PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PENSION SCHEMES BILL

Tenth Sitting

Tuesday 4 November 2014

(Afternoon)

CONTENTS

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

£6·00

PBC (Bill 012) 2014 - 2015

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Saturday 8 November 2014

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
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IN GENERAL COMMITTEES

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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)
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† 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)*

David Slater, *Committee Clerk*

† attended the Committee

Public Bill Committee

Tuesday 4 November 2014

(Afternoon)

[Mrs Linda Riordan *in the Chair*]

Pension Schemes Bill

Clause 14

Restriction on transfers out of public service defined benefits schemes

2 pm

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

The Minister for Pensions (Steve Webb): Welcome back to our proceedings, Mrs Riordan. We moved this clause out of sequence because it relates to transfers out of public service pension schemes and more naturally belonged with our discussion of the Budget changes, rather than in our earlier discussion of collectives and other forms of pension scheme and benefits.

The clause would provide for regulation-making powers for the Treasury which would allow it to ban members of defined-benefit public service pension schemes from taking cash equivalent transfer values in such a way that its value is transferred to a defined-contribution pension scheme. Specifically, the clause will enable the Treasury to ban transfers from unfunded public service pension schemes to defined-contribution schemes and schemes providing collective benefits.

I advise the Committee that we intend to bring forward further amendments to the clause on Report to tidy it up in response to the consultation. The amendment will ensure that the ban on transfers from unfunded defined-benefit public service pension schemes to schemes in which the new flexibilities are available is actually made in the Pension Schemes Act 1993 rather than in regulations. That is to give the measure primary force. We also intend to table amendments that will introduce a new statutory requirement for DB schemes to check that all individuals who are transferring to DC have taken advice before transferring.

On the substance, the rationale for a transfer ban is quite clear. After the introduction of changes in 2015, it will no longer be possible for members of unfunded DB public service pension schemes to transfer to schemes from which it is possible to draw down flexibly. The reason is the risk of large cost to the Exchequer. Currently, only a small number of transfers take place out of the public pension schemes to DC schemes. The introduction of the flexibilities may make transfers out to DC schemes more attractive for some. In unfunded public service schemes there is no fund of assets with which to finance transfer payments; instead, they are funded from contributions and general expenditure.

For every extra pound paid out in transfers, the Government will have a pound less to spend that year on public services or would have to borrow the money. We have estimated that if 1% of all public service workers reaching retirement took their benefits flexibly, it would cost the taxpayer £200 million a year. However, in funded public service schemes, as in the private sector, there is a pool of assets that is used to provide pension payments, so in most cases allowing greater flexibility will have a less direct impact on public finances.

There will be limited exceptions to the ban. We intend to legislate for some limited exceptions and will table an amendment on Report to allow the Treasury to make regulations providing for exceptions. Those would be in limited circumstances—for example, some specific circumstances under the Fair Deal process. We will announce further detail of that in due course.

The clause is consistent with what we have said all along about not applying the flexibilities to unfunded public services DB schemes, and I commend it to the Committee.

Gregg McClymont (Cumbernauld, Kilsyth and Kirkintilloch East) (Lab): It is a pleasure to serve under your chairmanship, Mrs Riordan. For the Committee's benefit, I would like to probe the Minister for some detail about what emerged from the consultation. He talked of some amendments here and some on Report. What issues were raised during the consultation on this very technical area?

Steve Webb: Rather than introduce the provision through a regulation-making power, which is what clause 14 would allow, we decided, in the light of feedback, that putting it in primary legislation, in the 1993 Act, would make it clearer. Generally, people understood the idea that where there is not a pension fund to transfer money across, separate issues are raised. In general, people wanted to retain the freedoms where possible, so we have retained them for the funded public service schemes—overwhelmingly, the local government pension scheme.

Gregg McClymont: Further clarification might be useful. What are the unfunded public sector schemes?

Steve Webb: The principal ones are for the NHS, teachers and civil servants. Those are the biggest three. From memory, I think the police scheme is another one, and then there is a whole tail of small schemes.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

New Clause 1

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

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

This amendment extends certain provisions in the Pension Schemes Act 1993, that were inserted by the Marriage (Same Sex Couples) Act 2013, to Scotland to allow regulations made under section 38A of the Pension Schemes Act to extend to Scotland.

Brought up, read the First and Second time, and added to the Bill.

New Clause 2

JUDICIAL PENSIONS: PENSION SHARING ON DIVORCE ETC

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

This corrects paragraph 1(5) of Schedule 2A to the Judicial Pensions and Retirement Act 1993, which is about funding of pensions shared on divorce etc. The amendment ensures that the Act works for cases where pension sharing is activated after a person has left judicial office.

Brought up, read the First and Second time, and added to the Bill.

New Clause 3

PENSION SCHEME FOR FEE-PAID JUDGES

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

"PART 1A

FEE-PAID JUDGES

18A Pension scheme for fee-paid judges

(1) The appropriate Minister may by regulations establish a scheme for the payment of pensions and other benefits to or in respect of fee-paid judges.

(2) The scheme may make provision for payments to or in respect of a person in relation to the person's service before the scheme is established.

(3) No benefits are to be provided under a new public service pension scheme in relation to service in relation to which benefits are to be provided under a scheme under this section.

"New public service pension scheme" means a scheme under—

(a) section 1 of the Public Service Pensions Act 2013, or

(b) section 1 of the Public Service Pensions Act (Northern Ireland) 2014 (c. 2).

(4) Regulations under this section may, in particular, include provision corresponding or similar to—

(a) any provision made by Part 1, section 20 or Schedule 2 or 2A;

(b) any provision that may be made by regulations under Part 1, section 20 or Schedule 2 or 2A.

(5) In this section—

"judge" means a person who holds an office specified in the regulations;

"fee-paid judge" means a judge whose service is remunerated by the payment of fees (as opposed to the payment of a salary)."

(2) Schedule (Amendments to do with section (Pension scheme for fee-paid judges)) contains related amendments."—*(Steve Webb.)*

This clause allows a pension scheme to be established for fee-paid judges, as required by case law. It is aimed at old and transitional cases. Pensions for fee-paid judges will in future be governed by a new scheme under the recent public service pensions legislation.

Brought up, read the First and Second time, and added to the Bill.

New Clause 4

PENSION SHARING AND NORMAL BENEFIT AGE

(1) The Pension Schemes Act 1993 is amended as follows.

(2) In section 101B (interpretation), for the definition of "normal benefit age" substitute—

""normal benefit age", in relation to a pension credit benefit for a member of a scheme, is the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);

"normal pension age", in relation to a benefit for a member of a scheme, means the earliest age at which the member is entitled to receive the benefit without adjustment for taking it early or late (disregarding any special provision as to early payment on the grounds of ill-health or otherwise);".

(3) In section 101C (basic principle as to pension credit benefit), for subsection (1) substitute—

"(1) The normal benefit age in relation to a pension credit benefit for a member of a scheme—

(a) must not be lower than 60, and

(b) must not be higher than the permitted maximum.

(1A) The "permitted maximum" is 65 or, if higher, the highest normal pension age for any benefit that is payable under the scheme to or in respect of any of the members by virtue of rights which are not attributable (directly or indirectly) to a pension credit."—*(Steve Webb.)*

This amendment allows schemes to increase beyond 65 the age at which a pension shared on divorce can first be put into payment but only if the scheme has a normal pension age above 65 for any benefits payable under the scheme.

Brought up, read the First and Second time, and added to the Bill.

New Clause 5

DUTY TO ACT IN THE BEST INTERESTS OF MEMBERS

'(1) Regulations may impose a duty on the managers of a relevant non-trust based scheme to act in the best interests of members when taking decisions of a specified description.

(2) In this section "relevant non-trust based scheme" means a non-trust based scheme that is—

(a) a shared risk scheme, or

(b) a defined contributions scheme under which any of the benefits that may be provided are collective benefits.

(3) Regulations under this section—

(a) may provide for the duty to act in the best interests of members to override obligations that are inconsistent with that duty (including obligations imposed by any instrument, enactment or rule of law), but

(b) do not otherwise affect any duty that might arise apart from this section.

(4) Regulations under this section may provide for the consequences of a manager breaching (or threatening to breach) the duty to act in the best interests of members to be the same as the consequences of breaching (or threatening to breach) a fiduciary duty owed by the manager to the members and, accordingly, for the duty to be enforceable in the same way as a fiduciary duty.

(5) In this section—

"collective benefit" has the meaning given by section19;

"defined contributions scheme" has the meaning given by section4;

"non-trust based scheme" means a scheme that is not established under a trust;

"shared risk scheme" has the meaning given by section3."—*(Steve Webb.)*

This amendment inserts a new power to make regulations which may impose a duty on managers of non-trust based schemes to act in members' best interests when taking certain specified decisions. This duty may apply in relation to shared-risk schemes and schemes providing collective benefits.

Brought up, and read the First time.

Steve Webb: I beg to move, That the clause be read a Second time.

The Chair: With this it will be convenient to discuss new clause 14—*Fiduciary duty of trustees*—

'(1) The Secretary of State may by regulations—

(a) require any pension scheme, which is not already overseen by independent trustees, to appoint a board of independent trustees; and

(b) set out the powers and duties of a board appointed under subsection (1)(a).

(2) Regulations under this section—

(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(3) The board of independent trustees shall have a fiduciary duty towards members of the scheme overseen by them.

(4) The fiduciary duty set out in subsection (3) shall take precedence over any duty to—

(a) the shareholders in, or

(b) other owners of,

the operators of the scheme.

(5) In relation to any matters of member interest, decisions of the board of independent trustees shall be binding on the board of directors or other analogous bodies.".

Steve Webb: In this group of new clauses we are considering the important issue of governance. Who is in charge of a pension scheme and who is looking after the members' interests is an important issue. New clause 5 relates to the governance of the new forms of benefits and collectives, which we talked about earlier. Obviously the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will speak to new clause 14; I will make passing reference to it and then respond further to his comments.

The Government have been the first to propose governance standards for all occupational schemes that will come into force from April 2015, subject to the current consultation and parliamentary approval. In parallel, the Financial Conduct Authority is making rules on governance in relation to workplace pension schemes. Just a few weeks ago, on 17 October, in our Command Paper, "Better workplace pensions: Putting savers' interests first", we confirmed our plans to introduce governance standards in all workplace pensions. The FCA recently consulted on draft rules for independent governance committees for workplace pensions to ensure oversight of these schemes in members' interests from April 2015. These proposals are built on an early agreement between the Association of British Insurers and the Office of Fair Trading to establish IGCs and introduce them on a mandatory footing.

Back on 17 October, we published a consultation on draft regulations to place minimum governance standards on occupational schemes, which are money-purchase or have money-purchase elements to them, as part of our wider Command Paper. The consultation ends in a couple of weeks, on 14 November. Subject to parliamentary approval and any further changes, the governance measures in these regulations will commence from April 2015. They are a comprehensive response to the OFT, which, after completing its market study in the summer of 2013, proposed minimum governance standards for workplace pension schemes. What the Government are doing is therefore in line with a careful study by the Office of Fair Trading of the workplace pension market and responds to its concerns.

I will come to new clause 5, but let me say first that the challenge presented by new clause 14 is that it appears to propose two main changes to the governance of pension schemes. It suggests that all pension schemes must be overseen by independent trustees, subject to regulations, and proposes a legal requirement that the board of independent trustees has a fiduciary duty to scheme members that must be prioritised over any duty to the shareholders or other owners or operators of the scheme. The main target of the change appears to be personal pension schemes without trustees, where a fiduciary duty to members does not currently exist.

Let me explain the difference in approach between new clauses 5 and 14. If new clause 14 was accepted, it would require independent trustees to be recruited for tens of thousands of pension schemes. Data from the National Association of Pension Funds show that just under half of the 1,200 schemes that it surveyed in 2013 had independent trustees, so considerable costs could be involved in increasing that figure.

However, we recognise that there is a governance issue, which is why we tabled new clause 5. There is a potential for new risks from the new types of decisions that might need to be taken in non-trust based schemes that provide collective benefits and in shared-risk schemes. To be clear, I am talking about the new sorts of collective benefits that the legislation allows, the governance of which needs to be changed because it is a different sort of governance. As new types of schemes and benefit designs are developed, it is likely that there will be more circumstances in which scheme managers may be taking decisions on the behalf of members or exercising discretions that affect members' benefits. As a result of the new types of risks that may arise in the new types of shared-risk schemes and schemes offering collective benefits, we want managers to have a duty to act in members' best interests when taking certain specified decisions. That is the purpose of new clause 5.

