningless. What is going on here is fairly intuitive: that is, simply allowing schemes that have clear, separate types within them to be categorised as separate schemes.

Clause 7 provides definitions of the various terms that have been used. We have already dealt with the most important definition, which is the pensions promise. Helpfully, as clause 7 says, the pension promise is what it means in clause 5, which we have covered already. The rest is fairly standard.

Nigel Mills: I have a question that risks being the most boring one of the day. In clause 7 there is a definition of "pension scheme" that goes back to the Pension Schemes Act 1993. When we get to the pensions guidance in new schedule 2, in proposed new section 333A(3) we see a definition of "pension scheme" as given by section 150(1) of the Finance Act 2004. Those definitions are subtly different. Can the Minister explain why we have two different definitions of pension scheme in the Bill?

Steve Webb: I will have a punt, reserving the right to give the right answer later on. When we originally envisaged the Pension Schemes Bill it was about workplace pension schemes. The Budget freedoms are principally about DC and money purchase schemes. In general, the Finance Act and the Financial Services and Markets Act 2000, as amended by all the stuff about the Budget in the guidance, relates principally in that context to DC pensions, whereas here we are talking on the whole about occupational pension schemes. Obviously, with our three categorisations some of them can be DC but we are talking principally about occupational pension schemes, whereas the Budget freedoms are principally about DC money purchase schemes. I reserve the right to refine that response at a later stage.

Apart from that subtlety, I think that the definitions are relatively straightforward. If anyone has any questions I am happy to respond. Otherwise, I commend clauses 6 and 7 to the Committee.

Gregg McClymont: The Minister used the word "intuitive" more than once, which I took to mean a way of trying to encourage us all to think that this is straightforward. However, it might not be straightforward to most of us and not necessarily intuitive.

I have a question for the Minister that goes back to the point I raised this morning about who regulates what. Clause 6(1), to which the Minister has already referred, states:

> "Regulations must provide for a pension scheme that does not fit within any of the categories to be treated, for the purposes of this Part and any other specified legislation, as if it were two or more separate schemes each of which then fits within one of the categories."

My reading of that is that there could be a pension scheme where one of the separate schemes as defined in this clause fitted into a form of pension scheme that was individual DC and another fitted into a category that was either collective DC or DB. Does that have any implications for regulation? In these circumstances or any other circumstances that emerge out of these definitions, could there be a pension scheme that was regulated by different regulators? Is that a problem; do issues arise out of that? That is one set of questions for the Minister.

Secondly, the hon. Member for Amber Valley made a very interesting point about the different definitions of a pension scheme. My sense of the Minister's response was that it confirmed that the draft Taxation of Pensions Bill is indeed complicating this Bill in ways that have been indicated by me and others. I took the Minister to be saying, "Well, we would have done this Bill with the definition set down in the Pension Schemes Act 1993, but with the Taxation of Pensions Bill and the implications for this legislation, we now have more than one definition of a pension scheme." I am keen for the Minister to elaborate on his explanation to the hon. Gentleman. I know the Minister said that he would take a punt at it and if that punt was not correct, he would come back, having consulted his officials. Alternatively, can he just elaborate on whether it is the case that the Taxation of Pensions Bill, according to the answer that he has given, has complicated the definitions for this Bill?

Steve Webb: Let me respond first to the hon. Gentleman's question on clause 6 and the business about treating two different parts of a scheme as separate schemes. To be clear, not all sectionalised schemes have to be split. What is crucial is whether some members are not experiencing the certainty of a promise and others are. That is the criterion, so just because a scheme is sectionalised does not mean that it has to be split under clause 6. The example that I have given is of where there is DB for older members and additional voluntary contributions or a DC scheme for new members. The hon. Gentleman asked whether the end result would be a different regulator. In general, what would happen in big firms, as he knows, would be this. If, for example, they had a DB scheme, a DC section for new members or whatever, it would in general be under trust governance. The trustees would have had some DB arrangement and perhaps some DC arrangement for new members, and all of that is regulated by the Pensions Regulator because it is that kind of pension scheme. I suppose that in extremis they could go off and set up some group personal pension over here that is regulated by the FCA in the normal way, because it is a different pension scheme, but I do not think that this creates particular complexity.

The hon. Gentleman asked about my response to my hon. Friend the Member for Amber Valley. In a way, we could have had two separate Bills. We could have had our pension scheme Bill providing for DA and then we could have had the DWP legislative changes necessary to facilitate the Treasury Budget measures. We have put them in one Bill. That does not mean that it is complicated; it just means that it is easier to do this in one Bill than two. But let me clarify my response to my hon. Friend. I think that I was in the right ball park, but I shall refine what I said ever so slightly. As I indicated, we have different definitions in different places for different purposes. The pension schemes regulation relates to the running of the schemes and member protections, and that is what is in the Pension Schemes Act 1993, whereas the reference that he spotted to the Finance Act and related legislation has to do with tax. He will understand that the Budget changes on pensions freedom were actually about changing tax legislation. That is why there is reference to the Finance Acts. We are matching the changes to the type of legislation; in one case it is tax legislation, in another case it is pensions scheme legislation.

