PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PENSION SCHEMES BILL [*LORDS*]

First Sitting

Tuesday 3 November 2020

(Morning)

CONTENTS

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Saturday 7 November 2020

The Committee consisted of the following Members:

Chairs: Mr Laurence Robertson, †Graham Stringer

† Bailey, Shaun *(West Bromwich West)* (Con)
† Baker, Duncan *(North Norfolk)* (Con)
† Baldwin, Harriett *(West Worcestershire)* (Con)
† Bell, Aaron *(Newcastle-under-Lyme)* (Con)
† Buck, Ms Karen *(Westminster North)* (Lab)
† Davies, Gareth *(Grantham and Stamford)* (Con)
† Drummond, Mrs Flick *(Meon Valley)* (Con)
† Eagle, Ms Angela *(Wallasey)* (Lab)
† Eshalomi, Florence *(Vauxhall)* (Lab/Co-op)
† Gray, Neil *(Airdrie and Shotts)* (SNP)
† Griffiths, Kate *(Burton)* (Con)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Morris, James *(Lord Commissioner of Her Majesty's Treasury)*
† Opperman, Guy *(Parliamentary Under-Secretary of State for Work and Pensions)*
† Roberts, Rob *(Delyn)* (Con)
† Thomson, Richard *(Gordon)* (SNP)
† Timms, Stephen *(East Ham)* (Lab)

Kenneth Fox, Huw Yardley, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 3 November 2020

(Morning)

[Graham Stringer *in the Chair*]

Pension Schemes Bill *[Lords]*

9.25 am

The Chair: Before we begin scrutiny, I have a few preliminary announcements. I will stop the sitting if Members do not respect the social distancing guidance. I remind Members to switch electronic devices to silent. Tea and coffee are not allowed during sittings. If drinks have been brought in, please remove them from the desk. I know that most speeches are spontaneous, but if Members have speaking notes, please email them to our *Hansard* colleagues at hansardnotes@parliament.uk. That would be helpful. We will first consider the programme motion on the amendment paper. We will then consider a motion to enable the reporting of written evidence for publication. Given the time available, I am sure we can do both of those without debate.

Ordered,

That—

(1) the Committee shall (in addition to its first meeting at 9.25 am on Tuesday 3 November) meet—

(a) at 2.00 pm on Tuesday 3 November;

(b) at 11.30 am and 2.00 pm on Thursday 5 November;

(2) the proceedings shall be taken in the following order: Clauses 1 to 6; Schedule 1; Clauses 7 to 44; Schedule 2; Clauses 45 to 48; Schedule 3; Clauses 49 to 57; Schedule 4; Clauses 58 to 95; Schedule 5; Clauses 96 to 99; Schedule 6; Clauses 100 to 116; Schedule 7; Clause 117; Schedule 8; Clauses 118 to 120; Schedule 9; Clauses 121 to 123; Schedule 10; Clauses 124 to 129; Schedule 11; Clauses 130 to 132; new Clauses; new Schedules; remaining proceedings on the Bill;

(3) the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Thursday 5 November.—*(Guy Opperman.)*

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House.—*(Guy Opperman.)*

The Chair: Copies of written evidence that the Committee receives will be made available in the room. We now begin line-by-line consideration of the Bill. The selection list for today's sitting is available in the room. It shows how the selected amendments have been grouped together for debate. Amendments grouped together are generally on the same or similar issues. Please note that decisions on amendments do not take place in the order they are debated, but in the order they appear on the amendment paper. The selection and grouping list shows the order of debates. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

Clause 1

Collective money purchase benefits and schemes

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

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

Clauses 2 to 6 stand part.

That schedule 1 be the First schedule to the Bill.

Clauses 7 to 25 stand part.

The Parliamentary Under-Secretary of State for Work and Pensions (Guy Opperman): It is a great pleasure to serve under your chairmanship, Mr Stringer. I thank colleagues for attending today's debate. I hope to proceed with cross-party agreement on those matters that are relatively uncontested, so that we can make progress and then focus on and debate properly those matters that are genuinely contested.

I stand to introduce clause 1 and the associated clauses up to clause 25 and to speak in support of the new form of occupational pension that we are introducing, commonly called collective defined contributions. In CDC schemes, members and employers make fixed-rate contributions to the pension fund. At retirement, members receive their regular pension income paid out of the fund each year until death. The rate or amount of the pension is not guaranteed and will be adjusted annually depending on how much money is in the fund and the projected cost of providing benefits under the scheme. CDC schemes offer the security of an income in retirement, which we know many people value, without individuals having to purchase an annuity on retirement. However, CDC schemes do not require the employer to make additional financial contributions to the scheme if the scheme's financial position weakens. CDCs have been introduced under a cross-party approach, with great support from all parts of the House. The pioneers of the scheme are the Communication Workers Union and the Royal Mail, which have proposed a way forward.

The Bill allows us to extend CDC provision to master trusts or non-connected multiple employers through further secondary legislation when appropriate, and we look forward to working with such employers in the industry on how such provision should operate and be regulated. It is a brave man who cites Tony Blair in aid of his proposals, but I genuinely believe that this is a third way in terms of pensions, as an alternative to defined-benefit and defined-contribution schemes. It is unquestionably something that huge numbers of people have sought to bring forward, so that we can address things in the main.

Ms Angela Eagle (Wallasey) (Lab): The Minister talks about the third way. Will he also take a little time in his opening remarks to recognise that pensions policy is best if it is done cross-party? We are dealing with changes to the Pensions Act 2004, which was cross-party legislation that introduced opting in. Changes and tweaks to the system are far more likely to last across different Governments and across time if we have some form of cross-party consensus. It is not only a third way. The only way we will end up with a workable pensions scheme is by building in sustainability across Governments and across time. As a former Pensions Minister who put

the auto-enrolment regulations on to the statute book prior to our loss of office in 2010, I am committed to cross-party working and I hope that the Minister is, too.

The Chair: This is an ideal opportunity to say that I do not think that members of the Committee will have any difficulty in catching my eye, but interventions should be brief and to the point.

Guy Opperman: I endorse that approach, Mr Stringer, but I also take the opportunity to welcome the cross-party approach to so much of pensions. I am conscious that two former Ministers of the Department for Work and Pensions are sitting on the Back Benches and that they will correct me and intervene regularly. I accept entirely that pensions policy works on a cross-party basis, whether it be automatic enrolment—which was introduced by the Labour Government through the Turner commission, brought forward by way of statute under the coalition, and expanded under this Conservative Government—or such successes as the Pension Protection Fund, which was one of the great successes of Blair's Labour Administration, and the variety of reforms that we have introduced. There are some cross-party matters, such as the increase in the state pension age, that some parties do not necessarily wish to continue to own and embrace after they have left office, but such is the way of life.

As I tweeted yesterday, this Bill has, effectively, 98% cross-party agreement and, although there may be legitimate debates on how we progress, we have worked on that basis. The hon. Member for Birmingham, Erdington (Jack Dromey) and I have worked together on a tremendous cross-party basis. My wife often comments that I text him way too much. The practical reality is that I have also engaged repeatedly with the hon. Member for Airdrie and Shotts, who represents the Scottish National party. We have exchanged emails, trying to work out where we disagreed and where we agreed, and there is a great deal of common ground. Both SNP spokesmen made that clear on Second Reading, though there is legitimate debate regarding the best way forward on other matters. I look forward to those debates.

Neil Gray (Airdrie and Shotts) (SNP): I concur with the Minister's remarks on cross-party working. He said that CDC schemes, which we support, would become a third way, but can he clarify whether he sees CDC schemes as replacing good DB schemes? Clearly, we would not see them as an alternative but as a fall-back for when schemes run into trouble in other areas.

Guy Opperman: We will debate DB schemes, which I think have a great future. We have gone to great efforts to support the future of DB schemes. This is an alternative way forward that some organisations—Royal Mail is the classic example, but there are others who are looking at this—will welcome. Under no circumstances should it be implied or in any way taken that the Government will do anything other than support DB schemes on an ongoing basis.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is a pleasure to serve under your chairship today, Mr Stringer. May I thank the Minister for the collegiate way in which he has undertaken debate during the progress of the Bill and, indeed, prior to that, on the issues and decisions we are making?

I thank my hon. Friend the Member for Wallasey for her comments on the importance of a continuing cross-party dialogue on the issue of pensions. I was involved in some of the Labour's Government's work on addressing pensions inequality for women and the Turner commission. I also pay tribute to the hon. Member for Airdrie and Shotts for his contribution to the collegiate way in which we have all been working together and for raising important issues for debate.