The decisions on which we are focusing will generally be taken where the individual member has no ability to influence or control the decision made, but where that decision could have a significant impact on their benefits. The details will be specified in regulations, but such decisions could include the distribution and redistribution of assets between members in schemes that provide collective benefits and, in shared-risk schemes, decisions relating to third-party promises—in particular, decisions about whether to offer or purchase a guarantee, the accurate attribution of the promise to relevant members, and retrieving and allocating any returns on such promises. The need for a new duty obviously does not arise in trust-based schemes, as those trustees are already in a fiduciary relationship with the members of the schemes, but we want a clear requirement to act in members' best interests in relation to certain decisions in contract-based schemes.

Under the Bill, shared-risk schemes can be trust or contract-based. Collective benefits can also be provided by a trust or contract-based scheme. That issue came up in oral evidence when the director of the Pensions Policy Institute, Chris Curry, was asked questions by both the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East and me. Although Chris Curry said that such schemes generally operate in trust, which can be a good form of governance, he would not rule out the possibility of a perfectly good contract-based scheme with collective benefits. In a sense, that is probably the difference between me and the hon. Gentleman. I have no problem with trust-based governance, which can be very good, but the Government do not want to preclude alternative models, particularly at a time of innovation, simply on principle. It is not the Government's view that it is impossible for a contract-based form of governance for collectives to be any good.

However, we do want a clear requirement to act in members' best interests in relation to certain decisions. Where a scheme is operated on a contract basis, scheme managers are currently required to operate under the Financial Conduct Authority's Treating Customers Fairly principles and to comply with FCA rules. We want to put that beyond doubt for specific decisions. New clause 5 contains a regulation-making power to impose a duty on managers of non-trust-based schemes to act in the best interests of members when taking specified decisions. As a result of the new types of risk that may arise in these new types of shared-risk schemes and schemes offering collective benefits, we want managers to have a duty to act in members' best interests when taking certain specified decisions.

Specifically, new clause 5 may require managers of non-trust-based schemes to act in members' best interests, but it does not apply to managers of schemes set up under trust. That duty will apply, crucially, to shared-risk schemes and schemes offering collective benefits. The duty is to members in the plural, so it will include balancing the interests of different groups of members. The duty will not apply generally to scheme managers in non-trust based schemes; it will apply only in relation to certain specified decisions made by managers of non-trust-based shared-risk schemes or schemes that provide collective benefits.

2.15 pm

The power under new clause 5 may also provide that the consequences of a manager breaching or threatening to breach the duty to act in the best interests of members will be the same as the consequences of breaching a fiduciary duty owed by the manager to the members and, accordingly, for the duty to be enforceable in the same way as a fiduciary duty. We seek to mirror the fiduciary duties of trustees and apply them to managers in regard to specified decisions. Of course, members will also have recourse to the same civil remedies as those in place for a breach of fiduciary duty in a trust-based scheme. Remedies in respect of fiduciary duty are provided for in common law rather than in statute. They may, for instance, include damages to put a member in the position that they would have been in had the breach not occurred.

We do not believe there is a need for a fiduciary duty to apply in DC schemes that offer only money-purchase benefits. In a sense, that is the nub of the debate. In relation to the issue that we are concerned about in new clause 5, DC schemes that offer only money-purchase benefits are similar to other types of commercial financial products, to which a fiduciary duty does not apply. By contrast, in schemes that provide collective benefits, members will hand over most of the decision making to the trustees or managers who run those more complex schemes. Members will not necessarily be able to exercise choice in relation to the decisions that we are concerned about, such as investment decisions. That will also be the case in some shared-risk schemes. Furthermore, there is already protection for members in DC schemes that offer money-purchase benefits.

I have a couple of other points to make. I want to clarify the role of the new independent governance committees, about which the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East is sceptical. IGCs are a response to the recommendations of the OFT, and they will go beyond the FCA's Treating Customers Fairly principle. They will challenge providers on the value for money of their workplace pension schemes. That is different from the powers in new clause 5 in relation to schemes that provide collective benefits. IGCs will report on how those schemes meet quality standards on the design and review of default funds, costs, charges and standards of administration. IGCs will have a duty to act in members' interests. They will have to have a minimum of five members, the majority of whom must be independent of the firm, and the chair will always have to be independent. IGCs will have the power to escalate any concerns to the FCA, scheme members and employers.

I hope I have given the Committee the sense that IGCs are not some sort of fig leaf. The hon. Gentleman tends to dismiss them, but we are setting out clearly in legislation their membership, independence and role, and the crucial part they will play in member protection. IGCs will not be involved in schemes' day-to-day decision making, but they will have a crucial oversight role. We will not simply leave people in individual DC schemes to get on with it; there will be a complex system of protection for those people under IGCs.

As I am speaking about the power to place managers under a duty, this is an opportune time to clarify something in the record of last week's debate on clause 33. That clause allows regulations under part 3 to confer a discretion on a person. As an example, I said that where regulations make provision for the methods and assumptions to be used by an actuary, we will leave some discretion about those matters to the actuary. I want to clarify that it is the regulations under clause 33, not the trustees or managers, that would confer any such discretion. However, trustees or managers have the power to delegate investment decisions under new clause 7, as we discussed during the previous debate.

In summary, there are two different views in this debate. We take the view that the new collectives—collective benefits and the new shared-risk schemes—require new forms of governance because individual scheme members will hand over complex decisions to those who are in charge, and those decisions will be made on their behalf with discretion being exercised. That is not the case if someone is in an individual DC scheme, where they will have a pot of money and it will be clear that that is their pot of money. They will get the investment return on it, and they will have choices about how it is invested. That is a very different sort of scheme, and we do not believe there should be a one-size-fits-all approach to governance.

Gregg McClymont: One issue here is how far I should go into the detail, given that we will be debating my new clause shortly. Let me just say a couple of things. If we step back from the disagreement and the approach that the Minister suggests—

Steve Webb: Unless I have misunderstood the grouping, the hon. Gentleman's new clause 14 is under discussion.

Gregg McClymont: Fabulous. That makes my job much easier.

The Minister began by setting out what new clause 5 does, and he ended by saying that the difference between this side of the Committee and the Government side is over the approach to money purchase schemes, as reflected in the Bill. I want to make a broad observation. We always talk about pensions being too complex and we always hear from all parts of the pensions industry that there is too much regulation. The Minister had a chance to chop down some of the regulatory forest, but adding new clause 5 complicates matters around collective defined contribution schemes when they could have been made much simpler, vis-à-vis our new clause 14.

I will come in detail to what the Minister said, but let me first set out the fundamentals of the argument around governance. Governance is a key thing in a pension scheme. There are many important things, but governance is critical to ensure that savers—members of the pension scheme—get value for money. Let us not forget what the OFT said in its market study: it could not be confident that savers were getting value for money in a contract-based market. It was very clear about that. That is a pretty strong statement from a competition body and it comes when the Government are automatically enrolling millions of people into workplace pensions for the first time.

The reasons are several, but the fundamental reason why the OFT came to its conclusion, as it made clear in its report, is that shareholder interest in contract-based schemes—the interests of shareholders who hold shares in the big contract-based insurance pension companies providing pensions—was predominating over the interests of savers getting value for money. It is not meant to predominate, because we have the Financial Conduct Authority, formerly the Financial Services Authority, regulation about treating the customer fairly, but, in the end, treating the customer fairly is an abstract—a judgment that contract-based schemes make. Given contract schemes' legal obligation to deliver for shareholders, and in the absence of pensions savers with a strong voice being able to say, "We want to know what our pension charges are and how to compare them with other pension schemes, and we want to be able to make an informed choice about the costs and outcomes of different pension schemes," that has not happened historically in the pensions market over a long period.

Bearing down on the tension between shareholder and saver interests is key. In a lot of markets, that works perfectly well, because the consumer shops around. There are many examples, and an obvious one is technology: mobile phones, laptops and, increasingly, tablets. Savers are very price sensitive and they can make decisions based on price and quality. Pension savers have found that very difficult to do, because, historically, pension companies have not published enough information, and also, and equally importantly, because the information that they do publish is very hard for an individual saver to understand, unless one is very knowledgeable about investment.

For example, in a debate on the Budget reforms, the Financial Secretary to the Treasury suggested that it is not the Government's job to interfere in the investment portfolio decisions that individuals make. That was interesting because it spoke to an approach that sees the public as investors in that professionalised sense. Most people have no experience of engaging with financial markets in that deeper sense and we have to recognise that as a starting point for these discussions. The collective provisions in the Bill recognise it because they say that these decisions can be so complex that they have to be entrusted to a range of professionals to make on an individual's behalf.

As we take the view that there is no simple or obvious way to reconcile that conflict of interest between shareholders and individual savers without trust-based governance, we take the approach that we do in new clause 14. The Minister referred to Chris Curry's evidence, and he is right—pushed by the Minister, Chris Curry did say that he could not rule out a very good contract-based scheme, but anyone who was listening to Chris Curry would remember that he said that the international evidence strongly suggests that trust is the better approach. Nothing is absolute and finding 100% proof of anything is difficult, but the international evidence, and common sense at some level, should tell one that we are more likely to get tougher, better governance through trustees.

The Minister raised a couple of objections, both fair to some degree but one fairer than the other. The first was the suggestion that we would need many, many trustees because there are so many pension schemes. Our new clause 13 would initiate a response to that problem, but let us not forget that of the 200,000 pension schemes in the UK the vast majority are group personal pensions under the management of four or five—no more than half a dozen—insurance companies. A governance board properly constituted of trustees attached to each one of those major insurance companies would deal with the vast majority of pension schemes in the UK. That is a very important point. Group personal pension is by far the fastest growing form of pension in the UK and most people in the private sector are being enrolled into such pensions. They are individual contracts, but under the auspices of five or six big insurance companies, so a trustee board attached to each of those companies would govern most of the pension schemes in the UK.

Steve Webb: Clearly, many people are in group personal pension arrangements, but we understand that 47,000 private workplace schemes are not group personal pensions. Does the hon. Gentleman not think that expecting tens of thousands of schemes to go out and find trustees would be costly? What estimate has he made of the cost?

Gregg McClymont: Let us deal first with that number subtracted from the 200,000 schemes. So, three quarters of pension schemes in the UK that are contract based could be dealt with by setting up half a dozen trustee boards. Secondly, the Minister makes a fair point. Rome was not built in a day. As new clause 13 indicates, giving the regulator powers to force mergers of small schemes is crucial. He has no problem with master trusts, which we will see more of. We have not discussed them in relation to the Bill because so much of it is enabling and permissive rather than prescriptive, but the kind of collective defined-contributions schemes that we are likely to see going forward will be cross-sectoral rather than single workplace or the like, so that would fit well.

In the end, the difference comes down to how serious we think the situation is on the contract-based side as we move into this brave new world of collective pensions. Most, or a lot, of our discussion has been around the complexity of the technical detail of the governance of those schemes. Compare the impact on the Bill of the Minister's new clause 5 and our new clause 14. At one level, he has given himself a headache as he has created yet another category when it would be much simpler to say throughout the Bill, "Plus these have to govern these schemes."

2.30 pm

Let me say a little more about the Minister's observations. He says that collective defined contribution schemes, which are money purchase, are the nub of the difference. That is a perfectly fair point of view, but is that worth complicating the Bill and missing the chance to simplify the governance of pension schemes so fundamentally, especially given our view that independent governance committees do not meet the tests necessary to assure savers that they are getting value for money? The Minister says that IGCs will challenge boards on value for money. The chair is independent and they have a majority of independent members. Let us step back from that for a moment: they have no power to compel contract-based pension schemes to implement their findings. They can refer it to the FCA, but they have no power to ensure that the insurance company or the pension provider implements their findings.

The committees are supposed to be independent governance committees, but it is an unusually capacious definition of governance, as they are really quasi-independent advisory committees. That became clear, if it was not clear already, during the evidence session. When I questioned the FCA, its representative conceded that IGCs are a form of advisory board, so they do not provide independent governance. That is not to say that they are not a step forward. The Minister will introduce IGCs and, according to the OFT report, among all the other things going on, he is beginning to grapple with the fundamental question that we have been raising for three years. Given the extent to which the tension between shareholder interest and saver value for money has been resolved historically to the benefit of the shareholder, the measure does not go far enough. IGCs are not independent and do not provide governance.