We already have elements of pensions schemes regulated by more than one regulator. The Pensions Regulator has objectives related to protecting members' benefits; FCA has an interest in the firms and individuals delivering the investment activities in the schemes. The new categories do not change that. We have two regulators, which raises issues—it came up in the oral evidence sessions last week, but we are not adding to the complexity with the measures contained in clause 6. I hope that that is helpful and I commend clauses 6 and 7 to Committee.

Question put and agreed to.

Clauses 6 accordingly ordered to stand part of the Bill.

Clause 7 ordered to stand part of the Bill.

Clause 8

Amendments to do with Part 1

Steve Webb: I beg to move amendment 6, in clause 8, page 4, line 23, leave out "that use expressions defined by this Part" and insert "to do with Parts 1 and 3".

The amendment changes the words used to describe Schedule 1 to the Bill. This is necessary given other material that is being inserted into Schedule 1.

The Chair: With this it will be convenient to discuss the following:

Government amendments 29, 30 and 31 to 36.

Government motions to transfer clause 8, schedule 1 and clauses 9 to 18.

Steve Webb: I am grateful for the Committee's perseverance. Having skipped at a high level through the broad sweeping uplands of this legislation, we are now down—if I may mix my metaphors—in the bowels of the legislation, and I apologise for a rather lengthy trip. As before, to understand Government amendments 6, 29, 30, 31, 36 and the motions to transfer, it is necessary to explain the purpose of clause 8.

Clause 8 simply says that there is a schedule and everything interesting is in the schedule. Schedule 1 makes amendments to existing legislation necessary as a result of provisions in the Bill. A lot of schedule 1 is going through lots of other legislation and making sure that the references are compatible and consistent with what we are doing.

The changes to existing legislation in schedule 1 are necessary to ensure that the Bill and existing legislation work together. They ensure that the provisions made by this Bill and the new scheme categories are taken into account and work coherently with existing pensions legislation. In particular, schedule 1 replaces existing references to money purchase schemes. I make the distinction between money purchase schemes and money purchase benefits. We are not getting rid of the concept of money purchase benefits, but we are getting rid of the concept of money purchase schemes, because we now have three new categories of pension scheme. If we retain the term "money purchase scheme" there would be an overlap across the new DC and DA scheme definitions. It is therefore important that we clearly identify what requirements bite and in what places. Essentially, schedule 1 is a tidying up of the consequences of bringing in the new definitions.

Many of these changes do not alter the meaning. References in existing legislation to a money purchase scheme are generally replaced by references to

"a scheme under which all the benefits that may be provided are money purchase benefits".

This does not change the effect of the legislation; the changes are technical to avoid confusion over scheme categorisation. In other cases, the new scheme categories are substituted for existing definition. To reiterate: the term "money purchase benefit" retains its existing, current meaning.

Some changes, however, have an impact on the effect of existing legislation. First, regarding the duty on the Secretary of State to pay unpaid contributions to schemes in the event of employer insolvency, the current provision is expanded to apply to collective benefits and DC schemes which provide a scheme pension to ensure equivalent and appropriate application of existing policy to the new landscape.

Secondly, on indexation, the schedule applies the exemption from indexation to DC schemes and thereby explicitly incorporates collective benefits and scheme pensions from a DC scheme to update the references and ensure that the requirement is applied appropriately in the new environment. This has no practical effect on current schemes.

Thirdly, on freezing orders, schedule 1 extends the provision to cover schemes where all the benefits are money purchase benefits and where there is also a third-party promise to ensure equivalent protection for all promised benefits under the provision.

10.45 am

Fourthly, on automatic enrolment, schedule 1 amends current references to scheme types to refer instead to the new scheme categories to ensure that the legislation is consistent in its use of the terms. We are basically ensuring that the new set of definitions fits into the existing legislative framework and continues our policy intent as appropriate.

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

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

Amendment 6 agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Ordered,

That clause 8 be transferred to the end of line 6 on page 15.—*(Steve Webb.)*

The Bill needs restructuring in light of the proposed Government amendments. There are a number of motions to transfer provisions around. Collectively they are designed to move Part 2 of the Bill to after Part 3 and to move clause 8 and Schedule 1 to the end of what is currently Part 2.

Schedule 1

AMENDMENTS TO DO WITH PART 1

Amendments made: 29, in schedule 1, page 19, line 2, at end insert ", or

(c) a shared risk scheme under which all the benefits that may be provided are money purchase benefits or collective benefits."

This text is taken from paragraph 4 of Schedule 4 to the Bill, which is left out by amendment 40. The effect is unchanged.

Amendment 30, in schedule 1, page 19, line 4, at end insert—

""""collective benefit" has the meaning given by section19 of the Pension Schemes Act 2014;"".—*(Steve Webb.)*

This amendment inserts the definition of a collective benefit for the purposes of the Pension Schemes Act 1993.

