PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PENSION SCHEMES BILL

Eighth Sitting

Thursday 30 October 2014

(Afternoon)

CONTENTS

PUBLISHED BY AUTHORITY OF THE HOUSE OF COMMONS
LONDON – THE STATIONERY OFFICE LIMITED

£5·00

PBC (Bill 012) 2014 - 2015

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Monday 3 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

Thursday 30 October 2014

(Afternoon)

[Mrs Linda Riordan *in the Chair*]

Pension Schemes Bill

Clause 28

Policy for dealing with a deficit or surplus

2 pm

Amendments made: 51, in clause 28, page 12, line 26, leave out

"lower than the required probability"

and insert "below the required range"

This amendment follows the approach taken in clause 20; it provides that there is a "deficit" in respect of a collective benefit if the probability of the scheme meeting a target in relation to the benefit is below the required range.

Amendment 52, in clause 28, page 12, line 29, leave out

"higher than the required probability"

and insert "above the required range".—*(Steve Webb.)*

This amendment follows the approach taken in clause 20; it provides that there is a "surplus" in respect of a collective benefit if the probability of the scheme meeting a target in relation to the benefit is above the required range.

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

The Minister for Pensions (Steve Webb): Good afternoon, Mrs Riordan. I was reflecting on whether you had done something wrong in a previous life to get a whole day of this, but we will give it a go.

I referred to clause 28 earlier on and so I will not go into it at great length. It provides that regulations may require trustees or managers of a pension scheme to set out a policy about how to deal with deficits or surpluses in the probability relating to the provision of collective benefits. Obviously it is essential that schemes offering collective benefits operate in a transparent and accountable manner, so the trustees or managers will be required to draw up a policy which sets out in advance how they will deal with any situation where the probability of the scheme meeting a target in relation to collective benefits is above or below the required range. We may also require the policy to be published.

The policy will set out what actions the trustees or managers will take in different situations. Those actions should be sufficient to restore the scheme's ability to offer the targeted benefits to the required probability. Obviously we have a regulation-making power under subsection 3(b) to make provision about the content of a policy, but on the other hand, we do not intend to place any unnecessary restriction on the scheme's ability to develop its own policy, particularly as there will be a range of different scheme designs and a range of possible circumstances.

Just to elaborate on what happens to those who are outside the probability range, we will not be overly prescriptive about what the policy should contain, because we want trustees and managers to have some flexibility as to how any deficit or surplus should be dealt with. The appropriate action might differ depending on the scheme design or the nature of an external event. This is why subsection (4)(b) contains a power to require the policy to contain provision for a deficit or surplus to be dealt with in one or more of a range of ways. Where there is a deficit the scheme could reduce the planned level of indexation. It could freeze indexation or it could cut targeted benefits for all members. Where there is a surplus it could reverse previous cuts to targeted benefits, restore loss indexation or introduce additional indexation or an increase in the target.

It is important to stress that the targets can themselves be adjusted. Trustees and managers will have to take action to achieve certain results within a prescribed period of time. Members will be consulted on the policy in certain circumstances and we will require schemes to have and to follow a policy which will help to protect the interests of members across the generations. That is a key concern. We would not want schemes to carry a large deficit below the required probability for a sustained period as this would carry a greater risk that members do not receive the benefits that have been targeted for them. In particular, a sustained deficit would increase the risk of the scheme having to make a larger correction later, at short notice, and could increase the risk of unfair transfers between generations. That is an issue that is raised in this context. I hope that that is helpful in fleshing out the purpose of clause 28, as amended. I commend it to the Committee.

Question put and agreed to.

Clause 28, as amended, accordingly ordered to stand part of the Bill.

Clause 29

Deficits attributable to an offence or the imposition of a levy

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

The Chair: With this it will be convenient to consider clauses 30 and 31 stand part.

Steve Webb: We cover a range of topics in clauses 29 to 31. Clause 29 continues with the issue of deficits and surpluses, and deals with one very specific issue. I want to read into the record a precise description of what the clause tries to achieve as there has been some uncertainty about what we are trying to do here. The clause enables regulations to be made to provide for an amount to be treated as a debt due from an employer to the trustees or managers of a pension scheme that provides collective benefits in cases where there is a deficit that is attributable to a specified offence or the imposition of a levy.