I speak on behalf of the Opposition, along with my hon. Friend the Member for Westminster North. We also speak on behalf of my hon. Friend the Member for Birmingham, Erdington (Jack Dromey), who is unable to be with us this week. Before I begin, I want to thank the Committee Clerks, who are ever helpful, professional and a true credit to the House.

As the Minister well knows, we have always been clear that we support the Bill, but, as hon. Members can see, we have identified some ways in which we believe it could be made better. We will discuss those areas in detail as we progress.

I turn to the general provisions in parts 1 and 2 of the Bill, on collective money purchase schemes, which is the legislative term for collective defined contribution or CDC schemes. The provisions mark a welcome innovation. I join colleagues in congratulating the CWU and the Royal Mail on their groundbreaking agreement to pursue the creation of a CDC scheme. They have forged an exciting pathway to a better pension for around 141,500 Royal Mail employees. Members will be aware that my hon. Friend the Member for Birmingham, Erdington was closely involved in that process.

CDC schemes offer many potential benefits, as the Select Committee on Work and Pensions concluded in a 2018 report:

> "Through the pooling of risk between scheme members, CDC may well…provide more generous pensions on average than standard DC saving…To offer more good choices is entirely consistent with both pension freedoms and promoting retirement saving."

There could hardly be a more important time to focus on reducing risks to people's pension savings. As we have seen, the coronavirus crisis poses a serious and significant risk to pension funds. Sadly, many members of defined-contribution schemes have suffered pension reductions of around 8% to 10%, due to the financial market reaction to the pandemic. In many cases, that has led to individuals deferring their retirement.

In that context, it is massively encouraging that the modelling conducted by Willis Towers Watson shows that the Royal Mail CDC scheme would have provided better outcomes for savers through this crisis than traditional DC schemes. According to the modelling, even with the severe level of market shock experienced earlier this year, there would have been no effect on current pension levels for CDC schemes. Future pension increases would have been affected, but only by 0.25% a year. That is in stark contrast to the losses that I have outlined for DC pension savers and is to be welcomed in the light of the turbulent economic circumstances we face for the foreseeable future. It is welcome, too, that supporters of CDC schemes make a wide and varied coalition, including the CBI and the TUC.

In summary, Labour supports part 1 of the Bill and the move to create CDC schemes provided, of course, that they are not used as a means of downgrading good DB schemes, a point that has already been made.

Stephen Timms (East Ham) (Lab): I am very pleased to be serving under your chairmanship, Mr Stringer. Like others, I very warmly welcome this proposed legislation for CDC pensions, and congratulate Royal Mail, the CWU and everyone involved on the success of their joint efforts to achieve the statutory framework that is needed to deliver them.

My hon. Friend the Member for Feltham and Heston referred to the previous Select Committee on Work and Pensions report on CDC schemes, published in July 2018. That report said that CDC schemes had the potential to "transform the pensions landscape", and it also commended Royal Mail and the CWU on the "ground-breaking agreement" they reached at that time. It added:

"To offer more good choices is entirely consistent with both pension freedoms and promoting retirement saving."

The Royal Society of Arts has long supported CDC provision, and I want to bring to bear on our discussion some of the points it has made in welcoming this proposed legislation. It points out, as my hon. Friend has just said, that CDC schemes are likely to provide a much higher income in retirement—at least 30% higher, it says—than the alternative of individual saving and then buying an annuity, and that that improvement is achieved by sharing longevity risk and targeting higher asset returns than an annuity provider. The RSA believes that the Bill provides a good framework for introducing CDC schemes, noting in particular that the regulator will act as a gatekeeper to ensure that only well-designed CDC schemes can open. It suggests that authorisation requirements for opening a CDC scheme and the process to verify continuing viability should not be unduly cumbersome, and that there should be a proper balance of prescription in scheme rules and trustee, actuarial and regulatory oversight.

Unlike DB schemes, a CDC scheme cannot go back to the employer and ask for more funding, so CDC pensions do need to vary if things prove better or worse than predicted. Those variations in other countries where CDC schemes are in place can generally be accommodated by raising pensions by more or less than inflation, but after the 2008 crisis the Dutch reduced their CDC pensions by 2% on average, and in one of the Dutch schemes the level of pensions being paid was reduced by 6%. Understandably, that caused a furore, so people in a CDC pension need to know what might have to be done depending on what happens in financial markets in the future.

Does the Minister agree that this places a premium on effective communications with members of CDC schemes? During stable times, CDC payments may seem pretty reliable, as had been the experience in the Netherlands, where they were uprated each year in the expected way. For many years, the Dutch system had experienced no problems with that, nor had the potential for reductions been clearly explained to pensioners, so when the reduction came—2% on average, 6% in one case—it caused a lot of anger, for understandable reasons.

My hon. Friend referred to the model put together by Willis Towers Watson, I think at the request of the RSA, to model how a CDC pension would respond to the drop in capital values over the first quarter of this year. As she said, that model showed that the Royal Mail scheme would have been pretty robust. The Bill will allow the Royal Mail proposal to proceed, and other private sector organisations to create similar arrangements, but it does not allow for unrelated companies to work together to create a single CDC pension plan. Since effective pensions require economies of scale, that in effect excludes smaller companies from the legislation's provisions, and from the option of a CDC—at least for now.

9.45 am

As my hon. Friend the Member for Birmingham, Erdington has said, it would be immensely beneficial if small companies in the care sector could come together to offer a sector-wide CDC pension scheme—something that no small company could undertake on their own. Obviously, all of us are thinking a lot at the moment about the wellbeing of people working in care occupations, often on low wages, and very often without an opportunity to save much for a pension.

Clause 47 gives the Government powers to allow multi-employer CDC schemes and/or providers to offer CDC master trusts, so that small employers can overcome this constraint. A Work and Pensions Committee report from two years ago recommended that legislation governing CDCs should accommodate mutual and multi-employer schemes, as well as stand-alone schemes such as the Royal Mail one. Will the Minister give us hope that the Government intend to take advantage of the power in clause 47, and say when they might do so and make this possibility a reality?

The Minister in the other place said:

"this new type of provision and the supporting regulatory regime need time to bed in before a decision is made on whether multiple employer, sector-specific or commercial CDC provision should be facilitated."—[*Official Report, House of Lords,* 28 January 2020; Vol. 801, c. 1352.]

We need to know how long the Minister thinks that bedding in will take. I hope he can reassure us that it will not be allowed to drag on too long, because there is an important opportunity here. We can all think of situations in which it would be valuable for that opportunity to be realised. Finally, will he confirm that the Government intend for the defined contribution pension freedoms, which are well established—they have been in place for five years—to be made available to CDC scheme members?

I welcome the legislation, and hope that the Minister can confirm to the Committee that it is the Government's intention to continue to develop this provision, so that smaller employers, in particular, can take advantage of it.

The Chair: Before I call Neil Gray, let me make it clear that we are not discussing clauses 27 and 47 now. I allowed what the right hon. Member for East Ham said to pass, because he referred to earlier clauses, too.

Neil Gray (Airdrie and Shotts) (SNP): It is a pleasure to take part in this Bill Committee with you in the Chair, Mr Stringer. Like the Labour spokesperson, I pay tribute to the Minister, and to the hon. Member for Birmingham, Erdington, for the cross-party work that brought the Bill to this point. We welcome the Bill as it has arrived from the Lords, though we have concerns about some of the amendments put forward. It is an important piece of legislation, and the part that brings about CDC schemes has arrived in a good state, which is why there are so few amendments to these clauses. The Minister has obviously done a good job on the drafting from that point of view.

I thank the Clerks for their time and patience in working with me, my hon. Friend the Member for Gordon and our staff in putting forward our amendments and priorities. We greatly appreciate all their help and support.

Following on neatly from where the Chair of the Select Committee left off, we very much support the creation of CDC schemes. We pay tribute to Royal Mail and the CWU for the work that they have done with the Government to get the Bill to this stage. As I intimated in my intervention on the Minister, and as the Chair of the Work and Pensions Committee, the right hon. Member for East Ham, also intimated, the CDC schemes cannot be seen as a panacea or the right solution for everybody. It is important—I think this will be a theme of our discussions—that people are given access to as much impartial information about their pensions as possible, giving them confidence to make informed decisions about their savings.

For the reasons that the right hon. Gentleman outlined, I wish to put on the record again that although the SNP feels that CDC schemes have major benefits—certainly for some scheme members in DC schemes—we would not wish them to be seen as a replacement for good DB schemes or for people to feel that they are necessary. I look forward to the rest of the debate, which I feel may well be rather more contentious than the issues that we are discussing at this early stage of the Committee.

Guy Opperman: I echo the support for the Clerks from this side of the Committee. We had a very helpful session yesterday, and they have been very helpful throughout. I will address the four or five points that have been raised.