To develop my point about the trade-off between simplicity and complexity, the Minister says that he is putting in quite a complex system of protection. We need a simple system of protection. One thing that the financial crisis taught us is that a complex system of regulation does not take us very far if the norms under which actors in the financial service industry operate are far removed from that complex system of protections. Unless we can change the incentives structure within the governance of pensions, rather than trying to regulate conflicts out of existence, I do not think we will solve the problem. That might sound techie but what I mean is very simple.

The Minister's response is to say that he accepts absolutely that there is a tension, and that tension has not always been resolved to the benefit of the pension saver. The OFT makes that clear. However, his response is to put in a complex series of protections, which include giving these committees a little bit of space to try to persuade pension companies to do the right thing at all times, but not the powers to compel them to do so. The reason why we think trust-based governance is the best approach is not because it is perfect. There are examples of small trust-based schemes that have had issues and, I would argue very strongly, in the scheme of things that is much less so than contract-based schemes.

If we want to make this simple we need to give those doing the governing a legal duty always to prioritise the interests of scheme members. That is not needed in the tablet market because consumers are price sensitive. It is not needed in a number of other markets but it is needed in pensions. The Minister will understandably stand behind the OFT's conclusion that shared that analysis, but called for advisory committees rather than independent governance. We say clearly that, given the analysis of the problem and the inherent conflict that has not been resolved favourably to the saver in contract-based schemes, trust-based is the best way to go. The international comparisons and evidence confirmed to the Committee by the chair of the Pensions Policy Institute made that clear.

There is a fundamental difference between the Government and the Opposition. We accept that the Minister has gone some way towards meeting concerns expressed by us and others, but it is a very complex and bitty solution, and there is an opportunity to achieve clarity.

When considering why a fiduciary duty should be imposed on those managing pension schemes, an important aspect of the conflict between the company's understandable desire to make as much money as possible and the scheme saver's interest is that of asset management fees. There are a number of reasons, but a fundamental one is the fact that many of the people who do the asset management are part of the same vertically integrated insurance company. There is a potential conflict right there. The money is moved from the administration side of the pension scheme to asset managers who in many cases work for the same vertically integrated insurer. That is not the insurance company's fault; it is the way that market has developed. It is our job to ensure that that vertical integration works to the benefit of savers.

In that context, I want to read something that came out today from the respected editor of *Money Week,* Merryn Somerset Webb, an expert on asset management who also writes in the *Financial Times* on Saturdays. It is worth quoting because it gets to the nub of the problem of fund managers:

"There are too many actively managed funds—think 4,000. Most underperform their indices (despite surreptitiously tracking them). Most trade more than they should and persist in overcharging while denying they do. I have lost count of the managers who insist I just don't understand how expensive fund management is, what with the regulation. It is a point: regulation is expensive. But you know what? It isn't the only thing in the life of a mainstream fund manager that is expensive. Offices in Mayfair are expensive. Broker research is expensive. So is in-house catering… most fund manager founders are great art lovers or great show-offs."

That is a respected figure in the fund management industry, with a pretty substantial knowledge, analysing and observing it. That is not in itself enough authority to make my case, but that argument on top of the one about people managing contract-based pension schemes often being in the same vertically integrated insurance company as the fund managers, point to a significant conflict of interest.

Stephen Hammond (Wimbledon) (Con): The hon. Gentleman talks about a conflict of interest, but he will recognise that fund managers under the proposed new regulations have to detail exactly their broker expenses and costs of dealing, so that they are transparent. One should not go too far down that line.

Gregg McClymont: I take the hon. Gentleman's point but let us not get ahead of ourselves. I spoke to the Minister the other day about that. Getting to the bottom of that we find very murky waters. It was beautifully put by Nigel Lawson's former adviser, Dominic Hobson, at the NAPF, just before the Minister gave his "Les Miserables" tale. Dominic Hobson runs the respected magazine, *Global Custodian.* As he said, there is a reason why fund managers meet in Monte Carlo and pension trustees meet in Manchester.

Getting to the bottom of that rent extraction is a very difficult task. We are concerned that in the past the FCA has not shown enough oomph in dealing with this kind of thing, so we will be watching very closely. The hon. Gentleman might not be aware that the Investment Management Association, which had a long conversation with me and other people over the months, has proposed things that should be disclosed. However, it is not at a stage where it is prepared to disclose everything. It might or might not have good reasons, but it is not prepared to disclose all the costs as they accrue to the investment of pension and other assets.

Stephen Hammond: Let us not get too technical. It is forced to disclose the costs of dealing, broker research, offices, corporate meetings and the number of those meetings. If anyone wants to see it, there is a pretty heavy element of disclosure on fund managers these days.

Gregg McClymont: I have to say to the hon. Gentleman that that is not my impression, nor the impression of those who look closely at this industry. There appears to be change coming, which the Minister has promised to put in place. As things stand, much information is not disclosed.

Stephen Hammond: Those are all statutory requirements.

Gregg McClymont: Let us be clear about what is not disclosed, as that is part of the problem. As the hon. Gentleman said himself, let us not get too technical. However, part of the reason why this has not been resolved over the years—whoever has held the reins of office—is that it is technical. As I mentioned to the Minister the other day, interest in cash balances held is not disclosed, nor are the costs around foreign exchange trading. Bid-offer spreads are not disclosed and it certainly is not a statutory requirement to do so. *[Interruption.]* If the hon. Gentleman wants to intervene I am delighted to give way.

There is a problem and, as the hon. Gentleman said, it is technical: very few people understand it. It reminds me of the banks. The things that banks were doing were so complex that it was hard to work out whether even the people doing them understood them. There is a need for politicians and regulators to understand what fund management does in managing our pension assets. That is fundamental to this issue. My argument is that the only way to do the best job possible and to get that disclosure in the most efficient form is through trustee governance, because it takes out that conflict of interest. Even then it will not be easy; there are small trust-based schemes that have been overpaying for fund management for a long time. John Gapper and journalists at the *Financial Times* did a report on that six or seven months ago. Given that it is a very big job, the question is: what is the right way to try to get that information on the balance of the evidence? It seems to me overwhelmingly the case that, while conceding that 100% proof of anything can be hard to get, the balance of evidence internationally and also working from first principles is that trust-based is more likely to do that.

That is the basis for our new clause. We do not think that the duty to treat customers fairly has been delivered over time. There is ample evidence of that, not least in the flurry of official reports on pensions. There is no doubt that things have improved with the newer pensions, but we must bear in mind the fact that we are starting from a low base. Finally, let me put it on record that that is not because people in the contract-based schemes do not want to do the best job possible; it is just that, faced with working in that space, with a priority to maximise shareholder value, and in the absence of competing pressure from the pension saver, inevitably shareholder value is prioritised.

As should be clear from what I have said, our view is that the answer is not to try, wishful thinking-wise, and assume that the individual saver is going to be able to do that. That is why governance is key. It has to be people acting in the saver's best interests. One of the positive things about this Bill is that it recognises that, in the form of collective pension schemes. That is very important.

We think there is a significant difference of view. We think that trustee governance is simpler—in the context of simplifying the legislation—and overwhelmingly, when one looks at the evidence, more likely to deliver the governance necessary in collective defined contribution schemes. On that basis, we intend to test the opinion of the Committee.

2.45 pm

Steve Webb: I am grateful to the hon. Gentleman for his remarks. He has raised some important issues. My slight hesitation is that he portrays the matter as if the Government have suddenly come on board with the Opposition's agenda. If I refer to the remarks by my hon. Friend the Member for Gloucester this morning, the framework for automatic enrolment was set up with no governance at all in place for contract-based schemes. We have made sure that we have responded positively to the OFT's report.

There is a timing issue. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East keeps quoting the OFT report, but the IGCs that we are talking about have been introduced in response to that. They were initiated following an agreement between the OFT and the Association of British Insurers, and the OFT thinks that that is the right response to its recommendations. The hon. Gentleman describes a situation without that governance in place and the problems that that brings, but we would not be introducing IGCs if we did not think there was a problem of governance in some of the contract-based schemes.

The hon. Gentleman did not really deal with the effectiveness of independent governance committees. He says that they are quasi-independent, but when we have a committee that has an independent chair, a majority of independent members, time limits on how long people can serve, and limited occasions on which they can be reappointed, the chances of capture by the host scheme are dealt with. He says that new clause 5 complicates things, but all it says is that we have something new: collective benefits. We need a regulatory regime for something that is brand-new. I used the word "complex", but, as I think a former President once said, I mis-spoke. "Comprehensive" was the word I was struggling for—a comprehensive system of member protection.

New clause 5 says that there is a difference between collectives and individual DC. It stands to reason: in collectives, the people in charge make judgment calls, balance the interests of members, and make decisions that members simply cannot take or be involved in. That is why we need the additional measure of governance. That simply is not the case with individual DC.

Essentially, the hon. Gentleman says that trust is good, and in many cases I would agree with him, but his case needs to be stronger than that. To demonstrate why we should accept new clause 14, he needs to persuade the Committee that contract cannot be good. If he says that everything has to be under trust, we have to sweep away 47,000 contract-based schemes and force them all to have trustees. When I intervened on him at that point, he just said, "Well, most of it is group personal pensions, so that's all right. We have to start somewhere." I did not understand his answer to the question. We have 47,000 schemes. New clause 14 would put a burden on the best part of 47,000 pension schemes, and he says, "Well, they can just merge."

Richard Graham (Gloucester) (Con): Effectively, 47,000 contracts would be obliged to have trustees. What costs would be involved and what sort of impact might that have on an individual's pension?

Steve Webb: My hon. Friend makes an important point. Whenever we propose additional regulatory burdens, we have to cost them meticulously. That has to be ratified by a business-led committee, and we have to find offsetting regulatory savings. The Opposition's amendments are a significant burden on large numbers of schemes. I intervened and asked about cost. If the hon. Gentleman has an estimate for the cost of his proposals, I am happy to give way. If 47,000 schemes suddenly have to find trustees, I have no idea where all the people would come from or how long it would take.

Gregg McClymont: The Minister paints a gloomy picture of the pensions landscape that would exist if our new clause were accepted, but he must know that in every single pensions Bill we have had, there has been a recognition—almost universal among the witnesses who have given evidence—that scaling up pension schemes is an absolute necessity. He says that 47,000 pension schemes still have to find trustees, but that is not the case if they are not big enough to give value for money under another of our new clauses. Of course not—they merge. Surely he is on the record as saying that scale matters and that we need more scale. In one sense I am offering the Minister a measure that would enable him to achieve one of his ambitions: to scale up the pensions scheme landscape.

Steve Webb: The shadow Minister says glibly, "Why don't they just merge," but I wonder whether he has any sense of the cost of such mergers. The other question is: who will they merge with? If there is a small, contract-based DC pension scheme linked to an employer over here and a completely different one over there, will we need lonely hearts adverts to match them up?

Gregg McClymont: I do not quite understand the Minister's response. There is a broad consensus of opinion among pensions professionals at the sharp end that scaling up is necessary; we have heard that in evidence given to a number of pensions Bill Committees. The Pensions Regulator told us when we were considering a previous pensions Bill that scale matters. Have the Government not thought about these things?

Steve Webb: The Committee will be aware that I have given the hon. Gentleman several opportunities to tell us what the cost of his proposal to require 47,000 schemes either to find trustees—from goodness only knows where—or to merge. It is apparent that he has no idea and, frankly, that is not uncharitable. He has not got a clue what the cost of what he proposes for pension schemes. The point my hon. Friend the Member for Gloucester was making was that such costs come out of members' pensions.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East said saying that people were being ripped off while investment managers were going to Monte Carlo and so on. However, he forgets that we are legislating for a charge cap. Going forward, more than 99p in the pound of what people put into their pension schemes will go into their pensions, not the scheme's running costs. The 0.75% taken from the relatively modest contributions that someone on an average wage will put into an auto-enrolment scheme will be, in some cases, not much more than pennies. We have clamped down hugely on unnecessary costs, but any costs that he would add through his regulatory burden on tens of thousands of schemes would simply come out of members' benefits.

Gregg McClymont: Is the Minister moving away from his previously stated position that there should be a scaling up in the pensions system and a reduction in the number of pension schemes? That is what his response suggests.

Steve Webb: As you know, Mrs Riordan, we will be moving on to another of the hon. Gentleman's new clauses, which deals with scale, so we will discuss that substantively. It is clear that consolidation is happening organically, but he wants to force the pace at considerable cost to members. We still have not had an answer from him on what the cost of that will be and where the tens of thousands of trustees will come from.