In general, the employer is not on the hook for a CDC scheme, but, in this one specific case, we may provide for an amount to be treated as a debt due from an employer. I will explain that situation.

The provisions under section 75 of the Pensions Act 2004, referred to as the employer debt provisions, are usually not relevant in the context of collective benefits, because a funding shortfall that has to be met by the employer cannot arise. For the same reason, money purchase schemes are also not usually subject to the employer debt provisions. However, there are some limited circumstances in which it is appropriate for an amount to be treated as a debt due from an employer to the trustees or managers of the scheme, both in the context of money purchase schemes and to the extent that a scheme provides collective benefits.

Our intention is that, in specific circumstances where money purchase schemes could be subject to the provisions of section 75, the same should apply to the extent that a scheme provides collective benefits. I stress, however, that we only intend to use such powers in specific circumstances.

Although subsection (2) provides that regulations may correspond to or resemble any provisions made by section 75 of the Pension Act 1995 that in turn resemble a provision in section 89(2) of that Act in relation to money purchase schemes, we do not intend for that power to be exercised in any circumstances other than those set out in subsection (1).

Our intention is that regulations made under clause 29 should capture the same situations as those set out in regulation 10 of the Occupational Pension Schemes (Employer Debt) Regulations 2005 to ensure consistency between the treatment of money purchase schemes and schemes to the extent that they provide collective benefits. I am sure that that is clear.

Clause 30 is on transfer values. We are creating this new collective benefit, but what value does someone get when they transfer their money out of a scheme containing collective benefits? The clause contains a power to require in regulations that trustees or managers of a scheme offering collective benefits have, and follow, a policy for the calculation and verification of cash equivalents for collective benefits. A cash equivalent means—not surprisingly—the cash equivalent calculated on a given date of any benefits that have accrued to or in respect of a member under the rules of the scheme.

Regulations can require trustees or managers to ensure that the policy is consistent with any requirements imposed by regulations under section 97 of the Pension Schemes Act 1993, which deals with the calculation of cash equivalents; make provision about the content of the policy; require trustees or managers to consult about the policy, and make provision about reviewing and revising the policy. There are similarities between the regulatory regime for collective benefits and other forms of provision, but there are also distinct characteristics. Collective benefits are different, so transfers have to be different.

There is a collective pool of assets. Members' benefits are calculated from the assets available and risks are shared between members to try to achieve a smoother outcome. Therefore, we cannot deal with transfers in the same way as other benefits. Transfer values for money purchase benefits use the realisable value of the member's share of the assets, and final salary schemes, for example, use a cash equivalent for the promised benefits. There will not be one model of collective benefit, so whatever we do needs to work across a range of models.

Transfer values for collective benefits will need to take account of the effect of pooling of assets and risk sharing at the time a transfer value is calculated to ensure that a given member does not get a disproportionately low or high figure. The process needs to be transparent, and the requirement for trustees or managers to have policies on transfer values will provide such transparency. I assure the Committee, however, that we will consult on any regulations made under the clause.

Clause 31 covers what happens when a scheme winds up. It enables the Government to make regulations to cater for the winding-up of schemes providing collective benefits. It provides for regulations to disapply or modify the application of sections 73, 73A, 73B and 74 of the Pensions Act 1995, which, as the Committee well knows, concern the winding-up of occupational pension schemes in relation to collective benefits. It also allows for provisions to be made on those matters in relation to collective benefits.

Section 73 of the 1995 Act provides for a priority order if a scheme winds up without enough assets; section 73A makes provisions for how a scheme should operate during wind-up; section 73B makes supplementary provisions, and section 74 deals with the discharge of liability on wind up. All that the clause does is ensure that we have equivalent provisions for the wind-up of schemes with collective benefits as we do for other forms of pension provision. The details of that will follow in regulations as we work through the Bill, but the basic point is that the clause is giving us primary power to introduce such regulations to work through the fine detail over the coming months.