On communications, I utterly endorse the point made by the Chair of the Select Committee. He will, I hope, appreciate that over the last three years, one of the major things that I have tried to drive forward in the Department is communications across the level. We are using simpler statements, by taking the 10 to 43-page pension statements that very few people read—putting them in a kitchen drawer and not necessarily taking them on board—and providing a simpler two-page statement and a written version. Our pensions dashboards create an amenable version of the online version, with great, ongoing communication.

On CDCs, I totally endorse the points that the right hon. Gentleman made: it is vital that we learn the lessons from the Netherlands, and that we ensure good communication. The possibility of fluctuations in benefits will be made clear and transparent in key member communications at points throughout their pension journey, including by providing details of fluctuation risks at the point of joining, by emphasising benefit changes in both active and deferred members' annual benefit statements, and by making clear in retirement information packs that benefits can change during retirement.

Quite simply, that point was not made clear to members in the Dutch example. Some may not have taken it on board at the start, while others perhaps did not quite understand the situation as well as they would have had it been explained to them. We hope that we have learned that particular lesson and have very much taken that on board. I know that the two organisations that are looking at CDCs are very conscious of that and, to their great credit, have held multiple roadshows around the country, talking about this and engaging with people long before the legislation was introduced.

The reality of the situation for the CWU and Royal Mail was that their endorsement of the approach would not have been possible without member engagement from the very start. They have probably engaged more with a pension scheme than anyone has ever done before, prior even to the drafting of the legislation. They very much wanted that engagement to take place.

Ms Eagle: Clearly, the changes that the Bill would make allow for pioneering in the CDCs that Royal Mail and the CWU have introduced to be put into effect. Will the Minister say a little about how other organisations —smaller employers, perhaps—might try to get into the CDC space? Clearly, Royal Mail and the CWU are an unusual combination, both in the size of the industry and their buy-ins—very few employers are of the same size as the CWU, which represents its members, and Royal Mail, which wishes to offer this particular CDC.

Guy Opperman: I agree that large employers, such as Royal Mail, which employ nearly one out of every 200 full-time working employees in this country, will look at that and say it is a potential way forward.

Before I come to the hon. Lady's point, I want to address DB briefly and make it clear that CDC is intended to offer a further pension-saving option for employers and their workers, should they wish to make use of it: it is for the employers and the workers to decide the type of benefit they wish to have via their occupational pension scheme. That has always been the right of the employer fundamentally, but also engaging with the employee. We specifically amended the subsisting rights provisions via clause 24 to prevent existing DB benefits in the scheme from being converted into CDC benefits. I hope that I have addressed in full the DB issue, which was also raised separately by the right hon. Member for East Ham.

Stephen Timms: I am grateful for the Minister's reassurance on communications. Will good communications be a consideration for the regulator in determining whether a proposed CDC scheme should go ahead?

Guy Opperman: The short answer is yes.

Neil Gray: To build on that, does the Minister see the engagement, which he has rightly described as one of the most extensive from an employer and an employee-representative organisation in terms of changes to pension provisions, as being the gold standard going forward, if an employer seeks to switch from a DC to a CDC scheme in the future? Is that the bar that needs to be met?

Guy Opperman: I am now straying into industrial relations and how best to manage a company to take someone's employees with them in a complex negotiation about future pension rights. All I can say is that I have worked and sat down regularly with the leading individuals in the Communication Workers Union and the individuals who have been running Royal Mail—that has changed slightly as it has gone along. I have seen the way in which they have engaged with their workforce and had a proper conversation up and down the country in a series of roadshows. With a large unionised workforce in the modern era, that is the right way in any event. I would certainly endorse that approach. It is clear that the company and the employees have been able to work

together—working with the union, working with representatives—and it seems to me that, while I would not say the phrase is "gold standard", it is an advisable way to proceed and it is good company relations to have a proper dialogue and engagement with individual employees.

The short answer I gave to the Chair of the Select Committee was yes, but the longer answer is that there is a whole supervisory regime, which we will discuss later, under clause 27 and thereafter, which must be submitted to the regulator in order to qualify to be accepted as a CDC. The practical reality of that is that I cannot see a way in which the regulator endorses and allows a company to go down the route of a CDC without all aspects of that communication being considered. Clearly, there are secondary regulations that follow. It is not in the specifics of the Bill, as I understand it. I make the point, when I am answering questions, that I am doing this utterly blind, so it has to be from my memory because I cannot take any notes from anybody. That is the fun of a covid Committee, as the right hon. Member for East Ham will know from chairing a Select Committee.

Ms Eagle: Semaphore? [*Laughter*.]

Guy Opperman: The practical reality is that there is a supervisory regime that must be embraced as part of the application to the regulator to become a CDC. I believe that that will be comprehensively addressed and it is my intention that that should be so in the relationships that we have.

The right hon. Member for East Ham asked about clause 47 in ballpark terms and the speed and expedition. I take the point that we are not debating those matters but yes, I accept that we need to press ahead with that. I wish to do so. I have been working on the Bill for the best part of two and a half years. It has not been for lack of trying. We started it prior to the general election and had to pause and start again afterwards, so it is not for the lack of trying to progress it. Both Royal Mail and the CWU are very keen to expedite it.

10 am

One of the reasons that the Bill is this size is that the first 51 clauses are for Great Britain, while clauses 51 to 102, which are a mirror image, apply to Northern Ireland. This is not a company-specific proposal; we have made the Bill sufficiently wide so that other organisations—the obvious ones being master trusts—can come forward and be included. I totally take the point that there is great eagerness to have smaller, multi-employer schemes take part on an ongoing basis, to see how they progress.

Stephen Timms: Can the Minister raise our hopes that perhaps in the next 12 months or so, there might be regulations that allow multi-employer CDCs to be set up?

The Chair: Could the Minster be brief, as that moves us into a debate on clause 47, which comes later in the agenda?

Guy Opperman: The final question that I was asked was about extensions on DCs, and the answer to that is yes.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clauses 2 to 6 ordered to stand part of the Bill.

Schedule 1 agreed to.

Clauses 7 to 25 ordered to stand part of the Bill.

Clause 26

LIST OF AUTHORISED SCHEMES

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

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

Government amendment 6.

Clauses 27 to 44 stand part.

That schedule 2 be the Second schedule to the Bill.

Clause 45 stand part.

Amendment 25, in clause 46, page 36, line 41, at end insert—

"(e) require information to be made available to The Pensions Regulator relating to actions taken by the scheme to ensure diversity considerations are taken into account in the recruitment of the trustee board with regard to—

(i) age;

(ii) gender; and

(iii) ethnicity."

This amendment is to require pension schemes to send information on the diversity of the trustee board to TPR.

Clauses 46 to 48 stand part.

That schedule 3 be the Third schedule to the Bill.

Clauses 49 to 51 stand part.

Guy Opperman: Clauses 26 to 51 complete the parts of the Bill that apply to Great Britain, but not to Northern Ireland. I will briefly address the two amendments. Government amendment 6 removes the provision put in primarily by Liberal Democrat peers in the House of Lords to incorporate a specific requirement of fairness. Unquestionably, as with much of the debate that we will have in Committee over the next two days, it is about the ways in which we proceed where the objective is agreed, and the objective is clearly one of fairness. The Government do not feel that clause 27(3) is appropriate, however, and we will seek to overturn it.

Requiring trustees to make such an assessment is likely to generate confusion unless further clarity is provided, and it may result in legal disputes. We have specifically and intentionally avoided referencing fairness in such a way in any of the CDC provisions, but I make clear to the Committee that we intend to use regulations to set out clear principles and processes that schemes must follow to ensure that different types of members are treated the same where justified.

Those requirements would form part of the authorisation process for the CDC schemes, overseen by the Pensions Regulator. Regulations under clause 18, for example, will require CDC schemes to ensure that there is no difference in treatment between different scheme member cohorts or age groups when calculating or adjusting benefits. That is a clearer, better and more effective approach to delivering fairness in practice, and it is supported by the Institute of Faculty of Actuaries.

I also pray in aid—as we have all cited our support for them—the note submitted by the Communication Workers Union and Royal Mail in written evidence to the Bill. They jointly addressed this specific point, saying:

"We welcome discussions on how to ensure the fairness of future CDC schemes. Royal Mail's scheme is designed to address the possibility of intergenerational unfairness by not using capital buffers and explicitly preventing the trustees from favouring one group over another. The DWP acknowledged this in its 2019 consultation response. When it comes to Lord Sharkey's amendment, we agree with Government that we should give careful consideration to how reporting on fairness might work in practice and share their concerns with the additional reporting requirements the amendment introduces. We therefore support the Government amendment which removes Lord Sharkey's amendment from the Bill."