Richard Graham: The Minister is right to highlight these issues. It may be worse than that, because there is a shortage of qualified trustees, even for trust schemes. First, to find volunteers will be incredibly hard. Secondly, they have to be trained, which takes an enormous amount of time. Thirdly, some remuneration is inevitably involved in expenses for travelling to meetings.

The operation is enormous. It is not quite of the scale of the 1948 partition of British India, but it has been rather cavalierly wrapped into a short proposal by the shadow Minister. Does the Minister agree that it is curious that we have not heard any presentation of evidence from the 40,000 schemes involved that this is what they want to do, because they think it is needed and because members are crying out for it, let alone any costing?

Steve Webb: I grateful to my hon. Friend. My history is not good enough to know whether the analogy with the partition of India is entirely accurate, but I take his point. We are talking about huge costs, which have not been quantified by the Opposition. One reason why the Government have taken regulatory burdens seriously is that previous Governments have piled regulation on regulation without worrying about the cost to schemes, which has had an impact on members' benefits. That is why we have to take action.

Debbie Abrahams (Oldham East and Saddleworth) (Lab): Will the Minister state whether regulatory burdens or governance are more important?

Steve Webb: What we want is proportionate good governance. We could spend the rest of the year passing more and more laws and putting in more and more requirements, but they will all have a cost. I think that when Labour was in government, it failed to recognise the flipside to regulatory burden.

We need regulation—we are passing regulations this afternoon—but we need proportionate regulation, not over-regulation. In a sense, the challenge is that we already have these pensions in place. Over time, there has been organic consolidation, which is to be welcomed. However, I do not think that there is evidence for using a sledgehammer and not only saying, "Trust, good; contract, not so good" but that trust is God and is the only acceptable form of pension scheme governance. Crucially—and this is relevant to the Bill—we are in a time of innovation. I want to stress that. We want people to come forward with new models. We want them to come up with collective benefits. We want them to come up with new forms of risk-sharing pensions. Simply to say that there is only one form of governance that could possibly do the job—and that is the proposition put forward by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East—is over-restrictive at this point.

Richard Graham: Does the Minister agree that, philosophically, the shadow Minister is starting from a very similar point to most Government Members, which is that it is important that these schemes are managed well? The duty to act is laid out very cogently in new clause 5. It is a shame that the hon. Gentleman has launched into something at the risk of dividing the Committee when there is an enormous amount of consensus. Does the Minister agree that it would be very helpful if the shadow Minister chose not to press new clause 14?

Steve Webb: Oddly enough, I do, and equally oddly, I do not suppose that the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East will accept the recommendation. I hope, however, that we can unite, as my hon. Friend says, on new clause 5, because it ensures proper governance of collective schemes providing collective benefits.

Finally, on the issue of IGCs, which the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East wants to dismiss even though it is what the OFT concluded was the right answer to the problems they discovered, the provider's board has a comply or explain duty in response to recommendations from the IGC. If the IGC is not content with the board's response, it can escalate to the FCA and to members of the scheme. That is crucial. If I am running a pension scheme and the governance committee in charge of it says, "Unless you sort this problem out, every member of the scheme is going to know that we are not satisfied with the way this scheme is being run," that is a huge threat. That is like having a hand grenade threatening to go off. They can go to the regulator, they can go to the scheme, they can go to the employer and they can go public. Coupled with the IGC's duty to act in the members' interests, this is a practical, direct way of ensuring that members' interests are acted on. We believe that new clause 5 is proportionate, effective regulation, which is particularly needed for the new forms of collective benefits, but that it is not over-regulation, as is the case with new clause 14.

Question put and agreed to.

New clause 5 accordingly read a Second time, and added to the Bill.

New Clause 6

Collective benefits exempt from indexation

'(1) In section 51 of the Pensions Act 1995 (annual increase in rate of pension)—

(a) in subsection (1), for "Subject to subsections (6) and (7)" substitute "Subject to subsections (6) to (7A)";

(b) after subsection (7) insert—

"(7A) This section does not apply to any pension, or part of a pension, that is a collective benefit."

(2) Omit section 21(2) of the Pensions Act 2011, which is no longer needed given subsection (1).". —*(Steve Webb.)*

This text is taken from paragraphs 1 and 2 of Schedule 4 to the Bill, which is left out by amendment 40. The effect is unchanged.

Brought up, and read the First time.

Steve Webb: I beg to move, That the clause be read a Second time.

The Committee will be relieved to know that I can be relatively brief. New clause 6 puts back in the Bill two paragraphs from schedule 4, which were deleted when we deleted schedule 4 last Thursday. These relate to the requirement to increase pensions in payment and the fact that that should not apply to collective benefits.

That exemption from the requirement to index comes about because collective benefits are not like other benefits. They are provided on the basis of investing members' assets on a pooled basis in a way that shares risk across the membership. As discussed, there will always be a target attached to collective benefits. The target could be an income in retirement, a pot of money or something else. In existing CB schemes in other parts of the world, it is normal for increases to pensions in payment to form part of the benefit design, but that is a matter for the scheme. It is important to remember that targeted benefits can go up or down, and benefits in payment can fluctuate in response to funding pressures. The essence of collective benefits is that they make no promise. There is a target, which trustees and managers work towards, but the eventual benefit always has to depend on the amount available to pay benefits to or in respect of the member, and to other members of the scheme.

Against that backdrop, it would make no sense to require pensions in payment to be increased by statute. A statutory promise of pension increases would undermine the way collective benefits work. On that basis I commend new clause 6 to the Committee.

Question put and agreed to.

New clause 6 accordingly read a Second time, and added to the Bill.

3 pm

New Clause 7

Investment powers

'(1) Regulations may make provision about—

(a) the investment powers of the trustees or managers of a pension scheme in connection with collective benefit investments;

(b) their powers to delegate decisions in connection with collective benefit investments (including provision as to liability for delegated decisions);

(c) the investment powers of any person to whom they have delegated decisions in connection with collective benefit investments.

(2) The regulations may, in particular—

(a) make provision corresponding or similar to any provision made by section 34 or 36 of the Pensions Act 1995 (powers of investment and delegation and choice of investments for occupational trust-based schemes);

(b) disapply those sections in relation to collective benefit investments.".—*(Steve Webb.)*

This replaces clause 24 (which is left out by amendment 45) and contains additional material about investment powers in relation to collective benefits.

Brought up, read the First and Second time, and added to the Bill.

New Clause 8

Restriction on borrowing by trustees or managers

'(1) Regulations may prohibit a person to whom this section applies from borrowing money or acting as a guarantor except in specified cases.

(2) This section applies to—

(a) the trustees or managers of a pension scheme under which any of the benefits that may be provided are collective benefits, and

(b) any person to whom they have delegated decisions about collective benefit investments.". —*(Steve Webb.)*

Section 36A of the Pensions Act 1995 contains a similar power in respect of occupational trust-based schemes.

Brought up, read the First and Second time, and added to the Bill.

New Clause 9

Investment powers: duty of care

'(1) Regulations may make provision to prevent any instrument or agreement from excluding or restricting any liability of the trustees or managers of a pension scheme, or any person to whom they have delegated decisions, in respect of the performance of investment functions involving collective benefit investments.

(2) The regulations may, in particular—

(a) make provision corresponding or similar to any provision made by section 33 of the Pensions Act 1995 (duty of care in respect of investment powers for occupational trust-based schemes);

(b) disapply that section in relation to collective benefit investments.".—*(Steve Webb.)*

This amendment outlines a new regulation-making power to prevent liability being restricted in respect of investment functions in schemes offering collective benefits. The regulations may make corresponding or similar provision to section 33 of the Pensions Act 1995.

Brought up, read the First and Second time, and added to the Bill.

New Clause 10

Payment of amounts out of collective benefit funds

'(1) Regulations must prohibit the making of payments out of funds held for the purposes of providing collective benefits except for—

(a) payments made for the purpose of providing those benefits, or

(b) other specified payments.

(2) The regulations may, in particular, make provision corresponding or similar to any provision made by section 37 of the Pensions Act 1995 (payment of surplus to employer in the case of an occupational trust-based scheme).".—*(Steve Webb.)*

The amendment requires regulations to be made preventing payments being made out of funds held for the purposes of providing collective benefits subject to specified exceptions.

Brought up, read the First and Second time, and added to the Bill.

New Clause 11

Regulations under Part 3: overriding requirements

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

The amendment allows regulations to override the scheme rules in cases where there is a conflict.

Brought up, read the First and Second time, and added to the Bill.

New Clause 12

Pensions guidance

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

This amendment introduces the Schedule inserted by NS2.

Brought up, read the First and Second time, and added to the Bill.

New Clause 13

Scale of pension schemes

‘(1) The fiduciary duty of pension scheme trustees shall include a duty to consider whether the scheme has sufficient scale to deliver good value for members.

(2) Where trustees take the view that the scheme has insufficient scale, they must consider whether merger with another scheme would be in the members’ interests.

(3) The Pensions Regulator shall have power to direct merger of pensions schemes where it would be in the interests of the members of each of the relevant schemes for merger to take place.

(4) The Pensions Regulator shall exercise this power in accordance with a methodology on which it has publicly consulted and which has been agreed with the Secretary of State.

(5) The methodology set out in subsection (4) shall be kept under regular review and revised when necessary, subject to further consultation and agreement from the Secretary of State.”.—*(Gregg McClymont.)*

Brought up, and read the First time.

Gregg McClymont: I beg to move, That the clause be read a Second time.

The new clause had an airing in the discussion on new clauses 5 and 14. It would give the Pensions Regulator, along with the trustees of such pension schemes, the power to encourage and make consolidation happen. The schemes we are talking about here are the 40,000 or so that the Minister mentioned in his response to our new clause 14. Let us be clear what we are talking about: there are about 200,000 pension schemes in the UK and about 150,000 are the type of scheme, such as group personal pensions and so on, that our new clause homes in on.

The issue around scale on the trust side is significant. It is true that on the trust side governance issues are usually around scale. There are also issues around the quality of trustees when there are so many pension schemes, as the hon. Member for Gloucester mentioned. Our answer is to encourage forcefully the reduction in the number of pension schemes to increase that scale, which is widely recognised as an important aspect of getting value for money, and to clarify the issue around the number of trustees available.

What is the international and pensions landscape evidence? The Pensions Regulator gave evidence, I think to the previous pensions Bill; there have been so many pensions Bills that it is hard to remember. The Pensions Regulator was clear that scale must be encouraged. It is critical to delivering value for money because it enables higher-quality governance and the economies of scale that can make a big difference when there is a lot of money under management. It also encourages a focus on the pooling of risk so that returns are greater; one can take more risk and hedge against it with a larger number of assets under management. That is something we discussed this morning.

The Committee does not have to my word for it, or that of other Opposition Members. In the pension world elsewhere, scale is seen as important. The most obvious examples are Canada and Australia, where we often look, not just for a Governor of the Bank of England, but for the governance of pension schemes. New Brunswick was mentioned in a different context. That ability to get scaled pension schemes can make a significant difference on a number of levels. First, it can provide economies of scale and, secondly, deal with the issue of finding high-quality trustees. If there are fewer schemes there is less need to find a large number of high-quality trustees.

Thirdly and importantly, Canada shows that if a scheme can get sufficient scale it can substantially reduce the intermediation that takes place through the investment chain. By intermediation I mean the middle men and women who handle a pension saver’s money—the pension fund money—through the investment phase. John Kay’s report for the Secretary of State for Business, Innovation and Skills was clear on the need to reduce intermediation.

Probably the best way to do that is to get pension schemes that are big enough to do a lot of their asset management in-house. That is something that Denmark and the Netherlands do very effectively. I recall a pensions observer famously writing on the wider topic of why Dutch fund houses were under pressure, saying that Dutch pension schemes do not like to pay high charges. That is something that we need to get to in the UK. Although the pension cap is welcome, the governance has to be right to drive down further to an appropriate overall level.

Richard Graham: The history of in-house asset management in UK pension schemes is by and large not a happy one. There are few examples of where it has successfully taken place and there is the well known example of the BT scheme, which created its own in-house manager, Hermes. Over time, the pension trustees increasingly outsourced the management to external asset managers precisely because the in-house operation was not good enough. The argument that in-house asset management is a way forward for pension schemes should be strongly discouraged.

Gregg McClymont: The hon. Gentleman makes an interesting point and produces one example. I am not sure that I agree entirely with him about the BT pension scheme; I will have to look at that in more detail. Certainly, my sense is that Hermes has been a pretty successful fund manager.