I hope that is helpful. I have covered a range of topics and I commend clauses 29, 30 and 31 to the Committee.

Gregg McClymont (Cumbernauld, Kilsyth and Kirkintilloch East) (Lab): I have a question about clause 29. The Minister referred to some concerns being expressed about the meaning of the clause and its potential consequences. Can he enlighten the Committee as to what those concerns were? Who was expressing them? How have the Government met them?

Steve Webb: One of the attractions of CDC for employers is that there is not something on their balance sheet; there is not a number that goes up or down, a deficit or a surplus, which has been one of the problems with DB. The basic principle of CDC is that there are no hard promises, only targets. An employer cannot have a legal obligation to put money into the scheme to deal with, for example, a deficit or a surplus. In general, that is the principle. However, clause 29 allows for exceptional circumstances such as where an offence results in an imposition on the scheme that the employer would be expected to pay.

I deliberately read out some quite precise forms of words to reassure employers—it is employers and their organisations and pensions funds that raise those issues with us—to make clear that it is not a Trojan horse to suddenly risk employers being on the hook for deficits or surpluses in schemes with collective benefits. It is a very narrow, specific situation that can already arise in DB schemes and money purchase schemes. In a sense it is analogous to existing provision because with existing

[Steve Webb]

money purchase benefits, an employer can be required to put money into a money purchase scheme in that kind of situation. We want to make it clear that we are not driving a coach and horses through the basic principle that an employer is not on the hook for benefits in a CDC scheme.

Gregg McClymont: Can the Minister give an idea of what kind of offences one might be talking about? I am not trying to catch him out, but what kind of offences could take place that would put the employer, to use the Minister's language, "on the hook"? Is it something that happens regularly or is it a rare occurrence? What are the circumstances?

Steve Webb: We are talking about exceptional circumstances. For the offences that will be prescribed for the purposes of this section, we covered situations in which a pension corresponding or similar to any provision made by section 75 of the 1995 Act can be applied in the context of collective benefits talking about specific scenarios where an offence has taken place. An offence relates to the running of the scheme, so dishonesty or fraud would be an obvious example. I hope that is helpful.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clauses 30 and 31 ordered to stand part of the Bill.

Clause 32

Requirement to obtain actuarial advice

2.15 pm

Steve Webb: I beg to move amendment 18, in clause 32, page 14, line 4, leave out "the scheme" and insert "an".

The purpose of this amendment and amendments 20, 21, 22, 23 and 24 is to replace references in clause 32 to "the scheme actuary" with references to "an actuary". This follows the approach taken in clauses 20 and 26. Amendment 19 is also related as it is about the actuary's qualifications.

The Chair: With this it will be convenient to discuss Government amendments 19 to 24.

Steve Webb: I will briefly set out what the clause does, although it is one of those that is relatively straightforward to read, and then I will explain why we have made some modest amendments.

Clause 32 sets out a regulation-making power that may require trustees or managers to obtain advice from the scheme actuary before making specific decisions or taking specified steps to be prescribed in regulations. In addition, the regulations may provide that the scheme actuary must have regard to guidance issued periodically by a specified person and may impose other requirements on the scheme actuary when advising on those matters.

There is a precedent in pensions legislation for including provisions that require the actuary to have regard to prescribed guidance; for example, under section 230(3) of the Pensions Act 2004, which covers matters on which the advice of an actuary must be obtained.

We have made a number of minor amendments to the clause in response to comments made by stakeholders about the use of the term "scheme actuary". We have also added in an extra regulation-making power so that regulations may require trustees or managers to obtain advice from an actuary who has specified qualifications or who meets other requirements. We talked a bit about that this morning. That is to ensure that the actuary used is appropriately skilled for the task.

The clause sets out a regulation-making power that may require the trustees or managers of a pension scheme to obtain actuarial advice before making a specified decision or taking other specified steps required by regulations under part 3.