Steve Webb: I beg to move amendment 55, in schedule 1, page 19, line 13, at end insert—

"9A In section 37 (payment of surplus to employer), in subsection (1A)—

(a) after "does not apply in the case of" insert "—

(a) ";

(b) at the end insert—

"(b) any payments out of funds held for the purposes of providing collective benefits under the scheme (but see section (Payment of amounts out of collective benefit funds) of the Pension Schemes Act 2014)."".

The amendment disapplies section 37 of the Pensions Act 1995 in respect of collective benefits.

The Chair: With this it will be convenient to discuss Government new clause 10—*Payment of amounts out of collective benefit funds.*.

Steve Webb: We now move on to further amendments to schedule 1. Government amendment 55 relates to section 37 of the Pensions Act 1995, which makes provision for payments to employers when a trust-based occupational scheme is in surplus. The purpose of amendment 55 is to disapply section 37 of the 1995 Act in relation to funds held for the purposes of collective benefits. New clause 10 requires the Secretary of State to make regulations to prohibit payments from collective benefit funds except in prescribed circumstances. Taken together, amendment 55 and new clause 10 carve out collective benefits from the provisions relating to employers receiving surpluses and create a requirement for regulations to prevent payments being made out of funds held for the purposes of providing collective benefits subject to specified exceptions.

We are in slightly unfamiliar territory. We are talking about collective schemes and surpluses, and what happens when a collective scheme is funded in excess of the level needed to meet the probability of the target. The question is, what happens then. An employer's liability to a scheme in respect of collective benefits will be limited to the contributions. If a scheme provides collective benefits, it should not normally be possible for any surplus in a collective benefits fund to be paid to the employer. That is because the employer's only liability to the scheme is to pay the employer contributions. The fund exists to pay benefits to members.

To help to make that clear, amendment 55 seeks to remove funds held for the purpose of providing collective benefits from existing provisions in the Pensions Act 1995, which sets out when trustees may pay to the employer funds held for the purposes of the scheme. New clause 10 makes it clear that regulations will require that funds held to pay collective benefits can be paid only to members except in limited circumstances. Under the new clause, regulations will specify that funds held to pay collective benefits can be paid only to members except in limited circumstances, because the employer has no automatic right to any surplus. We want to ensure that members have confidence that the funds in the scheme will be available to pay their benefits. However, limited exceptions will be set out in regulations.

We have made it clear that the employer has no automatic call on any surplus, but we are conscious that there may be limited circumstances when it may be appropriate for an employer or some other party to be entitled to some share of any surplus. For example, it is possible that an employer may want to assist a scheme with collective benefits that falls into difficulty. We want to encourage such action and it might be more likely to happen if employers could arrange for the possibility of full or partial repayment if the scheme has a future surplus. We may therefore want to make regulations expressly allowing for that possibility. We would provide for that only after careful consideration of the implications and consultation with stakeholders. It is about a specific case of a collective scheme with a surplus and an employer getting money out of the scheme. That would certainly not be automatic, and in general it would not happen, but we would allow it to happen by regulation in specific cases such as those I have given. I hope that clarification is helpful.

Amendment 55 agreed to.

Amendments made: 31, in schedule 1, page 19, line 24, leave out paragraphs 13 and 14 and insert—

13 In section 73 (preferential liabilities on winding up), for subsection (2) substitute—

(2) This section applies to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (2A) provides for the scheme to be exempt.

(2A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits, or

(b) a prescribed scheme or a scheme of a prescribed description."

14 In section 75 (employer debt where deficiency in assets on winding up etc), for subsection (1) substitute—

(1) This section applies in relation to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (1A), the scheme is to be treated for the purposes of this Part as two separate schemes, one relating to the collective benefits and the other relating to the other benefits."

14A (1) Section 87 (schedules of payments to money purchase schemes) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies to an occupational pension scheme that is a scheme under which —

(a) all the benefits that may be provided are money purchase benefits, or

(b) all the benefits that may be provided are money purchase benefits or collective benefits,

other than a scheme falling within a prescribed class or description."

(3) In subsection (2)(a), after "members of the scheme" insert "in respect of money purchase benefits".

(4) In the heading, for "to money purchase schemes" substitute "in respect of money purchase benefits under certain schemes".

14B For the italic cross-heading above section 87 substitute "Schemes providing money purchase benefits".

14C In the heading to section 88 (schedules of payments to money purchase schemes: supplementary), for "to money purchase schemes" substitute "in respect of money purchase benefits under certain schemes"."

The text in new paragraphs 14A to 14C is taken from paragraphs 8 to 10 of Schedule 4 to the Bill, which is left out by amendment 40.

Amendment 32, in schedule 1, page 19, line 40, at end insert—

""""collective benefit" has the meaning given by section19 of the Pension Schemes Act 2014;""

This text is taken from paragraph 13 of Schedule 4 to the Bill, which is left out by amendment 40. The effect is unchanged.

Amendment 33, in schedule 1, page 19, line 44, at end insert—

""""occupational", in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme, means an occupational pension scheme of that description;""

This amends the Pensions Act 1995 to include definitions of terms used in amendment 31.