Richard Graham *rose—*

Gregg McClymont: Let me make a bit of progress. Let us be clear about the evidence from elsewhere. The Danish system always talks about rankings and the quality of pension schemes, for a number of reasons. A big part of that is that intermediation—agents taking a cut through the investment chain—is much reduced because so much of it is done in-house. In Canada, there is now sufficient scale that they do not pay private equity houses and agents to buy chunks of private equity. They do it themselves. The Danes do that too. If the hon. Gentleman thinks that the level of intermediation—people taking cuts—is acceptable in the UK asset management world, he is going against the findings of the widely respected Kay report, which was delivered to his own Government not that long ago.

Richard Graham: I am sorry, but the hon. Gentleman is not on a good track here. The reason is fairly straightforward. Fees paid by pension schemes to in-house asset managers, or indeed by insurers to in-house investment managers, are by and large not less than those they would pay to external managers. In fact, quite often they are more expensive. Most important is the element of competition. Asset management mandates have to be won by open and fair tender and they should go to the best managers who put themselves forward. Where there is an easy slide of appointing an in-house asset manager, I am afraid there are many examples of inferior performance and poor results for pension scheme members.

I would put the challenge the other way: name a good example of a pension scheme in the UK where an asset manager has delivered outstanding results. Furthermore, the vast majority of pension schemes should not even be looking at private equity.

Gregg McClymont: The hon. Gentleman is competing with me for the lengthiest intervention in Committee, but I think I am still winning from last week. He often makes good points, but sometimes he proceeds by assertion. That was mostly assertion, although it might be that we are not talking about the same thing. The Kay report, which looked at this in detail and was from a widely acknowledged expert, was crystal clear that significant detriment to savers and investors came from intermediation in UK financial services.

Richard Graham *rose—*

Gregg McClymont: The hon. Gentleman can accept that or not. He appears not to accept it, which puts him at odds with the report that his own Government endorsed. He is never slow to make his point whether through assertion or evidence. Let us be clear what we are talking about here: the Kay report, delivered to the Business Secretary, is crystal clear that there is far too much intermediation. It talks about pension schemes, which are a massive part of that asset management industry. Of course they are. The way that most people are invested in the stock market is through their pension scheme. The idea that intermediation is in asset management only outside the pension funds seems rather odd.

Richard Graham: With all due respect to the hon. Gentleman, I worked in the pension sector for well over 10 years and he is making a number of assertions from a position of not necessarily great experience in the sector. Intermediation in the financial services sector as a whole is vastly different from jumping to the conclusion that just because a scheme is bigger it will necessarily be cheaper and better run and produce better results than a smaller scheme. There will be examples where that is so and examples where it is not so. There should be some economies of scale from bigger schemes. They might also be able to negotiate better deals and lower prices, but there is little evidence to suggest a widespread, generalised conclusion that big is always better and small always more expensive, producing worse outcomes. That is simply not the case.

Gregg McClymont: Again, the hon. Gentleman makes a series of assertions in the absence of producing any evidence whereas I, in contrast, am placing the Government's own report on the table as evidence on behalf of our case. Let members of the Committee make up their minds about it. He is behind the curve, in so far as the advantages of scale are now widely recognised in the investment sphere. Just a moment ago, I quoted the editor of *MoneyWeek*, who said there are far too many actively managed funds, which tend to be smaller, and the tide of opinion and the investing of assets is moving rapidly towards large, passively managed investments. However, we will let the Committee make up its own mind about that; we can disagree. I put the Kay report on the table.

3.15 pm

Debbie Abrahams: As we are talking about evidence, it might be appropriate to mention the Work and Pensions Committee, which looked at governance. One of the recommendations, based on all the evidence submitted to the Committee in 2012, including from the Minister, was the favouring and support of super-trusts.

Gregg McClymont: I thank my hon. Friend for making an important point. I do not want to be sidetracked but there is a general view—it is certainly repeated weekly in the pages of the *Financial Times*, *Fund Management*, where this kind of issue is widely discussed by members of the investment community—that scale matters. That does not mean that there will not be boutiques that do a good job, but generally speaking, as a principle, scale is now accepted as an important part of getting value for money in pensions.

The architect of the Australian reforms is clear that the Australians are more scaled than we are, but now they feel they are not scaled enough, relative to places such as Canada, because they are not able, with a mature book, to make the variety of investment decisions, in the hedging and the risk-taking, that is necessary. However, we can disagree on that point and come back to it in future.

Richard Graham: The important thing—it is why this debate matters—is that the new clause the hon. Gentleman is trying to add to the Bill effectively requires pension scheme trustees, first, to take a view on whether the scheme has sufficient scale to deliver good value and,

[Richard Graham]

secondly, to require the Pensions Regulator to direct the merger of pension schemes where that would be in the interests of the members. The point is that it is not easy to establish whether it would be in the interests of members to have a merger. It is not an easy thing for the Pensions Regulator to do, nor is it an easy thing for the pension scheme trustees in the first place to do. There is no proof of these things. Every single merger and acquisition in corporate history has started from the assumption that by merging two entities the combined entity would necessarily be better, and there is a mass of evidence to show that many mergers and acquisitions have ended in disaster.

Gregg McClymont: If the hon. Gentleman wants to make a speech, he should do so. I will just say that I do not accept his argument; he has not produced evidence to that effect. I say to him again that the Kay report—produced by the commission set up by the Government and endorsed by the Business Secretary—takes a different view from him. If he disagrees with Kay and with me, that is perfectly legitimate, although I will leave it there for the moment.

To sum up, I say again that in our view and the view of the Pensions Regulator, which was set out in evidence last year, there has to be a scaling up of the UK pensions industry. At the moment, there are far too many schemes—200,000. Our new clause would not reduce that number to a handful by any means, but it would make a start, by giving the powers to trustees and the regulator to promote scale. It is something the Australians have already undertaken, as they move to scale their auto-enrolment system, which we have learned so much from. It would be a sensible addition to the powers that trustees and regulators have, given the widespread consensus in the pensions world that scaling up will have to happen.

Steve Webb: It is a pleasure to respond to someone else's new clause for a change. Oddly enough, my little note has that word, "reject", on it, for reasons I will explain.

Let me start with a point of agreement. Clearly, other things being equal, there are potential advantages to scale, but the hon. Gentleman talks as if scaling up is not happening. My first observation is that considerable consolidation is happening. "Organic" is probably not the right word, because we do a lot of intervening in the market, but substantial consolidation is happening. Scheme trustees and employers are deciding in certain circumstances that it would be better to be part of something bigger, and they are closing down existing schemes and merging and so forth.

To give a sense of the consolidation that is going on and the number of people who are actually in large schemes, in 2013 more than half of active members of private sector occupational defined-contribution schemes were in schemes with more than 10,000 members. The hon. Gentleman suggested—he did not say this exactly, but one might have inferred it from the tenor of his remarks—that lots of people are in tiny little schemes. More than half of all people in that type of scheme are in schemes with more than 10,000 members, so that is 700,000 out of 1.2 million active members. At the start of this century, in 2000, the figure was only 100,000 out of a total of 800,000, so there is a clear trend towards consolidation. Active members in small and medium private sector DC schemes have decreased from 300,000 over the same period to 100,000, people are heading towards the larger schemes.

The numbers show that schemes are consolidating. In the past four years alone, the number of small and medium occupational DC schemes fell by more than 40%, from 3,300 to 1,950. The number of micros fell by 10,000, from around 45,000 to around 35,000, and the number of large schemes remained relatively stable, so consolidation is happening, which is an entirely good thing. Schemes proactively look at what they are doing and work out whether they could do things better. The hon. Gentleman goes much further than that. He proposes that we force the process, and that is where we have concerns.

Forcing scale does not automatically drive good governance, investment expertise or low costs. We are already driving up standards and making sure schemes are run at the right scale through our governance requirements and our charge cap. A scheme that is too small to deliver a default fund for less than 0.75% cannot be used for auto-enrolment. I often think that the hon. Gentleman's contributions are slightly stuck in a time warp of pre-auto-enrolment, pre-charge cap and pre-governance. He is legislating for the future, not the past—or he should be. The 0.75% charge cap is a pretty tough test. If someone is running a sub-scale small scheme that cannot deliver, they will not be able to use it. We are making sure that the inefficient, badly governed small scheme cannot continue, but the efficient, well governed one can. Again, it is the blunderbuss approach against the subtle approach. It is going with organic consolidation, rather than forcing the pace; it is the heavy hand of regulation against the nimble, light-footed regulation that we are so famous for.

We argue that consolidation and scale have their place, but we object to forcing the pace. Agreeing with what sufficient scale means and policing it would be very difficult. My hon. Friend the Member for Gloucester made a powerful point. The new clause would require the regulator to force schemes to merge where the regulator thought they were not of sufficient scale, but merge with whom? How does the regulator look at the tens of thousands of schemes and spot one that is sub-scale? How do they force it to merge with another scheme that will probably have another set of trustees, who might not want to be merged?

Richard Graham: The Minister is absolutely right. Even the Reverend Moon in Korea has not gone into the game of actually finding marriage partners for the many thousands of people he obliges to marry.

Steve Webb: I am grateful to my hon. Friend for his ever colourful analogies, which did not appear in my briefing pack. He is quite right: the idea that we have forced marriages, to extend his metaphor, but I will not take it too far—we might call them shotgun weddings—does not seem the right approach to regulation. There is a danger in confusing means and ends. The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East is focused on the means: scale is good, so we have to make things big. We are focused on the ends: we want good quality, low-cost, well governed schemes; we are requiring schemes to be all those things. They might do it and be small, and that enables them to be bespoke.

Perhaps a firm would want a relatively small scheme, bespoke and tailored to the needs of their particular employees. The hon. Gentleman might say no to that, because the regulator might say they have to marry somebody else, because they are not big enough and they do not approve; but, beyond the limits of auto-enrolment, occupational pension provision is voluntary. Firms do not have to do such things at all, beyond the legal minimum, so where they do, they often do it for a reason. They provide schemes to meet the needs of their employees, and it seems to us that they should have the freedom, within the constraints of value for money, governance and costs, to do so at an appropriate scale. The regime we are putting in place is leading to consolidation and will do so further, and we welcome that. We do not believe it is right to force consolidation on unwilling schemes that are delivering value for money, governance and cost.

Gregg McClymont: The Minister has a tendency to draw caricature dividing lines. I also noticed that after saying that "organic" was not the right word, he lapsed back into saying it. That reflects a tension in the Minister's mind. He again tries to paint a very black scenario. Why should the regulator be given the power to force schemes to merge? Well, in many other areas of pensions policy the Minister is giving the regulators more powers. As I understand it, he has previously agreed that scale matters. He now says that, all things being equal, scaling up could be the right thing to do. I did not quite catch his last words. He again lapsed into the use of "organic", which does not seem to meet the argument.

Let us not overestimate the disagreement, as I think the Minister does. Our view is that it is perfectly sensible to give the Pensions Regulator the power to force mergers of pension schemes where in the regulator's opinion they are too small to give value for money. That is not a revolutionary proposal. In the Minister's desire to create a bigger divide between us, he is caricaturing the position. Giving trustees the power under their fiduciary duty to consider whether their scheme is large enough to get value for money seems a sensible move. If the Pensions Regulator thinks there are small schemes that cannot get value for money and takes the view that they should merge, we do not see that as a doomsday scenario. In fact, it is to the benefit of those who matter, the scheme members.

This debate comes down to a difference on the importance of scale. The Minister does not see scale as being as important as we do. He also argues that scale is emerging organically. Let us be clear: there are 200,000 pension schemes in the UK. There is no other system in the world with that level of fragmentation. Pension provision is not a cottage industry. There are some industries where it makes sense to proceed on a cottage basis. The Minister also lapsed into using the word "bespoke". When I hear the word "bespoke" my ears prick up. It is one of those adjectives that people use when they want to make a certain sort of argument.

Our view, which is supported by the evidence, is that this is not a cottage industry. We think the Government and the Minister should recognise that and not be a little complacent about the moves towards scale. Our new clause would be a sensible addition to the Bill. However, given the discussions that are still to take place and the serried ranks of Government Members, I beg to ask leave to withdraw the motion.

Clause, by leave, withdrawn.

New Clause 14

Fiduciary duty of trustees

'(1) The Secretary of State may by regulations—

(a) require any pension scheme, which is not already overseen by independent trustees, to appoint a board of independent trustees; and

(b) set out the powers and duties of a board appointed under subsection (1)(a).

(2) Regulations under this section—

(a) shall be made by statutory instrument, and

(b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(3) The board of independent trustees shall have a fiduciary duty towards members of the scheme overseen by them.