Actuarial input will play a key role in the lifecycle of a scheme offering collective benefits. In particular an actuary, not the trustees or managers, will assess the probability of the scheme meeting its targets. That will ensure that there is independent professional validation of the situation of the scheme, to give members confidence that their assets are being managed appropriately.

Amendment 18 simply replaces a reference to "the scheme actuary" with a reference to "an actuary" to ensure consistency when referring to an actuary throughout part 3 of the Bill. That should, I hope, not be contentious. Amendment 19 is needed to ensure that key scheme decision making incorporates an appropriate level of expert actuarial advice. That might, for instance, be in relation to a decision to modify the scheme's investment strategy. Amendment 20 covers the same issue of "the scheme actuary" and "an actuary". Amendment 21 is consequential. Amendment 22 also replaces a reference to "the scheme actuary" with "an actuary". Amendment 23 is consequential. Amendment 24 deletes a subsection of the clause which would have enabled a "scheme actuary" to be defined in regulations as that provision is no longer required. I commend the amendments to the Committee.

Gregg McClymont: I want to ask the Minister again about the representations made by pension schemes and others about why they wanted a reference to an actuary rather than a scheme actuary. Is that about greater flexibility around the kind of professional advice that people might seek? Is it as simple as that or is there anything else the Committee should be aware of?

Steve Webb: It is quite right for the hon. Gentleman to ask why we have made changes to the Bill. In this case, what has to be obtained is actuarial advice. The concept of a scheme actuary is narrower. Actuarial input can come independently of the scheme itself. It can be commissioned by the scheme from others, not necessarily the scheme's actuary. It is just a broader group of people. To make that clear we were asked to amend the wording.

Amendment 18 agreed to.

Amendments made: 19, in clause 32, page 14, line 5, at end insert—

'( ) The regulations may, in particular, require the trustees or managers to obtain the advice from an actuary who has specified qualifications or meets other specified requirements."

This amendment gives a power to require trustees or managers to obtain advice from an actuary who has certain qualifications or who meets other requirements before making certain decisions or taking certain steps.

Amendment 20, in clause 32, page 14, line 7, leave out "the scheme" and insert "an".

See explanatory statement to amendment 18.

Amendment 21, in clause 32, page 14, line 8, leave out "those matters" and insert "matters in accordance with the regulations".

See explanatory statement to amendment 18.

Amendment 22, in clause 32, page 14, line 9, leave out "the scheme" and insert "an".

See explanatory statement to amendment 18.

Amendment 23, in clause 32, page 14, line 10, leave out "those matters" and insert "matters in accordance with the regulations".

See explanatory statement to amendment 18.

Amendment 24, in clause 32, page 14, line 11, leave out subsection (3). *—(Steve Webb.)*

See explanatory statement to amendment 18.

Clause 32, as amended, ordered to stand part of the Bill.

Clause 33

Sub-delegation

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

The Chair: With this it will be convenient to take clause 34 stand part.

Steve Webb: Clause 33 must win the prize for the most opaque sentence in the Bill, and that is quite a high bar. It simply says:

"Regulations under this Part may confer a discretion on a person."

I am sure that we would all agree with that. To explain a little bit more what we are talking about here, the issue is sub-delegation. In general we are imposing duties on trustees and managers, but they may delegate their functions to others. Where regulations make provision for the methods and assumptions to be used by an actuary, for example, we leave some discretion about those matters to the actuary.

Actuarial work, as the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East said this morning, is perhaps a science, or an art, or something in between. Sometimes there are no right answers and it is appropriate for the trustees, who will not necessarily be specialist actuaries, to be allowed to delegate discretion on matters of actuarial valuation to an actuary. They cannot do that unless we give them the power to do so under clause 33. The Secretary of State makes regulations but delegates some decisions to the actuaries. We produce the regulations, but sometimes discretion is left to those on the front line such as the actuaries.

Clause 34 concerns the publication of documents. Again, transparency is critical in schemes offering collective benefits. We are trying to set out regulations about the publication of documents and those to whom they might be sent. We have to ensure that we have transparency. Part 3 of the Bill provides for a number of documents to be published with the idea that that will aid regulatory scrutiny of schemes to the extent that they provide collective benefits. We do not believe that these provisions are controversial.