Amendment 34, in schedule 1, page 20, line 35, at end insert—

22A In section 17 (power of the Regulator to recover unpaid contributions), in subsection (3)—

(a) in paragraph (b) of the definition of "due date", for "to money purchase schemes" substitute "in respect of money purchase benefits under certain schemes";

(b) in paragraph (a) of the definition of "employer contribution", for "to money purchase schemes" substitute "in respect of money purchase benefits under certain schemes"."

This text is taken from paragraph 11 of Schedule 4 to the Bill, which is left out by amendment 40. The effect is unchanged.

Amendment 35, in schedule 1, page 21, line 16, leave out paragraphs 24 to 28 and insert—

24 In section 38 (contribution notices where avoidance of employer debt), for subsection (1) substitute—

(1) This section applies in relation to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),

the scheme is to be treated for the purposes of this section and sections 38A to 42 as two separate schemes, one relating to the collective benefits and the other relating to the other benefits."

25 (1) Section 43 (financial support directions) is amended as follows.

(2) For subsection (1) substitute—

"(1) This section applies in relation to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),

the scheme is to be treated for the purposes of this section and sections 43A to 51 as two separate schemes, one relating to the collective benefits and the other relating to the other benefits."

(3) In subsection (2), for "such a scheme" substitute "a scheme to which this section applies".

26 In section 52 (restoration orders where transactions at an undervalue), for subsection (1) substitute—

"(1) This section applies in relation to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (1A) provides for the scheme to be exempt.

(1A) A scheme is exempt from this section if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (1A), the scheme is to be treated for the purposes of this section and sections 53 to 56 as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.""

27 In section 90 (codes of practice), in subsection (2)(i), for "money purchase schemes" substitute "certain schemes".

28 In section 126 (schemes eligible for pension protection), for subsection (1) substitute—

"(1) Subject to the following provisions of this section, in this Part references to an "eligible scheme" are to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme.

(1A) A scheme is not an eligible scheme if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(1B) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (1A),

the scheme is to be treated for the purposes of this Part as two separate schemes, one relating to the collective benefits and the other relating to the other benefits."

28A For section 221 (application of scheme funding rules) substitute—

"221 Pension schemes to which this Part applies

(1) The provisions of this Part apply to a pension scheme that is—

(a) an occupational defined benefits scheme,

(b) an occupational shared risk scheme, or

(c) an occupational defined contributions scheme,

unless subsection (2) provides for the scheme to be exempt.

(2) A scheme is exempt from this Part if it is—

(a) a scheme under which all the benefits that may be provided are money purchase benefits,

(b) a scheme under which all the benefits that may be provided are collective benefits,

(c) a scheme under which all the benefits that may be provided are money purchase benefits or collective benefits, or

(d) a prescribed scheme or a scheme of a prescribed description.

(3) Where—

(a) some of the benefits that may be provided under a scheme are collective benefits and some are not, and

(b) the scheme does not fall within paragraph (c) or (d) of subsection (2),

the scheme is to be treated for the purposes of this Part as two separate schemes, one relating to the collective benefits and the other relating to the other benefits.

(4) Regulations under subsection (2)(d) may provide for exemptions from all or any of the provisions of this Part, but for the purposes of subsection (3)(b) a scheme falls within subsection (2)(d) only if it is exempt from all of the provisions of this Part.""

The text is partly taken from paragraphs 6 and 7 of Schedule 4. It also amends the Pensions Act 2004 to set out how certain powers of the Pensions Regulator apply in respect of collective benefits and makes it clear how the new scheme categories apply in relation to scheme funding and PPF eligibility.

Amendment 36, in schedule 1, page 22, line 9, leave out "in subsection (1)" and insert "subsection (1) is amended as follows.

'( ) At the appropriate places insert—

""collective benefit" has the meaning given by section19 of the Pension Schemes Act 2014;""

""defined benefits scheme" has the meaning given by section2 of the Pension Schemes Act 2014;"

""defined contributions scheme" has the meaning given by section4 of the Pension Schemes Act 2014;"

""occupational", in relation to a defined benefits scheme, shared risk scheme or defined contributions scheme, means an occupational pension scheme of that description;"

""shared risk scheme" has the meaning given by section3 of the Pension Schemes Act 2014;"."—*(Steve Webb.)*

This amends the Pensions Act 2004 to include definitions of terms used in amendment 35.

Steve Webb: I beg to move amendment 56, page 22, line 10, in schedule 1, at end insert—

'( ) In subsection (3)—

(a) in paragraph (a), after sub-paragraph (vii) insert—

"(viii) regulations made under Part 3 of the Pension Schemes Act 2014;";

(b) in paragraph (b), after sub-paragraph (v) insert—

"(vi) regulations made under section (Regulations under Part 3: overriding requirements) of the Pension Schemes Act 2014.""

This inserts additional references into the definition of "relevant legislative provision" in section 318 of the Pensions Act 2004 and is consequential on NC11.

The Chair: With this it will be convenient to discuss the following:

Government amendments 57 and 42.

Government new clause 11—*Regulations under Part 3: overriding requirements*.