I suggest that that statement is telling, and I invite the Committee to support the Government amendment.

Neil Gray: Before we decide what to do on this amendment, I am keen to hear from the Minister. He suggested that if the clause was allowed to stay as it is—as it was amended by the Lords—it could garner legal challenge. Could he clarify where he sees that legal challenge coming from and why he thinks that is a concern?

Guy Opperman: If clause 27(3) provides specifically for fairness, it may be open to interpretation and mean different things to different people. The legal advice we have received is that it would be inappropriate to include that in the Bill, and that it is far better to address the matter in detailed regulation rather than through a single word in the confines of the Bill.

Ms Eagle: The Minister is trying to achieve fairness across cohorts, and different people will have different interpretations of that. Such schemes are reliant on the general performance of the stock market, investment and what is going on in the world economy. Does he agree that fairness is subject to all those swings and roundabouts?

Will the Minister give the Committee some idea of what he would regard as fair, given that annuities were grossly unfair for those who happened to retire at a time when the market was taking a dip? What would he regard as "fairness" in the requirement that he will put in regulations?

Guy Opperman: Having been a 20-year lawyer, whose last client was a very famous Mr Ed Balls—I had to represent him when he was Secretary of State for Children, Schools and Families, five weeks before the 2010 general election—I am loth to start defining fairness, as a Government Minister, specifically because of the problem that has been identified.

I can say that we are attempting to ensure that members are treated fairly, and that has been part of the central thrust of our work on CDCs from the outset. We have learned from the problems experienced by the Dutch model, which allows schemes to make different benefit adjustments to different groups of members. That transferred contributions from savers to pensioners. The UK system will not work in that way. We intend that regulations under clause 18 will require CDC schemes rules to contain provisions so that there is no difference in treatment between different cohorts or age groups of scheme members when calculating and adjusting benefits. If the scheme design does not do that, it will not be authorised. That goes to the whole proposal under the supervisory regime and the submission.

Further—we will come to the word "bespoke" later in our consideration of the Bill—this is an opportunity for individual schemes. The examples have been given of a small care home scheme coming together, and of the vast might of Royal Mail. Clearly, those are very different organisations. I hope that the regulator will look at them in slightly different ways with an overarching code of principles that allows it to permit such a scheme to go ahead. I will resist the hon. Lady's kind invitation to provide the exact definition that, we submit, would be one of the problems with clause 27(3).

Ms Eagle: We are here to tease out what the Government mean in the Bill, ahead of the unamendable regulations that have not yet been written. I hope that the Minister will indulge our temerity in using the Bill Committee to ask some relevant questions.

What the Minister said earlier about the Dutch schemes is correct. By reducing the available pensions, some choices were made between existing pensioners and those who were saving. His tone suggested that he judged that to be unfair. He states that he wants to achieve fairness between cohorts in CDCs, but how will that be done in reality?

Guy Opperman: I am invited to give a view on the future consultations on the points that the hon. Lady raises. The term "fairness" can be open to interpretation and can mean different things to different people. We envisage that regulations will clearly set out the principles and processes that schemes should follow to ensure that all types of members in CDC schemes are treated the same, where appropriate. Setting the requirement in regulations will give us the opportunity to consult on the approach that is to be taken. I respectfully suggest that rather than defining that in the Bill, the appropriate way forward is to consult, and to use all the opportunities that consultation entails for submissions on what that should look like, so that detailed regulations can then be taken forward.

Ms Eagle *rose—*

Guy Opperman: I will give way once more, but I am not sure I can improve on the answer I have already given.

Ms Eagle: I thank the Minister for the further explanation, but is he saying that he does not yet know how this will work, because the regulations have not been written? Is he stating that he wants to achieve a certain principle without yet knowing how it will be achieved?

Guy Opperman: No; I can merely repeat the answer I have just given, which is that the regulations under clause 18 will require schemes to contain provisions so that there is no difference in treatment between different cohorts or age groups of scheme members when calculating and adjusting benefits. If the scheme design does not do that, it will not be authorised.

I will try to expand on that and give a better answer. There is a two-phase process. In the first phase, a company must come forward to the regulator and seek permission to go down the CDC route; that goes back to the way in which the company and the employees work. A separate set of regulations will then be the framework on which that is judged. I suggest that this is specific to individual companies, because fairness will

be different for different organisations and they will be treated in different ways. There is a supervisory regime that must be gone through, and there will be a consultation on regulations regarding how it will be administered. For the present purposes, that is the best I can give to the hon. Lady.

I will now address amendment 25, which is about the actions of the regulator in relation to diversity considerations, taking into account the recruitment of the trustee board. This issue was raised in the other place as a point of debate. The Pensions Regulator is part of an ongoing discussion, and in February this year it launched an assessment of the appropriate way forward, looking at trustee board diversity across all schemes. It plans to set up an industry working group to bring together the wealth of available material and experience to help pension schemes to improve the diversity of scheme boards. I suggest it would be premature to pre-empt the outcome of the regulator's work in this area. It has indicated to me, unofficially, that it will respond by Christmas. It is certainly the case that this Government has brought forward, on a cross-party supported basis, environmental, social and governance regulations in respect of investment. We would certainly hope that organisations that treat their investments with due account to social and governance matters would also take an appropriate way forward in that respect.

10.15 am

Under clauses 9 and 11, the Pensions Regulator must be satisfied that the persons involved in the CDC scheme are "fit and proper persons" to act in relation to the scheme. If the regulator is not satisfied, authorisation of a CDC scheme cannot be granted. I simply add that clauses 26 to 51 set out the full details. I particularly pray in aid clause 27, which sets out the detail of the supervisory regime.

Seema Malhotra: It is a pleasure to respond to the Minister's comments. I thank him for laying out the Government's thinking on the clauses and amendments in this group. I will speak to Government amendment 6 and briefly to amendment 25, tabled by my right hon. Friend the Member for East Ham.

I thank the Minister again for his speech and the arguments that he has laid out for seeking to remove the amendment tabled by the noble Lord Sharkey and cross-party colleagues in the other place, which was agreed by peers in June. The Minister commented that, in his view, some of the concerns could be addressed by the implementation of clause 18. I want to come back to why I am concerned that may not go far enough; perhaps this will be an issue of ongoing debate as the Bill proceeds, and in regulations.

The amendment included by those in the other place was very considered. It spoke about

"the requirement that trustees make an assessment of the extent to which the scheme is operating in a manner fair to all members".

I believe that is the additional wording in the Bill. It is a very considered amendment, which could only be useful in keeping on the agenda of trustees the important analysis that should take place in relation to decision-making—to be sure about the best possible input and considerations in relation to the performance of the scheme for all its members.

I alluded in my opening remarks to the considerable insecurity that we face as a nation, exacerbated by the impact of covid-19 and its disproportionate impact on different groups and different generations, in terms of the economy and levels of employment and therefore saving into pension schemes. People's personal finances are likely to be under great strain in the coming years. Not only is there that insecurity, but it is increasingly difficult to encourage young people to save for retirement, with all the other cost pressures in life—paying off debts, for example, or the fact that, at the moment, the average age at which they will purchase their own home is around 34. There are considerable pressures on the personal finances of the next generations, as they plan ahead for their lives.

Thinking about our institutions and how we continue to consider and embed intergenerational fairness should be on Parliament's radar in all our work. In that context, we see unprecedented public policy challenges in ensuring fairness between different groups in society—from those in hard-hit industries, such as aviation and hospitality, to those affected by the way education is being delivered in the times in which we are living, which could continue beyond the next few months into the next few years, with all that uncertainty. We have also seen that black, Asian and minority ethnic communities have been hit harder by the health and economic impacts of this terrible virus. We can look at income today, but we are really talking about income tomorrow, and the impact on tomorrow of savings today.

It is incumbent on the Government to think about fairness between generations, and how we can stop young people bearing the brunt of the uncertainty and hardship caused by the economic havoc that we are experiencing right now. The impact on them could go unchecked in the medium and longer term. Concern about intergenerational fairness was raised by many respondents to the Government's consultation on the Bill's provisions.

Clause 27, as amended in the other place, sought to deal with some of those concerns. It effectively acknowledges that there may be a divergence in interests between different cohorts or sets of members in CDC schemes. Importantly, it does not compel any particular kind of action, but requires trustees to consider fairness and assess the extent to which the scheme is fair to all members. To Opposition Members, that is a very sensible suggestion, and we struggle to understand why it should be controversial for the Government.