Gregg McClymont: They are not controversial. I just want to make an obvious observation about transparency. Disclosure is important but with pensions it must be disclosure in a form that is explicable to those who receive the information. That is not specifically about the clause, but part of the wider debate about communicating some of the complexities around collective pension schemes. I am not seeking a response from the Minister as I am sure he agrees about the importance of transparency in a form that is understandable to scheme members. I simply put it on the record that that kind of clear and simple but comprehensive information is not easily achieved.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34 ordered to stand part of the Bill.

Clause 35

Enforcement

Amendment made: 25, in clause 35, page 14, line 21, leave out paragraph (a). *—(Steve Webb.)*

This amendment removes the power to confer functions on a specified person in connection with the enforcement of regulations made under Part 3. 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.

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

Steve Webb: We are moving now to the final elements of part 3, which places a number of legal duties on trustees, managers and others. This clause indicates that we can enforce the regulations and that there will be penalties for non-compliance. It allows regulations to confer the function of enforcement on a specified person. I am referring to a power to enable an appropriate body, such as a regulator, to regulate schemes offering collective benefits. It also allows regulations to provide that section 10 of the Pensions Act 1995, on civil penalties, should apply where there is non-compliance with the regulations.

We have already debated our amendments. The Government amendment removes the power to confer functions on a specified person in connection with the enforcement of regulations made under part 3, because on further reflection we concluded that the relevant regulators have the powers that they need.

We could be talking about a penalty of up to £5,000 for an individual or, potentially, up to £50,000 in other cases, so they are significant penalties. We have existing regulatory powers, and this clause, as amended, enables them to be used in the context of schemes offering collective benefits. I commend clause 35, as amended, to the Committee.

Question put and agreed to.

Clause 35, as amended, accordingly ordered to stand part of the Bill.

Clause 36

INTERPRETATION OF PART 3

Amendments made: 53, in clause 36, page 14, line 36, leave out

"probability" means the level of probability"

and insert

"range", in relation to a level of probability, means the range".

To reflect the changes made by amendments 43, 46, 51 and 52, this amendment removes the definition of "required probability" and inserts a definition of a "required range".

Amendment 26, in clause 36, page 14, line 38, 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;".—*(Steve Webb.)*

This amendment inserts a definition of "trustees or managers" 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.

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

Steve Webb: Clause 36 provides definitions so that people can interpret part 3 of the Bill. Most of this is self-explanatory. Subsection (2) provides that a power conferred by part 3

"to make provision corresponding or similar to any provision made by a section of another Act includes a power to make provision corresponding or similar to any provision that may be made by regulations under that section."

Essentially, these are the technicalities that we have to go through to complete the setting up of the concept of collective benefits. I hope that that is helpful and I commend clause 36 to the Committee.

Question put and agreed to.

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

Clause 37

COLLECTIVE BENEFITS: AMENDMENTS TO OTHER LEGISLATION

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

Steve Webb: Having got the taste this morning for opposing bits of my own Bill, I am going to do it again. I am seeking to twist the arm of the Committee to decide that clause 37 should not stand part of the Bill. The reason is that it introduces schedule 4 and, as we discussed earlier, we have restructured the Bill to a more rational form, so most of the provisions that were in schedule 4 have now been moved to schedule 1 and schedule 4 is now empty. Therefore, in a moment, I shall try to persuade the Committee also that schedule 4 should not be the fourth schedule to the Bill, because there is nothing in it. I hope that that is persuasive and I urge my colleagues to resist the temptation to retain clause 37.

Question put and negatived.

Clause 37 accordingly disagreed to.

Schedule 4

COLLECTIVE BENEFITS: AMENDMENTS TO OTHER LEGISLATION

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

Steve Webb: Just to reiterate, I urge that schedule 4 not be the fourth schedule to the Bill.

Question put and negatived.

Schedule 4 accordingly disagreed to.

Clause 38

PAYMENTS INTO REMPLOY LIMITED PENSION AND ASSURANCE SCHEME

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

The Chair: With this it will be convenient to consider clauses 39 and 40 stand part.