Steve Webb: Again, it may be helpful if I explain the purpose of new clause 11 and the associated amendments in this group, which I will do briefly. Under new clause 11, any regulations made under part 3 of the Bill can override a provision in scheme rules to the extent that they conflict with them. That is an override power. It is important that schemes are clear when legislation overrides scheme rules. That means that, for example, we can be sure that regulations providing important member protection will always take precedence over scheme rules that say something different. This is a fairly common provision in existing pensions legislation and ensures that trustees and managers of pension schemes are clear about their responsibilities where legislation and scheme rules appear to conflict.

There are some consequences for existing legislation. There are other provisions in pensions legislation that make reference to scheme rules being overridden by relevant legislation, for example, provisions relating to the modification of subsisting rights and transfers. Amendments 42, 56 and 57 would add into the definition of relevant legislation reference to the overriding regulations made under part 3 of the Pension Schemes Act 2014.

[Steve Webb]

I imagine that that is as clear as mud. The idea is to mirror, for these new types of pension schemes, something that we currently do routinely, which is to make clear that legislation dominates, whatever the pension scheme rules may contain. I hope that, on that basis the Committee will be happy to accept amendment 56.

Gregg McClymont: The Minister went through that quite quickly and I am sure with every justification, but can he think of any scenario where there would be a genuine tension between scheme rules and legislation as it pertains to the three categories of schemes in the Bill? Are there circumstances in which there would be a real issue that has to be resolved in this manner?

Steve Webb: I am grateful to the hon. Gentleman. One of the things that we have discovered over the years is just how different scheme rules can be. We deal here with legislation and we think it is all fairly standard, and then we encounter a pension scheme. I am not saying that every scheme is different, but there is massive variation in the rules on how pension schemes operate. That could be in terms of the legislative or cultural environment when they were set up or the type of pension scheme. As a result, pension schemes can sometimes be silent on some of the issues on which we legislate, or can have different practices in the event of certain scenarios arising.

So, Parliament could decide that in all cases members should have such and such a protection, and the pension scheme rule might either be silent, which is straightforward or might provide something inconsistent, because the rules were all written at different times in different contexts. This is a backstop provision to make it clear beyond doubt, as we currently do with existing pension scheme rules, that where we put overriding legislation in place, the legislation dominates, whatever the scheme rules say.

Without going through the vast multiplicity of individual sets of pension scheme rules, it is hard to give you a specific example, but we know that pension scheme rules are very diverse. Here is one example that came up a few years ago, when we were debating the move from the retail prices index to the consumer prices index. We found that some pension scheme rules said the words "retail prices index" in the rules, some said "the rate of inflation", and some said "whatever the Government say". They were all different. What we had to make clear was that it did not matter what the scheme rules were; this was how we were measuring inflation from now on. That is the sort of thing that might be an example. I hope that that is helpful and I commend the amendment to the Committee.

Amendment 56 agreed to.

Schedule 1, as amended, agreed to.

Ordered,

That Schedule 1 be transferred to the end of line 29 on page 32 —*(Steve Webb.)*

The Bill needs restructuring in light of the proposed Government amendments. There are a number of motions to transfer provisions around. Collectively they are designed to move Part 2 of the Bill to after Part 3 and to move clause 8 and Schedule 1 to the end of what is currently Part 2.

Clause 9

Pensions promise obtained from third party

Steve Webb: I beg to move amendment 7, in clause 9, page 4, line 36, leave out paragraph (b).

This amendment removes the power to confer functions on a specified person in connection with the enforcement of regulations made under clause 9. This is because there are existing powers that are considered sufficient and appropriate to deal with enforcement in relation to any breaches of those regulations.

The Chair: With this it will be convenient to discuss Government amendment 25.

11 am

Steve Webb: Again, I will set out a little bit about what clause 9 does before explaining how Government amendments 7 and 25 relate to that. The key point is that clause 9 contains a regulation-making power to enable the Secretary of State to prohibit trustees or managers of a scheme from obtaining a pensions promise from a third party unless specified conditions are met. The concept of pensions promises obtained from a third party is important, because one of the ways in which risk-sharing may be delivered in our DA world is not where either the employer or the scheme member takes on the risk directly but where a third party is involved, such as an insurance company. Clause 9 relates to the rules around, for example, buying in a pensions promise from an insurance company or someone like that. It allows for safeguards to be put in place where the pensions promise in a scheme is secured through the scheme from a third party.

The regulations may also make provision overriding scheme rules and provide for the regulator to impose a financial penalty for non-compliance. The clause amends section 34(7) of the Pensions Act 1995 to ensure that regulations made under clause 9 cannot be overridden by section 34 of that Act. It also allows for regulations to confer functions on a specified person to enforce compliance with the conditions set out in regulations.

Amendment 7 removes the power to confer functions on a specified person in connection with the enforcement of regulations made under clause 9. That is because we now believe there are existing powers that are considered sufficient and appropriate to deal with enforcement in relation to any breaches of those regulations. When we first drafted clause 9 we thought that we might need this additional power; but on further reflection we think that we already have the powers we need about having a specified person who is responsible for enforcing these regulations. Amendment 7 therefore takes out that provision.