I appreciate that the Minister outlined some comments from the CWU and others about the interpretation. He also mentioned treating people in the same way and his interpretation of the current wording of clause 18, which I was just reviewing. If there are different considerations in relation to levels of savings, other ways of joining a scheme or different circumstances, it may be necessary to look differently at different cohorts. Treating people fairly may not always mean thinking of them as the same. When we are thinking about fairness, we may need to be a bit more nuanced in our consideration of different needs and circumstances, and the potential impact of a decision on all cohorts.

Perhaps a different way of interpreting the amendment that was made in the other place would be to see it as enhancing the intention behind clause 18. I repeat that the amendment did not compel any particular kind of

action, but made it more explicit what trustees should consider. Baroness Stedman-Scott, the Parliamentary Under-Secretary, said in the other place:

> "I welcome the sentiment behind the proposed amendment; it is something to which we want to give further consideration. We need to give careful thought to how such reporting might work in practice and would want to work with trustees, administrators and the regulator to ensure that any such requirement is proportionate, appropriate and clear. We would also want to consult on any such approach to make sure that it is effective. I reassure all noble Lords that we will give this matter careful consideration. Should we need to bring forward such a requirement in regulations, we already have sufficient powers in existing legislation to require schemes to report on fairness in CDC schemes if warranted."—[*Official Report, House of Lords,* 30 June 2020; Vol. 804, c. 605.]

I hope that the Minister will continue to keep this issue under review, because we think it is very important for the sustainability of fairness and confidence in schemes. The very considered wording that was proposed and passed in the other place could help the Government in securing the intended outcomes that he described as being behind clause 18. Perhaps he can provide more detail on his plans to incentivise trustees to assess and report on the extent to which CDC schemes are operating in a manner that is fair to all.

My right hon. Friend the Member for East Ham may make a few comments on amendment 25, which is intended to require pension schemes to send information on the diversity of the trustee board to the pensions regulator. We believe in the value of this amendment, which is also supported by other colleagues—the SNP in particular. It is important to ensure that there is a diversity of voices in decision making. The debate about diversity on public and private boards comes in cycles. Diversity on public boards was considered under the last Labour Government, with quotas for diversity in recruitment. This is not a party political matter; a lot of research shows that diversity in decision making leads to better and safer sustained outcomes.

When looking at public funds, for example, the diversity of needs should be understood at the decision-making table. We do not need to rehearse the arguments for ensuring that different voices are represented at decision-making tables, whether that relates to gender, those with disabilities or those from particular minority communities.

The same is true of boards in the private sector. Research undertaken by business schools shows that diversity on decision-making boards has often led to considerably better returns on investment, and indeed shareholder returns. There is no sustained, credible argument that not having diversity on boards leads to better business outcomes.

I do not understand why this would not be an important consideration. Amendment 25 simply says that pension schemes should send information on the diversity of the trustee board to the Pensions Regulator. I am sure my right hon. Friend the Member for East Ham will share more information about how trustee boards are less diverse than other boards. That cannot be right for boards that have an increasingly important role in decisions about funds and investments, and about inclusivity and fairness.

This is not only an important consideration in terms of social justice; it is about the performance of the schemes. It is about recognising the importance of having diverse voices and voices that are representative of those within the schemes and those who may benefit from the schemes in the future. This is a matter of obvious importance that should not raise concerns, and it should be included in the Bill.

Stephen Timms: I apologise for raising clause 47 in the previous debate; I probably should have waited until now. I am glad we had that debate and I welcome the Minister's assurance that regulations to enable multi-employer CDCs will come forward within the next year.

I will confine myself in this debate to clause 46 and amendment 25, which stands in my name on the amendment paper. I am grateful to the hon. Members for Airdrie and Shotts and for Gordon for adding their names to it, and to my hon. Friend the Member for Feltham and Heston for the important points she has just made in favour of it. I thank ShareAction for its work on this topic and for the briefing it has provided.

We are all familiar, as my hon. Friend has just reminded us, with the criticism that there is insufficient diversity among directors of FTSE 100 companies. There has been progress, but the Government targets are going to be missed and there is still a long way to go among major company boards. Some 68% of board members are male and only 7.4% are from black, Asian or minority ethnic backgrounds. That proportion falls to 3.3% in the most senior board positions: chair, chief executive and finance director. Only just over half of boards have any ethnic minority members at all.

10.30 am

As my hon. Friend has just pointed out, the position among pension trustee boards is a great deal worse. There are not yet any trustees of CDC schemes, which would be addressed by my amendment. I do not know whether it has been announced who the trustees of the Royal Mail scheme will be, and I certainly have not seen that list, but as we debate the ground rules for trustees of CDC schemes, there are good reasons for ensuring that we do not end up, in this part of the pensions world, in the position we are in with pension trustee boards more generally. I hope that those who are looking at the make-up of trustee boards more generally will take a leaf out of the tenor of the discussion that we are having.

Ms Karen Buck (Westminster North) (Lab): I ask my right hon. Friend to confirm my understanding, which is that when we talk about diversity, we are not simply talking about it being a good thing to have a range of different experiences and backgrounds; all the evidence from across the commercial sector is that diversity increases performance because of the range of perspectives that it brings to bear.

Stephen Timms: My hon. Friend is absolutely right. She and I took part in a debate on a similar issue around 10 years ago, on the Welfare Reform Bill. She is right on this point, and that is an argument that I want to come to in a moment.

I hope the approach that I am advocating will be applied to other pension trustee boards in the UK in due course, because according to a report on diversity published in March by the Pensions and Lifetime Savings Association, which we used to call the National Association of Pension Funds, 83% of pension scheme trustees are male; 50% of chairs of trustee boards are over 60; a third of all trustees are over 60, while only 2.5% are

under 30; 25% of pension schemes have trustee boards that are entirely male; and only 5% of schemes have a majority of female trustees. This is a particularly stark picture if we look at the make-up of pension scheme trustee boards at the moment.

As the Pensions and Lifetime Savings Association comments:

"It seems clear that occupational pension scheme trustee boards have generally not implemented robust diversity policies as effectively as FTSE 100 boards".

Ms Eagle: I thank my right hon. Friend for making points that are difficult to argue against. What effect does he believe the age of pension fund trustees is likely to have on the intergenerational fairness points that I pressed the Minister on in our previous discussion?

Stephen Timms: My hon. Friend makes an important and interesting point. If we are to be confident that these new scheme trustees will make decisions that are fair to both the working members of the schemes and to pensioners, it is important that the voices of working age members should be taken fully into account in the trustee board's decisions. She makes a good argument about why diversity, specifically in respect of age, is important in this context.

It is not as though there is no evidence that diverse trustee boards do a better job. My hon. Friend the Member for Westminster North has just reminded the Committee that there is a substantial, growing body of evidence that diverse company boards make more effective decisions than homogeneous boards. We have talked about age, but we should not forget that the gender pensions gap, which is nearly 40%, is almost twice the size of the gender pay gap. The issues here are stark.

The Pensions Regulator commented on diversity in trustee boards for the first time last year:

"Our view is that pension boards benefit from having access to a range of diverse skills, points of view and expertise as it helps to mitigate against the risk of significant knowledge gaps or the board becoming over-reliant on a particular trustee or adviser. It also supports robust discussion and effective decision making."

Amendment 25 would require those who put boards together to report to the Pensions Regulator on steps to ensure diversity considerations are taken into account in the recruitment of the trustee board, with regard to age, gender and ethnicity. I know that the Pensions Regulator has set up an industry working group to consider this issue, as part of the consultation that the Minister referred to, and to raise the profile of it. However, to be effective, that group needs data, and this amendment would help to provide it. I think the result of the amendment would be not only greater fairness but better trustee decisions. I commend the amendment to the Committee.

Richard Thomson (Gordon) (SNP): It is a pleasure to serve under your chairmanship, Mr Stringer.

I will confine my brief remarks to amendments 6 and 25. I listened carefully and with interest to what the Minister said about the rationale for trying to withdraw clause 27 from the Bill. I agree that with him that in trying to come up with a legal definition of fairness, it will always be nebulous. There are clear difficulties around that, which is why I do not think the initial intention behind the clause was to provide absolute legal clarity.

I was reassured to a large extent by what the Minister said about the steps that would be taken to set up CDC schemes—by definition, schemes that are obviously unfair will not pass approval. The difficulty I have with that argument is that all that is being asked in clause 27 is that there is a requirement for trustees to make an assessment and nothing further. It is useful to have a process of self-challenge and continuous improvement, looking at aspects of the schemes that are directly under their control and that they can directly influence and alter. It is good to always have that consideration of whether the scheme is operating as fairly as possible for all present and future members and those taking benefits from it. My question to the Minister is, very simply, where is the harm? Even after taking on board all that he says, I still do not see the harm that lies in the Bill as it stands.