2.30 pm

Steve Webb: Just to jump ahead, clauses 39 and 40 are entirely consequential amendments to legislation. For example, we have to include the title of this Act in other legislation for consistency. Unless anyone has any questions, I do not propose to deal with clauses 39 and 40 in any detail.

Clause 38 is a technical amendment to the law that relates to the Remploy pension and assurance scheme. Remploy has been discussed at great length in the House, but the clause is narrowly drawn and simply gives the Secretary of State powers to make payments directly into the Remploy pension and assurance scheme rather than making such payments via Remploy.

The Government confirmed in March 2012 that they had decided to implement the Sayce review recommendations on Remploy that viable businesses should be given the opportunity to exit Government ownership or sold, and that non-viable businesses should be sold. The exit of factory businesses was completed in December 2013. On 22 July 2014, my right hon. Friend the Minister for Employment confirmed in a written ministerial statement that the Department for Work and Pensions would launch a commercial process for exiting Remploy Employment Services from Government control, a process that is on track to be completed by March 2015. The Government have confirmed that the accrued benefits of Remploy pension scheme members will be protected. The Remploy pension scheme is currently funded by Remploy Ltd as the sponsoring employer, and Remploy funding for the scheme includes the use of moneys provided to Remploy by the Department for Work and Pensions. The provision in the Bill enables the Department to fund the scheme directly should that be required at some future date.

Question put and agreed to.

Clause 38 accordingly ordered to stand part of the Bill.

Clauses 39 and 40 ordered to stand part of the Bill.

Clause 41

REGULATIONS

Steve Webb: I beg to move amendment 1, in clause 41, page 16, line 15, leave out "or repeal" and insert ", repeal or otherwise modify".

This amendment ensures that where regulations under clause 40 make consequential provision modifying primary legislation the regulations will be subject to the affirmative procedure.

The Chair: With this it will be convenient to discuss Government amendment 54.

Steve Webb: I hope to keep my remarks relatively brief. Clause 41 makes provision about the regulation-making powers set out in the Bill and the procedure for exercising those powers. It allows for the inclusion of incidental, supplementary, consequential, transitional, transitory or saving provisions. It also allows regulations to apply differently for different purposes and to apply to some or all of the purposes for which the Bill may be used. Government amendment 1 is a technical amendment to ensure that where consequential provision made by regulations under clause 40 amends, repeals or modifies primary legislation, those regulations will be subject to the affirmative procedure. I hope that that reassures the Committee that any such amendments will be properly debated by the House.

Amendment 54 will correct what my notes call an oversight in the Bill. Obviously, we do not generally make oversights, but on this occasion we did. It was not our intention for regulations that deal only with commencement, transitional, transitory or savings provision to be subject to further parliamentary scrutiny. That reflects the standard approach for such regulations. I hope that that offers the Committee the reassurance that it seeks.

Amendment 1 agreed to.

Amendment made: 54, in clause 41, page 16, line 20, at end insert—

'( ) Subsection (4) does not apply to a statutory instrument containing regulations under section 44(2) or (4) only." —*(Steve Webb.)*

This ensures that a statutory instrument containing commencement regulations or making transitional etc provision is not subject to any Parliamentary procedure. This brings the Bill into line with the usual approach.

Clause 41, as amended, ordered to stand part of the Bill.

Clause 42

CROWN APPLICATION

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

Steve Webb: The clause makes provision in respect of Crown application and provides for clause 9, on a pensions promise obtained from a third party, and part 3, on collective benefits, to apply to a pension scheme managed by or on behalf of the Crown. In case the Committee is concerned, I should stress that nothing in those provisions applies to Her Majesty in her private capacity.

We want those provisions to apply to a pension scheme managed by or on behalf of the Crown, for example, the royal household pension scheme. There is a presumption that Acts are not intended to bind the Crown, so we therefore need to make express provision for those provisions to apply to it. Section 121 of the 1995 Act and section 313 of the 2004 Act contain similar provisions.

Question put and agreed to.