Amendment 25 amends clause 35 and is similar to amendment 7. Clause 35 relates to the enforcement of regulations made under part 3, which is the collective benefits section. It allows regulations to confer functions on a specified person—that is, a power to enable an appropriate body to regulate schemes offering collective benefits. It also allows regulations made under part 3 to provide for section 10 of the Pensions Act 1995, on civil penalties, to apply where there is non-compliance. Amendment 25 impacts on clause 35 and removes the power to confer functions in exactly the same way that I described just now in the context of shared risk schemes. Later in the Bill we do the same for collective schemes:

it made sense to deal with that issue once and here. The amendments are required because sufficient and appropriate powers already exist to deal with enforcement in relation to any breaches of regulations made under clause 9 and part 3 on collectives. The Pensions Regulator and the Financial Conduct Authority already have the necessary powers and authority, under the Pensions Act 2004 and the Financial Services and Markets Act 2000, to enforce the conditions that will be required.

The current regulatory structure will remain; that is, the appropriate regulator for these requirements will be determined by the current structure and remits. There is no intention to change the current roles or remits of the current regulators. As a general rule, this means that the Pensions Regulator will regulate occupational schemes and the FCA will regulate personal pension schemes. However, there is of course a crossover of interests for workplace pension schemes and on some particular matters, such as investment.

The intention is that the Secretary of State will make any regulations in respect of occupational pension schemes, which the Pensions Regulator will regulate. Personal pension schemes will be governed by any rules developed by the FCA. Government and regulators will continue to work closely together to make sure that rules and regulations deliver consistent protections and outcomes for members.

I hope that is helpful to the Committee. I commend amendment 7.

Gregg McClymont: I think this is an appropriate moment to raise again with the Minister the issue of regulation. I found it striking, although understandable and expected, in the sense that the Minister referred there to the Secretary of State, in concert with the Pensions Regulator, setting the rules regarding occupational pensions under the TPR. At the same time, the Minister went on to say that those other types of schemes would be under the regulation of the FCA. Does he have any observations on whether the route that the Bill takes us down raises questions about whether it remains appropriate to have two regulators? What about the issues around the benefits and potential costs of a two-regulator system in pensions? Does the Bill begin to eliminate some of those issues? Would he like to have these pension schemes under the ambit of one regulator? I know he will not commit to that in any deliberate sense, but does he think there are issues around the fact that we have two regulators in pensions, and does the Bill eliminate some of those issues?

Steve Webb: These are clearly big issues that have been raised by, among others, the Select Committee, and they were raised on Second Reading. It is a perfectly sensible discussion to have. Is it the appropriate regulatory framework, and do we need two or one? Where we have two regulators there are two issues. There is overlap, duplication and gaps. We work very hard—the two regulators work very hard—to co-ordinate. In all the work we have been doing on charge caps, for example, we have needed DWP legislation to deal with trust-based occupational schemes and we have needed mirroring FCA activity to deal with contract-based schemes. As I think I observed on Second Reading, it would have been easier to deal with one body rather than two, and that is not surprising.

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

My only hesitation is that, whether we have one brand or two, or one building or two, most of the same issues are still there. In other words, we still need a regulator that understands employers and the issues for sponsoring employers, and understands funding and the implications of recovery plans for the sustainable growth of the employer and so on. We need a regulator that can do compliance on, for example, auto-enrolment—like minimum wage compliance—and can make sure that that happens. We also need a regulator that can do the things the FCA does, which regulates the sale of financial products in the insurance industry. That whole range of skills will still be needed. Indeed, we would still need a set of rules for trust-based schemes and contract-based schemes, because they are different types of thing.

Even if it was one organisation doing it, we would still be amending different bits of legislation. Whether we did it under one Government Department or two, it would be up for grabs. From a co-ordination point of view, I can see the potential benefits of having one organisation and not two, but I do not think it is a silver bullet. There would still be issues of overlap and gaps, and the different skill sets would still be needed. I know our deliberations may be followed by those who work for one of the regulators. My message to them would be that each, regardless of the banner under which they operate, has a vital role to play, and in any future structure one would envisage that they still played it. Certainly, for now, I would not envisage any change, but I think it is something that the next Government will probably want to look at. I hope that that is a constructive response to the hon. Gentleman.

Amendment 7 agreed to.

Steve Webb: I beg to move amendment 8, in clause 9, page 4, line 43, at end insert—

""trustees or managers" means—

(a) in relation to a scheme established under a trust, the trustees, and

(b) in relation to any other scheme, the managers."

This amendment inserts a definition of "trustees or managers" to clarify that regulations made under clause 9 may impose obligations on trustees in the context of a trust-based scheme, and on managers in the context of a scheme not established under trust.

The Chair: With this it will be convenient to discuss Government amendment 26.