(4) The fiduciary duty set out in subsection (3) shall take precedence over any duty to—

(a) the shareholders in, or

(b) other owners of,

the operators of the scheme.

(5) In relation to any matters of member interest, decisions of the board of independent trustees shall be binding on the board of directors or other analogous bodies.".—*(Gregg McClymont.)*

Brought up, and read the First time.

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

The Committee divided: Ayes 5, Noes 10.

Division No. 1]

AYES

Abrahams, Debbie
Blenkinsop, Tom
McCann, Mr Michael
McClymont, Gregg
Watts, Mr Dave

NOES

Coffey, Dr Thérèse
Graham, Richard
Hammond, Stephen
Hemming, John
Kwarteng, Kwasi
Latham, Pauline
Maynard, Paul
Mills, Nigel
Morris, James
Webb, rh Steve

Question accordingly negatived.

New Clause 15

Decumulation

(1) A qualifying money purchase scheme may not sell annuities directly to anyone who has saved with the scheme unless this is the recommendation of an independent annuity broker. A relevant scheme may provide an independent brokerage service itself. A self-provided annuity brokerage service will be considered independent for the purposes of this Act if the provision of its services is subject to the direction of independent trustees.

(2) Pension schemes shall ensure that any brokerage service selected or provided meets best practice in terms of providing members with—

(a) an assisted path through the annuity process;

(b) ensuring access to most annuity providers; and

(c) minimising costs.

(3) The standards meeting best practice for annuity brokerage services shall be defined by the Pensions Regulator after public consultation.

(4) The standards set out in subsection (3) shall be reviewed every three years and, if required, updated.—*(Gregg McClymont.)*

Brought up, and read the First time.

3.30 pm

Gregg McClymont: I beg to move, That the clause be read a Second time.

New clause 15 takes us back into the realm of retirement income and, in particular, the issue of individuals who might not exercise a choice through the new flexibilities that have been introduced, but will instead look to do something more similar to the current retirement income market. That is a roundabout way of saying that the Budget reforms and the guidance guarantees inserted into the Bill in the amendments do not explicitly solve the challenge of consumers defaulting back to their savings provider for an annuity. As the Minister pointed out, some consumers will still choose a retirement income. Our new clause is designed to ensure that those individuals—there is a danger that they will be forgotten about with the focus on the new flexibilities—get the best deal possible.

The Association of British Insurers has adopted a code of conduct that, among other things, requires its members to encourage savers to use the open market option when purchasing annuities. As mentioned earlier, only 50% of savers appear to be taking active steps to engage with the annuities market. Half of savers buy the annuity offered by the company with which they saved, without approaching other providers to discuss annuity products or gather annuity quotes. That is a fundamental reason why the annuities market and the open market option did not succeed. Some 50% of current consumers are deterred from actively shopping around. It is implausible that the situation will improve in the context of the new auto-enrolment pension system, in which the majority will be enrolled on the basis of inertia.

Much has been said about auto-enrolment, which we discussed this morning. The auto-enrolment system, which was devised by the previous Government and implemented by this Government, proceeds on the basis that if someone does not exercise a choice, they go into the pension scheme. That system appears to be the right one to both sides of the Committee, but that does nothing to deal with the issues at retirement. At one end of the scale, people are defaulted into a pension if they do not exercise a choice. When its comes to turning it into an annuity, if people do not exercise a choice, they are defaulted into an annuity that can be significantly lower—up to 20% lower, the National Association of Pension Funds estimates—than they would get if they shopped around. That is important, because that is 20% less every year for the rest of a person's life. It is not just a one-off cost.

Pension schemes should ensure that any brokerage service they employ on behalf of their members meets best practice, in terms of providing members with an assisted path through the annuity process, ensuring access to most annuity providers and minimising the costs. Pension schemes have a duty to get the best possible deal for their members or to do it themselves in-house, as the Royal Mail pension scheme and the National Employment Savings Trust do. That view flows partly from the significant evidence that the best way to get value for money on an annuity is to bulk-buy that annuity on behalf of the cohort of scheme members who are going to retire. It is a more sophisticated version of the principle of bulk buying. That is important, because it addresses what we have discussed umpteen times about the individual being able to get value for money. That did not happen in the annuities market as things stand. Either the pension scheme has to step up and do it in-house or we should ensure it has a duty to direct scheme members to the best possible brokerage service.

Steve Webb: Can the hon. Gentleman give the Committee an idea of what the cost would be to me as a scheme member of the services of an independent annuity broker, if this new clause were accepted? Just a ballpark figure would be useful. How many zeros are we talking?

Gregg McClymont: That, of course, depends on the scale at which the pension scheme is operating. If the Minister has an estimate of what he thinks the new clause would cost, I would be delighted to hear it. I am sure he would welcome what pension schemes such Royal Mail and NEST do, which is to ensure that their members get value for money at the annuity stage.

Stephen Hammond: Is the hon. Gentleman saying that best value is lowest cost, or is he going to define exactly what best value might be and all the possible permutations thereof?

Gregg McClymont: Best value is the largest possible annuity per annum. The hon. Gentleman makes a fair point, but I hope he would accept that we have an annuities market that has not worked because the individual is not able to make those decisions. It seems sensible to us to have the experts who do the job of building the pension pot up also doing the job of ensuring that it is turned into the largest possible income. I never understood why that is not seen as common sense. The two things are related.

Stephen Hammond: The hon. Gentleman makes the point that, of course, when the individual was forced to buy an annuity, there was a problem. In certain circumstances now the individual is no longer forced to buy an annuity. The reason I ask the question is because there will be a range of options for scheme members.

Gregg McClymont: I am not sure whether I quite understand, but let me see. The hon. Gentleman is right to say that with greater options there will be fewer people taking out an annuity. The new clause starts from the assumption that there will still be individuals who take out an annuity and that there is a potential detriment if the annuities market continues to operate on the same basis as in the past. To meet that detriment—and given a limited range of options—our view is that the best way to proceed is to draw on best practice from organisations such as the Royal Mail and NEST and have the pension schemes do that work for the members. There will be a cost to that, of course, but given that this is about an annuity—an income every year for the rest of someone's life—it is important to get this right.

Mr Dave Watts (St Helens North) (Lab): Is my hon. Friend concerned, as I am, that the Minister seems to be asking our side what the cost would be? One might assume that, if the Government were considering this clause, they would have done the assessment themselves, with the Department's backup and resources, which are unlike those we have as an Opposition party.

Gregg McClymont: My experienced hon. Friend makes a good point. I understand that the Minister and the Treasury have been busy on other matters. It is a fair point, which I raised myself.

Let me just say a little bit about how NEST proceeds in this space. NEST requires annuity providers to make sealed bids to provide annuities to those who have saved with NEST. It takes the cohort coming to retirement and says to the providers, "We have x people; given their personal circumstances, and taken together collectively, what offer of an annuity will you make?" That seems to be a sensible way to proceed. It has the advantage of scale and the expertise of the same pension scheme that has built up the pension pot turning it into retirement income. After all, the whole point is not to fetishise the pension pot, but to ensure that it provides an income in retirement. Reconnecting those two parts of the savings process seem to us to be very sensible.

The reason why the new clause uses "most annuity providers" rather than "whole of market" is that the latter is not available for every member. The power to write the detailed rules necessary to ensure that wording is not gamed or written in a way that can be gamed must go to the regulator and not be contained in legislation, which would require a new Act if providers found a way round it. Again, as the Minister has done a number of times during the Bill's progress, the regulator would be empowered to take on that role. The new clause would give the pensions regulator the power to set the details of best practice.

To sum up, annuities, as they are currently constituted, have not been delivering value for money for the whole of the market—for every saver who chooses to annuitise or who is forced to annuitise as things stand. The reason is fundamentally that half those coming to the point of annuitisation—turning their pension pot into an income—do not shop around for the best deal, because it is a complex and confusing process. First, because of that, and, secondly, because of getting the advantages of bulk buying by a professional expert, a pension scheme, to do that crucial aspect of retirement income planning—if someone is taking out an annuity, the fundamental aspect is to get that right—it seems sensible to empower pension schemes to do that. The new clause draws on best practice, and we think it would be sensible for the Government to accept it.

Nigel Mills (Amber Valley) (Con): I was intrigued by the new clause, because I remember that when the Work and Pensions Committee considered its pensions governance report I was keen on the report's recommendation that, as an absolute back-stop, if this industry would not sort itself out, we should separate out the accumulation phase and the decumulation phase, and just say, "Look, pension schemes can't sell annuities. They just can't be trusted to do it. We have to separate this and make people physically have a choice, because they can't stay with their incumbent provider."

Things have moved on a little since we made that recommendation, in that we have stopped people having to take annuities and we have probably blurred the lines between how accumulation and decumulation are carried out, in terms of the times at which one starts doing one, then the other. I suspect that a lot of people will choose not to unravel their pension scheme when they hit retirement age; they will probably try to stay with it and work on a draw-down. I suspect that people will do that with their pension scheme provider, so it will be much harder to separate out accumulation and decumulation.

That is why I am perhaps changing my mind on whether or not we should quite go this far. I suspect that we probably still need the market to fix annuities and get to a better position. Perhaps we have to keep this threat hanging around in the background, so that if a company keeps selling bad-quality annuities that are not properly sold—to the wrong people who will not benefit from them—perhaps we would have to say, "Pension schemes cannot sell them."

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East has tried to deal with some of the issues related to that point. If someone's pension scheme was offering the best annuity in the market and the law said that it could not sell to its customers, those customers would not be highly amused that they could no longer get the best annuity.

This is about trying to allow that to happen, with some kind of independent advice being given in the meantime. Then we can try to allow the independent advice to come from the pension scheme, or at least its sister company, with some kind of protection, so we are perhaps heading towards separation and then going back into a connective situation. That would look too muddy to work. We have to say either that this market can be fixed, that improvement is still needed and that, fundamentally, we will not try to separate accumulation and decumulation, or that we really cannot trust people who have a captive interest in their customers or anything at all about them. If we cannot do that through sister companies, subsidiaries or certain better-governed parts of the group, we would need complete separation, so I am afraid I cannot support the new clause.

Richard Graham: My hon. Friend the Member for Amber Valley is absolutely right to say that things have moved on. The new clause would have been much more relevant in the years before this Government ended the monopoly of annuities. Interestingly, the philosophy behind the new clause is virtually identical to that behind new clauses 13 and 14, which the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East proposed earlier. It is effectively the philosophy of the state knowing best. He wished to terminate unilaterally all the contract schemes and to force them to merge at the behest of TPR to whomever the TPR wishes. Finally, he now wishes to impose a situation where an annuity broker can overrule an individual who, for whatever reason, has decided they want an income for life.

[Richard Graham]

There will be times, of course, when that protection is relevant, but to be so prescriptive and put the individual wish at the bottom of the pile is part of the overwhelming philosophy that the state knows best and the individual must come last, with the decisions imposed from the top down, whatever the cost or consequences. It is time for us all to realise that neither the man in Whitehall nor the politician knows best the correct solution for an individual's financial planning. That is why I will certainly not support the new clause.

3.45 pm

Steve Webb: I admit that I was keeping an open mind until I heard the debate, but my hon. Friends the Members for Amber Valley and for Gloucester have convinced me to reject new clause 15. There are obviously technical drafting issues, as there often are. It is not apparent what "a qualifying money purchase scheme" means. The only reference to a qualifying money purchase scheme is in the Pensions Act 2008, which would imply that we are just talking about defined-contribution occupational schemes here. The coverage is not what the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East would hope.

My hon. Friend the Member for Gloucester made an important point when he used the word "overrule". Under new clause 15, if a member wanted to buy an annuity from their scheme, unless an independent annuity broker recommended it, the scheme could not sell it to them. The member could take or leave financial advice, but not in this case. They could not do what they thought was in their interests, if a so-called expert disagreed. That would be an extraordinarily prescriptive way to conduct things.

I challenge the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East on cost. Once again, he wants to put duties on individuals and schemes and has no idea what it would cost. For example, I could have a small pot and want to know how these provisions relate to people with small pots. I could have a pension pot that is less than the cost of an independent annuity broker but not be able to get an annuity from the scheme because I have to pay the cost of the broker who might cost more than the value of my pot. There is no de minimis and no provision for small pots.