Clause 42 accordingly ordered to stand part of the Bill.

Clause 43

EXTENT

Steve Webb: I beg to move amendment 2, in clause 43, page 17, line 5, at end insert—

'( ) Section (Extension to Scotland of certain provisions about the marriage of same sex couples) extends to Scotland only."

The effect of this amendment is that the new clause inserted by amendment NC1 extends to Scotland only.

The Chair: With this it will be convenient to discuss Government new clause 1—*Extension to Scotland of certain provisions about marriage of same sex couples.*

Steve Webb: We have a slightly surprising detour at this point. This is normally the bit that indicates whether a Bill relates to England, Wales, Scotland and Northern Ireland, and how it all works. We have used this opportunity to table an amendment and new clause that will tidy up an issue relating to the Marriage (Same Sex Couples) Act 2013 as it affects Scotland. New clause 1 will extend to Scotland certain provisions in the Pension Schemes Act 1993 that were inserted by the Marriage (Same Sex Couples) Act, and amendment 2 will limit the extent of new clause 1 to Scotland.

I probably need to do a bit of explaining. The amendment extends a regulation-making power to cover Scotland so that, as is usual, regulations can be made that extend to England and Wales and Scotland. A consequential amendment is being made to clause 43 so that new clause 1 extends only to Scotland. Section 38A was inserted into the Pension Schemes Act 1993 by the Marriage (Same Sex Couples) Act 2013, which was led by the Department for Culture, Media and Sport. We need to extend that section to Scotland, as it currently applies only to England and Wales.

Section 38A gives the Secretary of State the power to make regulations in relation to the administration of survivor benefits in a relevant legal change of gender case. That is a small legislative change to ensure that the powers to make regulations apply to Scotland so that, as usual, legislation can be made to apply to England, Wales and Scotland. As the regulation of occupational pensions is a reserved matter, we need to legislate for Scotland. I can go into more detail if the Committee wishes, but we are essentially trying to ensure that England, Wales and Scotland are in step with each other when it comes to some of the consequential pensions issues arising from the 2013 Act, particularly on the issue of transgender individuals in couples.

Gregg McClymont: We have heard much recently from Government Members about English votes for English laws. Is this an example where the only person on the Committee who should be allowed to air his opinion is myself? If that be the case, I would certainly be keen to push the matter to a vote. Perhaps the Minister can enlighten me.

Steve Webb: I am grateful to the hon. Gentleman for his contribution. My point was that these matters are reserved to Westminster, as most pensions policy is. I like to think that we are all equal on this Committee.

Amendment 2 agreed to.

Clause 43, as amended, ordered to stand part of the Bill.

Clause 44

Commencement

Steve Webb: I beg to move amendment 3, in clause 44, page 17, line 9, at end insert—

'( ) Sections (Judicial pensions: pension sharing on divorce etc) and (Pension scheme for fee-paid judges) and Schedule (Amendments to do with section (Pension scheme for fee-paid judges)) come into force on the day on which this Act is passed."

This ensures that the amendments relating to judicial pensions come into force on the day on which the Bill receives Royal Assent.

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

Government new clause 2—*Judicial pensions: pension sharing on divorce etc.*

Government new clause 3—*Pension scheme for fee-paid judges.*

Government new schedule 1—*Amendments to do with section (Pension scheme for fee-paid judges).*

Steve Webb: We are romping through varied topics this afternoon; at this point, we are on pensions for fee-paid judges. I must share one of the secrets of this dark book that I hold. It tells me that Government amendment 3 was moved by Steve Webb, that he is a Liberal Democrat and that it was tabled on 11 September, and it recommends that I accept the amendment. On balance, I think I will.

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

To explain in slightly more technical language, new clause 2 corrects an error in paragraph 1(5) of schedule 2A to the Judicial Pensions and Retirement Act 1993, which addresses the funding of pensions shared on divorce. New clause 3 provides a power to establish a pension scheme for fee-paid judges, as required by case law. It applies to historic cases only. As things stand, the scheme will reach back to 7 April 2000, but that point is subject to appeal.