Steve Webb: The purpose of amendment 8 is to clarify that regulations made under clause 9 may impose requirements on trustees in the context of a trust-based scheme, and on managers in the context of a scheme

[Steve Webb]

not established under trust. Clause 9 includes a regulation-making power which provides that the trustees or managers of a DB scheme or a shared-risk scheme must not obtain a pensions promise from a third party unless conditions specified in the regulations are met.

The amendment inserts a definition of "trustees or managers" into subsection (3) of clause 9 which confirms that

"trustees or managers means… in relation to a scheme established under a trust, the trustees, and… in relation to any other scheme, the managers."

Amendment 26 inserts the same definition of "trustees or managers" into clause 36 to clarify that regulations made under part 3 may impose obligations on trustees in the context of a trust-based scheme, and on managers in the context of a scheme not established under trust. That is a bit like we did in the last group. We are doing it here and, to save us coming back to it when we get to the collectives bit, we are doing exactly the same thing with clause 36.

Amendment 26 clarifies how the regulatory requirements should apply in schemes offering collective benefits where there may be both trustees and managers. The amendment makes it clear that regulations made under part 3 may impose obligations on trustees in the context of a trust-based scheme, and on managers in the context of a scheme not established under trust.

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

There is a kind of hierarchy going on here. If it is a trust-based pension scheme where we use the phrase "trustees or managers" in the legislation, we do not mean managers if there is a trustee knocking around, or if there is no trustee, because it is not a trust-based scheme, then we mean the person responsible for the management of the scheme. I hope that has helped with what I hope are relatively uncontentious amendments. I commend them to the Committee.

Gregg McClymont: I want to make an observation. It is very clear what a trustee is. It is someone who has an obligation under trust law. In this case it is to manage a pension scheme. It seems less clear to me what a manager is. It seems, to put it politely, a more capacious definition and, impolitely, open to a number of interpretations. While it is clear what a trustee is, could the Minister elaborate on who can fill the role of a manager? What sort of agents are we talking about in this context? We know what a trustee is but who is a manager? There are a number of different definitions of a manager contained in the terminology.

Steve Webb: I am grateful to the hon. Gentleman. We are not inventing these concepts for the purpose of the Bill. He will know that the phrase "trustees or managers" that we are using here is defined in the Pensions Act 1995 and "managers" is defined under the Pensions Act 2004. I hesitate to say, "You'd know it when you saw it", but essentially we are talking about the person responsible for the management of the scheme. Clearly one of the things about primary legislation is that we cannot be too descriptive as we end up missing people out and not covering certain sorts of circumstance. Just as we used the phrase "pension promise" earlier in the Bill to mean what everybody knows a promise is, we are using the term "manager" here simply to refer to the person responsible for the management of the scheme. This is a familiar concept to those who run pension schemes and has not caused any problems in the past.

Amendment 8 agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10

Disclosure of information about schemes

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

11.15 am

Steve Webb: Clause 10 relates to what we know in the jargon as disclosure requirements. That is an important concept because it ensures that people know what is going on and refers back to the conversations we had earlier. The clause amends the existing legislation about disclosure requirements but only in so far as it reframes it to take account of changes in the pensions landscape, including automatic enrolment. It also inserts a new requirement to have regard to guidance issued by the Secretary of State when complying with the requirements.

The changes allow the Secretary of State to ensure that information about schemes is made available to those who need it. Section 113 of the Pension Schemes Act 1993 sets out a power for the Secretary of State to make regulations in relation to occupation and personal pension schemes, setting out requirements to keep certain persons informed of various matters, including the scheme's constitution, its administration and finances and

"the rights and obligations that arise under it".

The clause amends that section, removing the list of persons to be kept informed, and instead referring to "persons of prescribed descriptions". That change allows the Secretary of State to ensure that information about schemes is made available to those who need it.

There are a few key points of clarification. We anticipate that shared risk and collective benefits might require specific forms of disclosure. That comes back to the conversation that I had with my hon. Friend the Member for Amber Valley. We will use the regulation-making power in section 113 of the 1993 Act to require schemes to provide the necessary information to members, prospective members and others with an interest in the scheme, such as employers.

Because shared-risk schemes and schemes containing collective benefits may be more complex and will have distinct features, we want to ensure that the disclosure provisions are updated if necessary, to take account of what key information should be provided by this type of scheme. For shared-risk schemes, for example, that information might include what is promised under the scheme and who stands behind the promise. For schemes containing collective benefits, that might include a statement of how risk is shared between members.

Stephen Hammond (Wimbledon) (Con): The Minister will remember that in the evidence sessions there was a lot of discussion about transparency and what information was provided, in order to ensure that information—not only about the promise but what underlies it in the form of the investment portfolio and associated decisions—be available to members as well as to scheme trustees and managers. Will the Minister clarify that under this clause that will happen?

Steve Webb: I am grateful to my hon. Friend. My view is that we should get the right information to the right people. Therefore, the trustees or managers of the scheme might need quite sophisticated, complex, high-level data. To use a cliché, scheme members need news they can use. In other words, they do not need reams of paperwork that they cannot understand because that is worse than useless. We need to ensure, through these regulations, that scheme members get in plain English an explanation of what is hard-wired, what is a promise, what is the target and how things have been going. It is important that they know who stands behind the promise. If the employer is paying an insurance company to guarantee certain levels of benefits, they need to know that. They do not need to be bombarded with information they cannot use. That is the balance we are trying to strike.