Moving on to amendment 25, I hear exactly what the Minister says about the requirement that already exists on trustees to be fit and proper people. My observation is that there are many potentially very fit and proper people who do not currently find themselves on boards, advisory committees or any of the governance structures around pensions, and who could nevertheless make a very good contribution to the running of those schemes.

Speaking from personal experience, prior to being elected as the Member for Gordon, I was a councillor in Aberdeenshire. Through that role, I was one of the Convention of Scottish Local Authorities nominees to the Scottish local government pension scheme advisory board, whose representation was equally split between employers' representatives, of which I was one, and trade union representatives. The trade union representatives were all extraordinarily capable and represented quite accurately the diversity of the scheme members whose interests they were there to represent. In all honesty, the employers' representatives perhaps did not represent that quite so well. I played my own part in skewing that representation.

The requirement to report back on the membership characteristics is a very useful tool in trying to understand whether all that is reasonable is being done to ensure that trustees and those in positions of governance on pension schemes are as representative as possible not just of the membership, but of the interests of the membership, and that we are giving as many people as possible the opportunity to fully skill up, participate and play the role that they can do. As things stand, we are missing out on the talents of many fit and proper people. Again, I do not see the difficulty in simply recording and reporting that information as part of the cycle of continuous improvement and self-reflection on whether we are achieving all that we seek to do.

Ms Eagle: I want to support, or enhance, the comments that have just been made by Opposition Members about the two issues that we are discussing in this group of amendments: amendment 25 on diversity, which was tabled my right hon. Friend the Member for East Ham, and the issue of intergenerational fairness and how it can be properly guaranteed in CDC schemes.

I hope the Minister will reaffirm on the record, in no uncertain terms, his agreement with the principles behind the amendment on intergenerational fairness that was made in the other place, even if he has issues with how one defines fairness in law. I have to say that, in social justice terms, we would have made very little progress in

the whole of our society if we quibbled about the meaning of fairness in law. Just because it is difficult to define, it does not mean that we should not assert it or seek to bring it about.

The Minister's response is a rather a technical answer to the principle that has been asserted by the change that their lordships made to this part of the Bill. His responses to my questions earlier did not fill me with confidence that he knew how the principle would be brought about if the amendment that their lordships put in the Bill was taken out. He simply seemed to say that it was a good thing to assert, and that it would be brought about by regulations that have not yet been written. He could not really give us any thoughts about how it might be guaranteed in the future, although he is asking us to take out an amendment that has actually been made to the Bill. He is asking us to exchange something that is really quite good and not damaging for something that is very nebulous and does not exist yet—it might do at some point in the future—in regulations that will be unamendable. We will have to take them or leave them when they come to the House, so I am slightly worried about that.

As is his wont, my right hon. Friend the Member for East Ham has zeroed in on the issue of diversity on boards and given us some shocking figures about what is happening on pension trustee boards. That ought to raise many alarm bells about potential group-think and about how the decisions made by trustee boards are not representing the interests of the many people who have pension savings in a way that we would find modern or appropriate.

Amendment 25 is a modest amendment. My right hon. Friend is asking only for the publication of information. He is not doing what I might do, which would be much more radical and would probably include all sorts of things, such as quotas and positive action, in order to make a real difference quite quickly. It is a modest amendment. If the Minister cannot accept that it is and does not have the good grace to support it, I will be rather disappointed.

Guy Opperman: I will try to address some of the issues raised. In respect of the approach of the regulator, the regulations for CDC schemes will require schemes to provide information to enable members to understand the unique risk-sharing features of CDC schemes. That will be underpinned by clause 15, which we have already debated. It requires the regulator to be satisfied that a CDC scheme has adequate systems and processes for communicating with members and others. Regulations will also require that scheme information is made available more widely to other interested parties, including employers, on a publicly available website. The practical reality is that we have learned from the Dutch model, which some argue had intergenerational fairness issues, and are producing a considerably fairer approach.

10.45 am

Perhaps I should have raised this with the hon. Member for Wallasey when she asked what we have set out, but I presume she is aware of the indicative illustrative regulations produced for the purposes of the House of Lords debate. I will ensure that those regulations, which had already been produced, are sent to her. As she will be aware, illustrative regulations produced for debate and discussion are often not the final version. They quite clearly cannot be, because the Government have to consult widely, although at speed—I accept the exhortation to produce them next year—with pension providers, employers, interested parties, lawyers, actuaries and others, before we lay the final regulations. However, it is right to draw the Committee's attention to a point that I did not make earlier: illustrative regulations that address some of the issues raised by the hon. Lady have been available for many months. While only illustrative, the provisions give a clear indication of the policy intentions.

I have addressed the point about speed and 2021. I endorse utterly the desire for greater diversity and will try to answer a couple of the key questions asked. As I understand it, the trustees of the Royal Mail and CWU scheme have not been identified as yet. Clearly, that is a matter for them as they take that forward, but I suspect that that point is well made and well noted. Self-evidently, all of us agree that diversity is a good thing, and that larger numbers of pension scheme trustees need to be more diverse in many different ways. I take the point that the efficacy of that will benefit not only the scheme but wider society as a whole. The regulator takes this seriously and is already consulting on addressing it on an ongoing basis. It would be premature to pre-empt the outcome of the regulator's work in this area, which, self-evidently, starts from the basis of considering not only whether the persons putting themselves forward are fit and proper persons, but the key issue of diversity.

Clauses 9 and 11, which we have already debated, mean that the Pensions Regulator must be satisfied that persons involved in CDC schemes are fit and proper persons to act in relation to the scheme. If the regulator is not satisfied, authorisation of the CDC scheme cannot be granted. In respect of that point, it is well noted that the House is concerned about ensuring that, prior to the granting of a specific CDC scheme, ongoing consideration should be given to the working group and also to the issue of diversity. On that basis, I invite the right hon. Member for East Ham not to press his amendment to a vote.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

REQUIREMENT TO SUBMIT SUPERVISORY RETURN

Amendment made: 6, in clause 27, page 17, line 38, leave out from beginning to end of line 40 and insert "The notice must specify—".—*(Guy Opperman.)*

This amendment would remove provision requiring a notice from the Pensions Regulator to collective money purchase scheme trustees to include a requirement to assess the extent to which the scheme is operating in a manner fair to all members.

Clause 27, as amended, ordered to stand part of the Bill.

Clauses 28 to 44 ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 45 ordered to stand part of the Bill.

The Chair: Before I ask the Committee to reach a decision on clause 46, does the right hon. Member for East Ham wish to press amendment 25 to a vote?

Stephen Timms: I am very grateful for the support that has been expressed and for the points that the Minister has made. I take his point that there is a consultation under way. I very much hope that the regulator will decide to require information on diversity from the schemes that are set up, and that it will continue to do so as the trustee board develops. However, at this stage I will not press the amendment to a vote.

Clause 46 ordered to stand part of the Bill.

Clauses 47 and 48 ordered to stand part of the Bill.

Schedule 3 agreed to.

Clauses 49 to 51 ordered to stand part of the Bill

Clause 52

COLLECTIVE MONEY PURCHASE BENEFITS AND SCHEMES

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

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

Clauses 53 to 57 stand part.

That schedule 4 be the Fourth schedule to the Bill.

Clauses 58 to 95 stand part.

That schedule 5 be the Fifth schedule to the Bill.

Clauses 96 to 99 stand part.

That schedule 6 be the Sixth schedule to the Bill.

Clauses 100 to 102 stand part.

Guy Opperman: With respect, Mr Stringer, I propose to address all these matters together. Clauses 52 to 102 replicate the measures outlined in clauses 1 to 51 and apply them to Northern Ireland, which has a different system. This required us to replicate the measures in their entirety. In discussing clauses 1 to 51, I outlined why CDCs are the appropriate measure, and I ask the Committee to imagine that I made the same speech, at great length, in respect of clauses 52 to 102.

Seema Malhotra: I will not make any further comments. I agree with the Minister.

Question put and agreed to.

Clause 52 accordingly ordered to stand part of the Bill.

The Chair: I propose to put as a single question that clauses 53 to 57 stand part, that schedule 4 be the Fourth schedule to the Bill, that clauses 58 to 95 stand part, that schedule 5 be the Fifth schedule to the Bill, that clauses 96 to 99 stand part, that schedule 6 be the Sixth schedule to the Bill, and that clauses 100 to 102 stand part.

Stephen Timms: Would it be in order, Mr Stringer, for me to ask about clause 98 in this part of our discussion? It is the counterpart to an earlier clause and will introduce regulations to enable CDC schemes in Northern Ireland to be extended to include multi-employer schemes. Can the Minister reassure us that in Northern Ireland, as in the UK, the plan will be to introduce regulations to enable that within the coming year?

The Chair: That is not completely in order, but I will allow it.