New schedule 1 will ensure that a pension scheme established via that power is linked to the Pensions (Increase) Act 1971, and that the powers taken under the Bill will come into effect on Royal Assent. The effect, as I said, is to correct the relevant part of the Judicial Pensions and Retirement Act 1993 dealing with pension sharing to ensure that it works correctly for cases where pension sharing is activated after a person has left judicial office.

The new schedule provides for a power to be taken under the 1993 Act that will enable the Lord Chancellor to establish a pension scheme for eligible fee-paid judges in the United Kingdom and Northern Ireland. The new schedule links such a scheme to the Pensions (Increase) Act 1971 to ensure that annual increases are in line with the legislation.

New clause 2 corrects current legislation. We have a legal requirement to respond to case law; failure to implement the amendments would impede the Lord Chancellor's compliance with his legal obligations. The ruling in question was a Supreme Court ruling in a case brought in February 2013 by Mr O'Brien, a retired recorder, that recorders, as part-time fee-paid judiciary, are workers under the part-time workers directive of 2000, and therefore entitled to a pension on the same basis, pro rata, as the salaried judiciary. The Lord Chancellor announced in his statement of 31 May 2013, as subsequently amended on 18 November 2013, that fee-paid judges for whom legal qualification is a requirement for appointment and who have a salaried full-time comparator are entitled to a pension. In line with that statement, we estimate that about 5,000 fee-paid judges are eligible for a pension.

The new judicial pensions scheme, which will be implemented in April 2015, has been designed to accommodate eligible fee-paid judges. However, a separate scheme is required to provide a pension to eligible fee-paid judges for their service from April 2000, when the part-time workers directive was implemented in the United Kingdom, until the new judicial pensions scheme comes into operation. I think that we all accept that, following that Court judgment, it is entirely proper that the Lord Chancellor makes those changes. I therefore hope that the Committee will accept the amendment.

Amendment 3 agreed to.

Steve Webb: I beg to move amendment 28, in clause 44, page 17, line 9, at end insert—

'( ) Section (Pension sharing and normal benefit age) comes into force on 1 April 2015."

This ensures that the new clause relating to pension sharing and normal benefit age (NC4) comes into force on 1 April 2015.

The Chair: With this it will be convenient to discuss Government new clause 4—*Pension sharing and normal benefit age.*

2.45 pm

Steve Webb: We are back on the issue of pension credits. As the Committee will recall from our earlier discussion, this is not about the income-related social

security benefit; it is about the bit of pension a person gets when they have been divorced in certain circumstances —the credit arising from the pension rights of their ex-spouse. The changes are mainly expected to be adopted by public service schemes in the early days. The number of private sector schemes that could immediately take advantage of the change that I am about to describe is minimal, as the number that have a normal pension age of more than 65 is limited. What we are discussing is a pension credit derived from pensions shared on divorce.

Where a couple share the value of pension rights on divorce, most schemes require the former spouse to transfer their share out to a personal pension. However, some allow—or, in the case of unfunded public service schemes, require—the pension share to remain in the original scheme, to be put into payment at the scheme's normal benefit age. Currently, the normal benefit age cannot exceed 65, even though schemes may have a higher normal pension age for ordinary members. Few private sector schemes, if any, are in that position. However, from April 2015, new public service pensions will have a normal pension age, which is the member's state pension age, meaning that from that date, normal pension age will be above 65 for most members of such schemes.

If the amendment is not made, schemes must continue to put pensions to former spouses into payment at an earlier age than the scheme members themselves can receive their own benefits from the scheme. The amendment removes that anomaly, but schemes will not be able to have a normal benefit age higher than the highest normal pension age for any benefit payable under the scheme. The change is permissive; no scheme is being forced to change its normal benefit age. It simply gives schemes flexibility if they wish to do so. The change will commence on 1 April 2015. I hope that Members will accept the amendment and new clause as a sensible tidying up, and I commend them to the Committee.

Amendment 28 agreed to.

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

2.47 pm

Adjourned till Tuesday 4 November at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

PS 12 Partnership Assurance Group plc