The new clause is stuck in a time warp. Just at the point where annuities are no longer compulsory, the Opposition want to put an annuity broker into primary legislation. We will have a guidance guarantee. Someone will reach an age at which they are interested in doing something with their retirement pot. The Government will write to them about a guidance guarantee. The scheme would tell them that they could not take an annuity unless they had spoken to an annuity broker. That person might be well served to talk to an independent financial adviser, because an annuity might not be the right thing. All those different people could be telling them different things, but the one who had the power would be the independent annuity broker, because if the person wanted to stay with the people they were with, his word would be law. That seems a muddled, backward-looking way to do things.

I am not convinced that that is the way forward, nor am I convinced by the hon. Gentleman's claim that how NEST operates is analogous to his proposal. NEST has an annuity panel, so it has a number of providers who will give annuity offers. However, NEST only searches a limited number of people on its panel. It is not the same as an independent annuity broker who would no doubt charge for services; NEST does not charge for access to the annuity panel. I do not think that is what NEST does, to be fair to the hon. Gentleman.

It is worth saying that some schemes offer guaranteed annuity rates. About 30% of defined-contribution trust schemes in a 2013 survey said that their scheme included a guaranteed annuity rate. If those rates were set some time ago, that is an attractive feature of a pension scheme, compared with whatever the market rate might be at the moment. There might be a compelling reason for people in that sort of scheme to stay in-house. Yet even if it is blindingly obvious that they want an annuity—perhaps an IFA has told them an annuity is best—they would still have to pay an independent annuity broker for permission to stay with the people they are with who might have a market-leading guaranteed annuity rate. The new clause is clumsy, backward looking, restrictive and costly. Those are just a few of the reasons why it should be rejected.

Gregg McClymont: The Minister has again caricatured the argument, as he has a tendency to do. The difference between us is not as wide as the Minister claims. When he resorts to repetition of phrases such as "backward looking" and "time warp", at one level I am reminded of the "Rocky Horror Show", but at another it makes me think that the Minister is not confident in his own argument.

The Minister talks about comprehensive protections for savers. As things stand, individuals who choose to be defaulted into an annuity do not get value for money, in a significant number of cases. We know from the current market that half of those who are annuitising do not shop around, so the idea that action is not needed and that the Budget reforms somehow make the case for action redundant does not strike me as fair or sensible.

The Minister talked about NEST. We know what it does; I described it. The new clause states:

> "A relevant scheme may provide an independent brokerage service itself. A self-provided annuity brokerage service will be considered independent for the purposes of this Act if the provision of its services is subject to the direction of independent trustees."

Our opinion is clear: NEST is included in that.

There is, therefore, a difference of opinion. The Opposition are strongly in favour of ensuring that those who have not exercised the choice of retirement get better value for money than they do now. The Minister wants to tell the individuals who are getting 20% less in their annuity than they otherwise would that that is backwards and in a time warp—so be it, but, while it is fair to disagree, I think that the Minister caricatures the disagreement between us.

I am somewhat relieved about the speech of the hon. Member for Gloucester. He compared our first new clause to the bloody chaos of Indian independence and our second to North Korea, so his comparison of our third to Douglas Jay's phrase "the gentleman in Whitehall knows best" must be considered progress.

Richard Graham *rose—*

Gregg McClymont: No, I will not give way. It is striking that when faced with Opposition arguments the Minister, in a more low-key, sensible way—but still, I think, over-egged—creates a massive division that is not there. Then the hon. Member for Gloucester goes into historical analogies that are at the very least unjustified and at worst distasteful.

Richard Graham: On a point of order, Mrs Riordan. Reverend Moon does not hold services or operate in North Korea. I suspect that his life would come to a fairly rapid end if he tried to. He operates in the democratic republic.

The Chair: That is not a point of order.

Gregg McClymont: We will push the matter to a vote, because we think it critical that those who are being defaulted into annuities get value for money, and we will be testing the Committee's opinion on that basis.

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

The Committee divided: Ayes 5, Noes 10.

Division No. 2]

AYES

Abrahams, Debbie
Blenkinsop, Tom
McCann, Mr Michael
McClymont, Gregg
Watts, Mr Dave

NOES

Coffey, Dr Thérèse
Graham, Richard
Hammond, Stephen
Hemming, John
Kwarteng, Kwasi
Latham, Pauline
Maynard, Paul
Mills, Nigel
Morris, James
Webb, rh Steve

Question accordingly negatived.

New Schedule 1

"Amendments to do with section (Pension Scheme for Fee-Paid Judges)

Pensions (Increase) Act 1971 (c. 56)

1 The Pensions (Increase) Act 1971 is amended as follows.

2 In section 19(2)(a) (extent to Northern Ireland)—

(a) after "or section" insert "18A or", and

(b) after "section 10 of that Act" insert "or provision made under section 18A of that Act that is corresponding or similar to the provision that may be made by regulations under section 10 of that Act".

3 In Schedule 2 (official pensions), after paragraph 4A insert—

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

Judicial Pensions and Retirement Act 1993 (c. 8)

4 The Judicial Pensions and Retirement Act 1993 is amended as follows.

5 In section 22 (application of the Pensions (Increase) Act 1971 to Northern Ireland), in subsection (2)—

(a) after "shall include" insert "—

(a) ";

(b) at the end insert "; and

(b) pensions payable under a scheme made under section 18A above, other than pensions payable under or by virtue of provision that is corresponding or similar to the provision that may be made by regulations under section 10 above."

6 (1) Section 28 (funding arrangements) is amended as follows.,

(2) In subsection (2) (benefits payable out of money provided by Parliament), after paragraph (a) (but before the "and" at the end) insert—

"(aa) any pension or other benefits payable under a scheme made under section 18A above;".

(3) In subsection (7), for "section 10 above" substitute "—

(a) section 10 above, or

(b) provision made under section 18A above that is corresponding or similar to the provision that may be made by regulations under section 10 above."

7 In section 28A (contributions in respect of Northern Ireland judges), at the end insert "or as a fee-paid judge in Northern Ireland (within the meaning given by section 18A)"." *—(Steve Webb.)*

These amendments in this new Schedule relate to the pension scheme for fee-paid judges - see NC3. Among other things, they deal with inflation increases.

Brought up, read the First and Second time, and added to the Bill.

New Schedule 2

Pensions Guidance

1 The Financial Services and Markets Act 2000 is amended as follows.

2 After section 333 insert—

"Part 20A

Pensions Guidance

333A Introduction and definitions

(1) This Part is about the giving of pensions guidance.

(2) "Pensions guidance" means guidance given for the purpose of helping a member of a pension scheme to make decisions about what to do with the cash balance benefits or other money purchase benefits that may be provided to the member.

(3) In this Part—

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

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

"pensions guidance" has the meaning given by subsection (2);

"pension scheme" has the meaning given by section 150(1) of the Finance Act 2004.

Giving of pensions guidance

333B Treasury's role in relation to pensions guidance

(1) The Treasury must take such steps as they consider appropriate to ensure that people have access to pensions guidance.

(2) The Treasury may—

(a) seek to increase awareness of the availability of the guidance;

(b) undertake or commission research relating to the giving of the guidance.

333C Giving of pensions guidance

(1) The bodies listed in subsection (2) are to give pensions guidance in accordance with arrangements made with the Treasury.

(2) Those bodies are—

(a) the Pensions Advisory Service Limited;

(b) the National Association of Citizens Advice Bureaux;

(c) the Scottish Association of Citizens Advice Bureaux;

(d) the Northern Ireland Association of Citizens Advice Bureaux.

(3) The bodies listed in subsection (2) may give pensions guidance by arranging for it to be given by another person (including another listed body).

(4) The National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux and the Northern Ireland Association of Citizens Advice Bureaux may jointly carry out their functions of giving pensions guidance.

(5) The Treasury may by regulations repeal one or more of paragraphs (a) to (d) of subsection (2).

(6) Regulations under subsection (5) may make consequential amendments of this Act.

333D Financial assistance to bodies involved in giving pensions guidance

(1) The Treasury may make grants or loans or give any other form of financial assistance to—

(a) the Pensions Advisory Service Limited;

(b) the Northern Ireland Association of Citizens Advice Bureaux.

(For the power to make grants to the National Association of Citizens Advice Bureaux and the Scottish Association of Citizens Advice Bureaux see section 40A of the Consumers, Estate Agents and Redress Act 2007.)

(2) Any grant, loan or other form of financial assistance under subsection (1)—

(a) is to be made or given for the purpose of enabling the body to carry out its functions under section 333C(1), and

(b) may be made or given subject to such other terms as the Treasury consider appropriate.

(3) Any expenses incurred by the Treasury under this section are to be met out of money provided by Parliament.

Designation of guidance providers

333E Designation of providers of pensions guidance

(1) In this Part "designated guidance provider" means—

(a) the Pensions Advisory Service Limited,

(b) the National Association of Citizens Advice Bureaux,

(c) the Scottish Association of Citizens Advice Bureaux,

(d) the Northern Ireland Association of Citizens Advice Bureaux, or

(e) a person designated by the Treasury as someone who must, in giving pensions guidance, comply with standards set by the FCA under section 333G.

(2) Before designating a person under subsection (1)(e), the Treasury must—

(a) consult the FCA,

(b) notify the person to be designated, and

(c) consider any representations made.

(3) The Treasury may revoke a designation under subsection (1)(e).

(4) The Treasury must give notice in writing of a designation under subsection (1)(e) or the revocation of a designation under subsection (3) to the person designated or (as the case may be) the person whose designation has been revoked.

(5) T he Treasury must send a copy of a notice given under subsection (4) to—

(a) all other designated guidance providers, and

(b) the FCA.

(6) The Treasury must from time to time publish, in such manner as they consider appropriate, a list of the persons who are designated under subsection (1)(e).

False claims when giving pensions guidance

333F Offence of falsely claiming to be giving pensions guidance under Treasury arrangements

(1) It is an offence for a person who is not giving pensions guidance under arrangements made with the Treasury—

(a) to describe himself (in whatever terms) as a person who is doing so, or

(b) to behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is doing so.

(2) For the purposes of subsection (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.

(3) In proceedings for an offence under this section it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(4) A person guilty of an offence under this section is liable on summary conviction—

(a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;

(b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;

(c) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.

(5) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (4)(a) to 51 weeks is to be read as a reference to 6 months.

(6) In relation to an offence committed before section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (4)(a) to a fine is to be read as a reference to a fine not exceeding level 5 on the standard scale.

Standards for giving of pensions guidance by designated guidance providers

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

(1) The FCA must from time to time set standards for the giving of pensions guidance by designated guidance providers.

(2) A failure by a designated guidance provider to comply with a standard set under this section is actionable at the suit of a private person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) In subsection (2) "private person" has the same meaning as in section 138D.

(4) Standards set under this section may provide for subsection (2) not to apply to a failure to comply with a specified provision of the standards.

(5) The procedural provisions of this Act in the first column of the table apply to the setting of standards under this section as if references in those provisions

to the making of rules (however expressed) were references to the setting of standards and with the additional modifications in the second column.

Procedural provisions of this Act	*Additional modifications*
Sections 138G and 138H	Treat the references to a rule-making instrument as references to a standard-making instrument.
Section 138I	Treat— (a) subsection (1)(a) as if it were omitted; (b) subsection (2)(d) as if it referred to an explanation of the FCA's reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.
Section 138L	Treat the reference in subsection (1) to consumers (as defined in section 425A) as a reference to recipients of pensions guidance from designated guidance providers.

333H Monitoring of compliance with standards by designated guidance providers

(1) The FCA must maintain arrangements for monitoring compliance by designated guidance providers with the standards set under section 333G.

(2) Sections 165 and 167 apply for the purpose of enabling the FCA to monitor compliance but as if—

(a) references to an authorised person or a former authorised person were references to a designated guidance provider or a former designated guidance provider;

(b) section 165(7)(b) to (d) were omitted;

(c) the reference in section 167(5A)(b) to the FCA or the PRA were a reference to the FCA.

(3) Section 175 applies as if a power that the FCA or an investigator has by virtue of subsection (2) were a power under Part 11.

(4) Section 177 applies as if a requirement imposed by virtue of subsection (2) were a requirement imposed under Part 11.

(5) References in a provision of Part 11 to section 165, 167, 175 or 177 include the relevant section as applied with modifications by this section.

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

(1) If the FCA considers that a designated guidance provider has failed to comply with a standard set under section 333G the FCA may—

(a) recommend steps that the designated guidance provider might take to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure, and

(b) having made such a recommendation, recommend that the Treasury give a direction under section 333L.

(2) The FCA must publish a recommendation made under subsection (1)(b) unless the FCA considers that to do so—

(a) would be against the public interest, or

(b) would be inappropriate for some other reason.