Stephen Hammond: The Minister will be aware that in many cases at the moment scheme members are provided with a small information pack, quarterly, half-yearly or annually. That summarises the promise and what lies behind it. Trustees will obviously need much more detail but scheme members need to be assured that they will at least get that continuing level of transparency.

Steve Webb: In many ways, the need for transparency will be greater in collective DC schemes where people will be less familiar with the concepts. I will not make any undertakings on frequency; that is a case-by-case judgment. People clearly need to know what is going on, what happens when things do not turn out as planned and who is accountable. I take my hon. Friend's point on that.

We anticipate that the new models may require specific forms of disclosure.

Dame Angela Watkinson (Hornchurch and Upminster) (Con): Given the increased complexity of the spectrum of pensions and the new shared-risk schemes, will sufficient information be available to pension savers about what will happen under certain circumstances, such as their wanting to exit a scheme and join a different one or their deciding to retire early and remove their savings from a scheme? Will that information be included in the terms and conditions, so that people know what to expect if such things happen?

Steve Webb: I am grateful to my hon. Friend. I would distinguish between two different things here: there are the rules of the scheme, which should be made clear to someone when they join the scheme; and then there is the ongoing performance of the scheme. People have the right to know when they join a scheme the terms of early exit and so on, as she suggested. That information would not be repeated, but what people would receive on an ongoing basis is, for example, information about how the funds are doing, what the latest target is and that kind of thing. However, I entirely agree that people need clarity.

In a world where automatic enrolment will increasingly govern workplace pension provision, on the whole individuals themselves will not be making these choices. It will not be, "How do I have a clue whether I want to be in a shared risk, or a CDC, or whatever?" I will not be choosing; in general, it will be my employer, who will decide what they want to provide for the work force; I will be automatically enrolled into it. The vast majority of workers will stay in what they have been enrolled into. They will not have to make complicated choices between this whole array of pension schemes. They will be placed in one; there will be an employer contribution; on the whole, they will stay in it; and at that point, as my hon. Friend quite rightly said, they need to know what the rules of the game are, and I take that point.

To clarify matters, for some existing schemes, where they fall within the shared-risk definition they may already fulfil these basic requirements, but we intend to consult on any changes and, of course, we will be mindful of the impacts on existing schemes.

We also want to ensure—not unreasonably—that, if the Secretary of State issues guidance to schemes, they take account of it. We will want to support schemes in providing members of shared-risk schemes and schemes that contain collective benefits with information that presents options and materials to them in a clear and comprehensive manner. This support may include guidance issued by the Secretary of State. Obviously, if such guidance is issued, we want schemes to pay regard to it. Making the communication of information work for schemes, individuals and employers is important, to ensure transparency in risk-sharing schemes and collective benefits.

We anticipate that there will be a longer list of those parties who must be kept informed. Placing the list of persons who must be kept informed in regulations, rather than in primary legislation, is appropriate for this kind of detail. It also enables consultation on additions to the list as the landscape evolves. To give the Committee an example, we may require schemes to provide the necessary information to members, prospective members and others with an interest in the scheme, such as employers.

Just to clarify matters further, the reference in the clause to trade unions and employment tribunals is simply to retain the current provision in the primary legislation, in a way that makes sense once we have removed from it the list of persons to whom information must be given.

The mood of the whole Committee, as far as I can see, is that we all want to ensure that scheme members, prospective members, employers and others receive a good flow of clear information, and the clause gives the Government greater flexibility in specifying who has a right to information and how it should be provided.

Nigel Mills: The Minister will know that it has not always been easy to get details from some schemes—mainly, defined contribution schemes—about exactly what charges

[Nigel Mills]

they are incurring, such as management fees, transaction fees or other hidden costs. Will these rules allow those details to be flushed out of schemes, so that we can all know what we are spending?

Steve Webb: My hon. Friend is quite right that these various charges and deductions have all too often been opaque. The measures that we are already introducing, under previous legislation, should deliver what he seeks. So, the Command Paper that we have just published—here is one that we prepared earlier, as it were—will provide for next April, first, obviously the cap on charges and the banning of certain categories of charges during subsequent years, and, secondly, a duty on the trustees and managers of schemes to find out the sort of hidden charges that my hon. Friend refers to, report on them and then—potentially in the next Parliament—we will be in a position to consider how far those hidden charges should be included in charge caps.

What we are trying to do is to ensure that people do not face unfair charges, and that the people who can do something with the information—the trustees and managers—receive that information and act on it. Clearly, scheme members should receive a basic level of information about those costs, but we have a programme of work contained in this document and other regulations that should deliver what he seeks.

I hope that has been helpful and I commend the clause to the Committee.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned.—*(Dr Thérèse Coffey).*

11.24 am

Adjourned till this day at Two o'clock.