Guy Opperman: It is very hard to turn down such a great man as the right hon. Member for East Ham, and I fully understand why you have given him some latitude, Mr Stringer. The answer is that I cannot be precise. Clearly, it is a matter for the Northern Ireland Government and the various civil servants who will take the legislation forward, but we expect them to take a similar approach. If I am wrong, I will write to the right hon. Gentleman to correct the record, but that is my expectation.

Clauses 53 to 57 ordered to stand part of the Bill.

Schedule 4 agreed to.

Clauses 58 to 95 ordered to stand part of the Bill.

Schedule 5 agreed to.

Clauses 96 to 99 ordered to stand part of the Bill.

Schedule 6 agreed to.

Clauses 100 to 102 ordered to stand part of the Bill.

Clause 103

GROUNDS FOR ISSUING A SECTION 38 CONTRIBUTION NOTICE

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

The Chair: With this it will be convenient to discuss clauses 104 to 106 stand part.

Guy Opperman: I am grateful to you, Mr Stringer, and to colleagues for the progress we have made in respect of collective defined contributions. We now turn to part three of the Bill, on regulatory powers. The powers are, in broad terms, agreed, as I understand it, subject to debate on clause 107. It is entirely right that we have set those out in defined benefit and regulator consultations over many years and in the preparations for White Papers and Green Papers, and that enhanced powers will be given to the regulator on an ongoing basis. I recommend the regulations to the Committee.

Seema Malhotra: We will not be making any further comments. We support the Minister on these clauses.

Stephen Timms: This part of the Bill gives new powers to the regulator, so it is worth recapping the problems that gave rise to the need for them. Most of the thinking here came from the joint work of the former Work and Pensions Committee—I pay tribute to my predecessor as its Chair, Frank Field—and the Select Committee on Business, Innovation and Skills, after the awful problems at two firms: BHS and Carillion.

BHS had two defined-benefit pension schemes. They were in a combined surplus of £43 million when Sir Philip Green bought the company in 2000. The surplus gradually declined and the schemes fell into a combined deficit in 2006, following the period when large dividends had been paid to members of the Green family. By the time of the sale of BHS in 2015, the value of the schemes' assets was almost £350 million short of their liabilities. As the schemes fell into deficit, the BHS board repeatedly resisted requests from the scheme trustees for increased contributions.

In 2012-13, there were negotiations over a deficit recovery plan and they concluded with a 23-year recovery plan. At the time, eight years was the median rate for a recovery plan and 95% of comparable schemes had a

recovery plan of less than 17 years. The plan we got in the case of BHS was for 23 years. The payments under that plan barely covered the interest on the scheme's deficit and so the deficit continued to grow even while that plan was being followed.

The two Select Committees concluded that the Pensions Regulator had acted too slowly. Having received the 23-year plan in September 2013, it did not send the first information request to the trustees until January 2014. The Committee added, however, that the onus for resolving problems was on Sir Philip Green.

In the case of Carillion, it left a pension liability of around £2.6 billion. The 27,000 members of Carillion's defined-benefit pension schemes will now be paid reduced pensions by the Pension Protection Fund—one of the biggest calls ever on that fund. I agree with what the Minister said earlier about the success of the fund, which was introduced by the previous Labour Government.

11 am

Richard Adams was Carillion's finance director for ten years. He refused to make adequate contributions to pensions schemes, and the chair of trustees said that he seemed to consider them a "waste of money". The scheme actuary, Edwin Topper from Mercer, said that Carillion's

"primary objective was to minimise the cash payments to the schemes".

The Committees heard that the Pensions Regulator threatened seven times to use a power that it had never used, concluding:

"These were empty threats; the Carillion directors knew it and got their way."

The Committees added:

"The Government has recognised the regulatory weaknesses exposed by this and other corporate failures, but its responses have been cautious, largely technical, and characterised by seemingly endless consultation. It has lacked the decisiveness or bravery to pursue bold measures recommended by our select committees that could make a significant difference. That must change. That does not just mean giving the FRC and TPR greater powers. Chronically passive, they do not seek to influence corporate decision-making with the realistic threat of intervention. Action is part of their brief. They require cultural change as well."

Since then, the Pensions Regulator has launched a new approach. It says that it will take a

"clearer, quicker and tougher approach to driving up standards in the pension sector."

We must all hope that the new approach, facilitated by the new powers under discussion, will do the job.

More recently, the current Work and Pensions Select Committee has expressed its support for the lenient approach that the Pensions Regulator has taken during the pandemic to employers seeking to reduce deficit reduction payments for defined-benefit pension schemes. We warned, though, that

"following our predecessor Committees' experience with BHS and Carillion, the Pensions Regulator must remain alert to the risk of unscrupulous employers not in financial difficulty seeking to take advantage."

We recommended specifically:

"If an employer is making deficit reduction contributions at a lower rate because of the pandemic, no reasonable person would expect them simultaneously to be paying dividends to shareholders and bonuses to senior executives. We recognise that there may be a small number of exceptions to this, but we would expect them to be wholly exceptional. We urge the Pensions Regulator to keep a close eye on this area, and to raise the alarm if it detects abuse."

When the Government respond to the report, I hope that the Pensions Regulator will accept that recommendation, and we must all hope that the entirely sensible changes being made by the Bill do the important job that history makes clear is needed.

Ms Eagle: I support my right hon. Friend the Member for East Ham, who has crystallised some of the dangers in private sector schemes. I do not want to add to the excoriating verdict of his predecessor Committee in the two cases mentioned, except to say that this does have an effect on the willingness of individuals to save into pension schemes. Although people might not know the detail of this behaviour and the losses it has caused to retirement income, some out there in the ether will use the lack of effective protection that has resulted from the failure both of regulation and in pursuing effectively those who engage in this kind of larceny. Individuals who may otherwise be pension savers choose not to save into a pension and regard it as a bit of a mug's game because their money is not properly protected. They know that there are scams and that a range of people out there—from the great killer sharks who loot pension schemes, to those who do dodgy things at the margins—are causing people who were saving into pension schemes, in good faith, to lose benefits in retirement.

How will the Minister drive the Pensions Regulator to be far more proactive and effective? Later, we will come to the Bill's measures on scamming and the even worse end of bad behaviour, but that is for a future part of the Bill. I hope the Minister can reassure us that he will insist that the regulator transforms its passive attitude into a much more aggressive one that not only actively deters but drives this appalling behaviour out of the whole of the pension scene.

Guy Opperman: I utterly endorse the speech of the right hon. Member for East Ham. I did not disagree with a single word of it. I could wax lyrical about why the Government, with the support of the Work and Pensions Committee and the special joint inquiry it set up with the Business, Innovation and Skills Committee to address BHS, have introduced this overdue legislation, which is linked to a much-enhanced regulator with a strong direction from Select Committees and the Government that there should be a much more robust approach. The new chief executive of the Pensions Regulator was appointed by the Secretary of State and me with a specific exhortation that they take a different approach.

The actions of Philip Green at BHS and the Carillion case, with which the right hon. Gentleman is extraordinarily familiar, scarred all Members of Parliament. No matter what our political party, we have all seen the impact that those cases have had on individual members of our communities. I take the point that the hon. Member for Wallasey made: these scandals involving organisations and companies that have not been sufficiently regulated, and for which the regulator has not, to be blunt, had the power, to intervene and take a different approach, have affected people's perceptions of the sanctity and safety of their pension.

We have gone to great effort to ensure, on a cross-party basis and taking on board the various Select Committee recommendations, that we give the regulator enhanced powers. We will come to the significant reality of the criminal sanctions that clause 107 outlines. Without a

shadow of a doubt, we are in the business of ensuring that callous crooks who put a pension scheme at risk are not able to function as they did in the past. I most definitely endorse every comment that was made.

Question put and agreed to.

Clause 103 accordingly ordered to stand part of the Bill.

Clauses 104 to 106 ordered to stand part of the Bill.

Clause 107

SANCTIONS FOR AVOIDANCE OF EMPLOYER DEBT ETC

Neil Gray: I beg to move amendment 19, in clause 107, page 90, leave out lines 5 and 6 and insert—

"(c) The person neglected to act in accordance with their duties and responsibilities."

This amendment and amendment 20 are intended to avoid the risk that routine behaviour by parties involved with pension schemes and others would be judged criminal, and thereby to protect professional advisers from criminal liability for carrying out their role.

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

Amendment 20, in clause 107, page 91, leave out lines 3 and 4 and insert—

"(c) The person neglected to act in accordance with their duties and responsibilities."

This amendment and amendment 19 are intended to avoid the risk that routine behaviour by parties involved with pension schemes and others would be judged criminal, and thereby to protect professional advisers from criminal liability for carrying out their role.