(3) If the condition in subsection (2)(a) or (b) is satisfied in relation to a recommendation but would not be satisfied if the FCA published part only of the recommendation, the FCA may publish that part.

333J FCA policy on making recommendations under section 333I

(1) The FCA must prepare and issue a statement of its policy with respect to the making of recommendations under section 333I.

(2) The FCA may at any time alter or replace a statement issued under this section.

(3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.

(4) The FCA may issue a statement under this section only with the consent of the Treasury.

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

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

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

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

(a) consult the Treasury, and

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

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

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

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

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

(b) its response to them.

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

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

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

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

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

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

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

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

(3) The Treasury must—

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

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

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

(5) Once the time specified under subsection (4) has elapsed, the Treasury must publish the direction unless—

(a) the Treasury consider that to do so would be against the public interest;

(b) having considered representations made by the designated guidance provider within the specified time, the Treasury consider that it would be inappropriate to do so for some other reason.

(6) If the condition in subsection (5)(a) or (b) is satisfied in relation to a direction but would not be satisfied if the Treasury published part only of the direction, the Treasury may publish that part.

(7) A direction under subsection (1) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

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

(1) The power conferred by section 333L(1) is exercisable in addition to, or instead of, the power conferred by section 333E(3) to revoke a designation.

(2) If the power in section 333E(3) is exercised before the power in section 333L(1) the reference in section 333L(1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.

(3) Subsection (1) does not limit the grounds on which the power in section 333E(3) may be exercised.

FCA's duties and power to give guidance

333N FCA's duties

(1) The FCA must discharge its general pensions guidance functions with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.

(2) In discharging its general pensions guidance functions the FCA must have regard to—

(a) its strategic and operational objectives in section 1B(2) and (3), and

(b) the regulatory principles in section 3B.

(3) In this section the FCA's "general pensions guidance functions" means its functions of—

(a) setting standards under section 333G,

(b) issuing statements under section 333J,

(c) giving general guidance under section 333O (see section 333O(9)),

(d) making rules under section 333P, and

(e) determining the general policy and principles by reference to which it performs particular functions under this Part.

333O Power of the FCA to give guidance

(1) The FCA may give guidance consisting of such information and advice relating to its functions under sections 333G, 333H, 333I, 333J and 333P as it considers appropriate.

(2) Subsection (3) applies where the FCA proposes to give guidance to designated guidance providers generally, or to a class of designated guidance providers, in relation to standards set under section 333G or rules made under section 333P.

(3) Where this subsection applies, subsections (1)(b), (2)(e) and (3) of section 138I apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of recipients of pensions guidance from designated guidance providers.

(4) The FCA may—

(a) publish its guidance,

(b) offer copies of its published guidance for sale at a reasonable price, and

(c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.

(5) On giving any general guidance, the FCA must give written notice to the Treasury without delay.

(6) If the FCA alters any of its general guidance, it must give written notice to the Treasury without delay.

(7) The notice under subsection (6) must include details of the alteration.

(8) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.

(9) In this section "general guidance" means guidance given by the FCA under this section which is—

(a) given to persons generally, to designated guidance providers generally or to a class of designated guidance provider,

(b) intended to have continuing effect, and

(c) given in writing or other legible form.

Funding of pensions guidance

333P Funding of FCA's pensions guidance costs

(1) For the purpose of meeting the FCA's pensions guidance costs the FCA must make rules requiring designated guidance providers, or any specified class of designated guidance provider, to pay to the FCA specified amounts or amounts calculated in a specified way.

(2) Before the FCA publishes a draft of the rules it must consult the Treasury.

(3) The amounts to be paid under the rules may include a component—

(a) to cover the expenses of the FCA in collecting the payments;

(b) to enable the FCA to maintain an adequate reserve.

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

333Q Funding of Treasury's pensions guidance costs

(1) The Treasury must, from time to time, notify the FCA of the amount of the Treasury's pensions guidance costs.

(2) Having been so notified, the FCA must make rules requiring authorised persons, or any specified class of authorised person, to pay to the FCA specified amounts or amounts calculated in a specified way with a view to recovering the amount notified under subsection (1).

(3) The amounts to be paid under the rules may include a component to cover the expenses of the FCA in collecting the payments ("collection costs").

(4) Before the FCA publishes a draft of the rules it must consult the Treasury.

(5) The rules may be made only with the consent of the Treasury.

(6) The Treasury may notify the FCA of matters that they will take into account when deciding whether or not to give consent for the purposes of subsection (5).

(7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.

(8) The FCA must pay to the Treasury the amounts that it receives under rules made under this section apart from amounts in respect of its collection costs (which it may keep).

(9) The Treasury must pay into the Consolidated Fund the amounts received by them under subsection (8).

(10) In this section the "Treasury's pensions guidance costs" means the expenses incurred, or expected to be incurred, by the Treasury—

(a) in giving pensions guidance or arranging for it to be given by designated guidance providers,

(b) in meeting the expenses of designated guidance providers incurred in connection with the giving of the guidance (including expenses incurred by virtue of sections 333G(2), 333L and 333P), whether by means of the power conferred by section 333D or otherwise,

(c) in providing services to designated guidance providers to support them in giving the guidance,

(d) in increasing awareness of the availability of the guidance,

(e) in undertaking or commissioning research relating to the giving of the guidance, and

(f) otherwise in connection with the carrying out of its functions under section 333B.

(11) The Treasury may by regulations amend the definition of the "Treasury's pensions guidance costs" in subsection (10)."

3 In section 1B (the FCA's general duties), after subsection (7) insert—

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

4 After section 137FA insert—

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

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

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

(a) the Secretary of State, and

(b) the Treasury.

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

(4) In this section—

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

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

"pensions guidance" means pensions guidance given by virtue of Part 20A;

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

(a) a personal pension scheme within the meaning of an order under section 22, or

(b) a stakeholder pension scheme within the meaning of such an order."

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

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

"(aa) section 137FB;";

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

"(ca) section 333P;

(cb) section 333Q;";

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

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

(b) ".

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

"(1A) The FCA may not give guidance under this section relating to its functions under sections 333G, 333H, 333I, 333J and 333P (see section 333O for provision about the giving of guidance relating to these functions)."

7 In section 140A (competition scrutiny: interpretation), in subsection (1), in paragraph (a) of the definition of "regulating provisions"—

(a) in sub-paragraph (ii), after "section 139B(5)" insert "or 333O(9)";

(b) after sub-paragraph (iv) insert—

"(v) standards set under section 333G;

(vi) statement issued by the FCA under 333J;".

8 In section 168 (appointment of persons to carry out investigations in particular cases), in subsection (2)(a), after "section 24(1)" insert "or 333F".

9 In section 429 (Parliamentary control of statutory instruments), in subsection (2) (regulations subject to the affirmative resolution procedure), for "or 262" substitute ", 262, 333C or 333Q".

10 In Schedule 1ZA (the FCA), in paragraph 8 (arrangements for discharging functions)—

(a) in sub-paragraph (3) (legislative functions that must be exercised by the FCA acting through its governing body), in paragraph (c)(i), for "or 312J" substitute ", 312J or 333J";

(b) in sub-paragraph (3), after paragraph (d) insert—

"(e) setting standards under section 333G."

(c) in sub-paragraph (4), after "section 139B(5)" insert "or 333O(9)".

11 In that Schedule, in paragraph 11 (annual report), in sub-paragraph (1) (matters to be covered in the report), after paragraph (ha) insert—

"(hb) how, in its opinion, it has complied with its duties in section 333N,".

12 In that Schedule, in paragraph 23 (fees)—

(a) in sub-paragraph (1), in the opening words, after "of this Act" insert "other than sections 333P and 333Q";

(b) in sub-paragraph (1)(a), after "functions" insert ", other than its excepted functions,";

(c) in sub-paragraph (2)(a), after "(ca)" insert "but not its excepted functions";

(d) after sub-paragraph (2) insert—

"(2ZA) The "excepted functions" of the FCA are—

(a) its functions under sections 333E to 333P, and

(b) its functions under section 333Q so far as relating to the collection of payments."

13 In section 85 of the Financial Services Act 2012 (relevant functions in relation to scheme for investigating complaints against FCA and other regulators), in subsection (4) (legislative functions of the FCA that are excluded)—

(a) in paragraph (c)(i), for "or 312J" substitute ", 312J or 333J";

(b) in paragraph (e), after "139B(5)" insert "or 333O(9)";

(c) after paragraph (e) insert—

"(f) setting standards under section 333G of FSMA 2000."

14 (1) For the purpose of the exercise of a function conferred by a provision listed in the first column of the table, a consultation requirement listed in the corresponding entry in the second column may be satisfied by things done before the day on which this Act is passed.

Provision conferring function	*Consultation requirement*
Section 137FB of FSMA	Sections 137FB(2) and 138I(1) of FSMA
Section 333E(1)(e) of FSMA	Section 333E(2) of FSMA
Section 333G(1) of FSMA	Section 138I(1) of FSMA as applied with modifications by section 333G(5) of FSMA
Section 333J(1) of FSMA	Section 333K(1) of FSMA
Section 333O(1) of FSMA	Section 138(1)(b) of FSMA as applied by section 333O(3) of FSMA
Section 333P(1) of FSMA	Sections 138I(1) and 333P(2) of FSMA.
Section 333Q(2) of FSMA	Sections 138I(1) and 333Q(4) of FSMA

(2) Where before the day on which this Act is passed the Financial Conduct Authority publishes a draft of proposed standards for the giving of pensions guidance by designated guidance providers—

(a) the consultation requirement in section 138I of FSMA may be treated as satisfied by virtue of sub-paragraph (1) even if the draft is not accompanied by—

(i) a cost benefit analysis, or

(ii) an explanation of the Financial Conduct Authority's reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers, and

(b) if it is, any resulting standards published under section 138G(4) of FSMA must be accompanied by—

(i) a cost benefit analysis within the meaning of section 138I of that Act even if the conditions in subsection (5) of section 138I are not satisfied, and

(ii) an explanation of the Financial Conduct Authority's reasons for believing that setting the standards will secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.

(3) References in sub-paragraph (2) to provisions of sections 138G and 138I of FSMA are to those provisions as applied with modifications by section 333G(5) of that Act.

(4) Where before the day on which this Act is passed the Financial Conduct Authority publishes a draft of proposed rules requiring information about the availability of pensions guidance to be given by the trustees or managers of a relevant pension scheme to members of the scheme with a right or entitlement to cash balance benefits or other money purchase benefits, the consultation requirement in section 137FB(2) of FSMA may be treated as satisfied by virtue of sub-paragraph (1) even if the only consultation before publication was with the Treasury.

(5) In this paragraph—

"consultation requirement" includes—

(a) a requirement to publish a draft;

(b) a requirement under section 333E(2)(b) or (c) of FSMA;

"FSMA" means the Financial Services and Markets Act 2000.

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

The Schedule inserted by this amendment sets out the legislative framework for the giving of pensions guidance to pension scheme members with a right or entitlement to cash balance benefits or other money purchase benefits by inserting a new Part 20A into the Financial Services and Markets Act 2000 and making consequential amendments.

Brought up, read the First and Second time and added to the Bill.

Steve Webb: On a point of order, Mrs Riordan. I am aware that we are constrained for time, but I want to put on the record my appreciation of you and your fellow Chair for your wise and thorough chairing of our proceedings. I think that you got the short straw, Mrs Riordan, having had all of last Thursday—I shall have words with Mr Bone—but we are very grateful to you. I am grateful to all Members who have served on the Committee. It was fiercely contested and Members were desperate to be on it. We have the privileged few among us. I am also grateful to my hon. Friends for their insightful and knowledgeable contributions. In general, this has been a well-informed, thoughtful and constructive Committee. I enjoyed the new clauses tabled by the hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East. I always enjoy them when he tables them. I hope that he feels better when we get to Report, when we can further consider his issues.

Finally, I thank the officials—the lawyers, dare I say it?—and everyone who has enabled the Committee to function so effectively. I will not say that the ink is still wet on some of the amendments, but it has been like trying to keep up with a moving train. I know a huge amount of hard work has gone in. My briefing has been excellent, particularly that which appeared on the odd-numbered pages.

Bill, as amended, to be reported.

3.57 pm

Committee rose.

Written evidence reported to the House

PS 13 Bernard H Casey

PS 14 First Actuarial LLP

PS 15 Institute and Faculty of Actuaries

PS 16 Investment Management Association

PS 17 NASUWT

PS 18 Association of Professional and Financial Advisers—supplementary