Clause stand part.

Clauses 108 to 116 stand part.

That schedule 7 be the Seventh schedule to the Bill.

Clause 117 stand part.

That schedule 8 be the Eighth schedule to the Bill.

Neil Gray: Amendments 19 and 20 are in my name and that of my hon. Friend the Member for Gordon, and for the reasons that other members of the Committee have outlined we support part 3 of the Bill. We are also incredibly supportive of the principles of clause 107, which introduces new criminal offences aimed at deterring occupational pension schemes, sponsoring employers or scheme trustees from engaging in wrongdoing in relation to their pension scheme. We would not table the amendments if we were not concerned, and if serious concerns had not been raised about the clause.

We think the clause will act as a strong deterrent against those who would wilfully run a scheme down, as we have seen happen in the not too distant past, and as was outlined earlier by the Chair of the Work and Pensions Committee, the right hon. Member for East Ham. However, the new criminal powers are wide-ranging and have the potential—I am sure it is unintentional—to criminalise routine behaviour by parties involved with pension schemes and those who are not directly involved at all, such as lenders and those doing business with a pension scheme's employers. That could have damaging knock-on effects for the viability of the pension scheme, if those who dealt with it, or employers, deemed that that legal risk was intolerable.

We have been working with the Institute and Faculty of Actuaries, which the Minister previously quoted in his favour in relation to part 3 of the Bill, as it has serious misgivings about the impact that the clause could have. It suggests that a wide range of conduct has the potential to have a detrimental effect on the likelihood of scheme benefits being met, in which case schemes might fall foul of the proposed current wording of clause 107.

The Institute and Faculty of Actuaries says, for example, that such conduct might include a Government entity terminating an outsourcing contract, where the contractor has a pension scheme; an employer giving employees a pay increase; a Government increasing corporation tax or business rates; a landlord increasing rents, where the tenant has a pension scheme; trustees or a scheme actuary granting an augmentation or increase to members without additional employer contributions; or a bank refusing to lend to an employer. That view is also supported by the Pensions and Lifetime Savings Association.

Our amendments would protect professional advisers from criminal liability for carrying out their role. That could be achieved in the Bill if the duties and responsibilities of an individual were considered when determining whether a person intended to commit an offence. The amendments would clarify matters in adding the question of negligence, which we feel is the intention behind the clause, but which is not explicit. They would also make it clear that a person's role and responsibility should be considered.

The intended effect is not to change the policy aims of the legislation—far from it—but to clarify the extent of the powers and, in doing so, protect professional advisers from criminal liability for legitimately carrying out their roles. We therefore hope that the Government will accept the amendments.

Stephen Timms: I have listened with great interest to the case that the hon. Member for Airdrie and Shotts has been making. I have also been contacted by a reputable industry body, the Pensions Management Institute, as well as the Institute and Faculty of Actuaries, which has been mentioned. They expressed alarm about the consequences of clause 107, which the hon. Gentleman has raised concerns about.

I have seen, for example, letters to the Minister from the Joint Industry Forum, which is a genuinely cross-industry group. One is dated 11 December last year, and the other is dated 9 September this year. They suggest possible changes and discussions with officials about how the difficulties could be overcome. I hope the Minister will tell us what discussions there have been since those letters, to try to resolve the problem, and what his conclusion was.

11.15 am

It is worth quoting from the Joint Industry Forum's second letter, which was sent in September:

"Third parties such as banks, trade counterparties and landlords could find themselves guilty of a criminal offence in relation to a pension scheme for which they previously had no responsibility. So could government bodies that deal with the private sector, pension trustees, trade unions, investment counterparties, or anyone who deals with the employer in any capacity whatever. We note that the third party need not be dealing with the pension scheme—any business dealing with the employer could be sufficient"

to be brought within the scope of the clause.

The letter continues:

"We appreciate the underlying policy is to create a criminal offence for the most serious conduct that harms pension schemes. However, the legislation has set the test at a much lower level—any conduct that causes a 'material detriment' to the likelihood of scheme benefits being met could be a criminal offence. All sorts of routine business activities could cause such a 'material detriment'. Many of those activities would not normally be thought wrong, let alone criminal. Any business contract that an employer signs is likely to involve liability that could compete with the pension scheme. Unless the contract is immaterial, it could be a criminal offence."

That certainly sounds to me like a serious problem, albeit clearly an unintended one, and I am surprised, given that the first of those letters was sent almost a year ago, that it does not appear as yet to have been resolved. The amendments tabled by the hon. Member for Airdrie and Shotts would certainly deal with the problem. I hope the Minister will be able to give us a persuasive explanation for how he plans to overcome what appears to be a clear and serious problem on the face of the Bill as it stands.

Guy Opperman: I would like to provide some reassurance on that particular point. I am acutely aware of it and have engaged at length with many different organisations. It is certainly not the intention to frustrate legitimate business activities where they are conducted in good faith. It is important, however, that where the elements of offences are met, no matter who has committed it, the Pensions Regulator should be able to respond appropriately. Any restriction of the persons would create a loophole for these people to potentially act in such a way.

The new criminal offences proposed in the Bill make it clear that an offence is committed only if the person did not have a reasonable excuse for doing the act or engaging in the course of conduct. Crucially, what is reasonable will depend, obviously, on the particular circumstances of the act, but the burden will be on the regulator to prove that the excuse was not reasonable. The regulator will be publishing specific guidance on these powers after consulting industry, but ultimately it is for the courts to decide that an offence has taken place, and, if so, the appropriate punishment.

The amendments also seek to remove the reasonable excuse defence—as set out in sections 58A and 58B—and replace it with a narrower concept of negligence. The existing defence of reasonable excuse is wider in definition than that proposed by the amendments. Therefore, the current defence provides more protection and a greater safeguard to potential targets. What is considered negligent is, in fact, specific and relies on case law—the law of tort, as I am sure the hon. Member for Airdrie and Shotts is aware—therefore introducing the concept of negligence would not help individuals to determine if what they were doing would be deemed negligent.

Stephen Timms: I have a real worry about this. Is the Minster saying that, for example, if a trade union successfully called for a higher pay rise than was initially offered, the company subsequently failed and there was a problem with the pension scheme, that the trade union would have to say that it had a reasonable excuse for pressing its pay demand? That seems a strange arrangement for us to be entering into.

Guy Opperman: It is for the regulator to show that that was not a reasonable approach. The burden is on the regulator to bring the offence and to prove it. I will choose my words carefully because this is subject to further regulation and consultation by the regulator, but it is certainly not the case that this is to catch everybody in how they conduct their normal business. However, there has to be a capability to identify and then prosecute and bring action against all persons, if they are found to have committed an offence without reasonable excuse. The ask is to narrow down the scope of the offence. We have just had a debate about circumstances where people have potentially committed things in the past.

Neil Gray: I understand the Minister's riposte, but there are two points here. First, the amendment covers reasonable excuse by allowing consideration to be given to the person's role in the trust. For instance, in a trade union, to take the argument of the Chair of the Select Committee, consideration would be given to the person's role.

Secondly, the Minister is asking us to wait until the Pensions Regulator has consulted and says how it thinks it should deal with the matter, but by that point it will be too late to ensure that we have got this measure right. I hope that the Minister looks again at this point and provides better comfort to the likes of the Institute and Faculty of Actuaries, which has a very broad base of professional expertise, and which suggested the amendments. I hope for a more favourable response from the Minister.

Guy Opperman: I am happy to write to the hon. Gentleman and set out the position in more detail. I come back to the simple point. If a trade union has a reasonable excuse for asking for a pay rise for its members, given their circumstances in an organisation, there is no reason why it should have any concern whatsoever. The starting point is whether someone has a reasonable excuse to progress a particular thing. If it is clearly part of normal business activities, I would not anticipate a problem.

Stephen Timms: I wonder whether the Minister would agree that it does seem very odd that a trade union making a legitimate pay claim might have to worry about whether it is committing a criminal offence because of some future damage to the pension scheme. I am very surprised that the Minister is putting in place measures that would have that effect.

Guy Opperman: This is in the context of the offence of avoidance of employer debt. We start with the very eloquent exposition that the hon. Member for Airdrie and Shotts gave on where employer debt arises and contributions are not made to pension schemes. One has to then look at the individuals and their approach. I do not believe that including a reasonable excuse defence will in any way hold back normal, traditional business activity. I can give that reassurance: traditional business activity would clearly include union work. This is clearly an issue that the regulator is very conscious of. On the one hand, we want a more robust approach. On the other hand, we want to ensure that normal business activity goes ahead. I believe that this is the appropriate way forward.

Neil Gray: I cannot say that I am wholly satisfied with the Minister's explanation. The two amendments would narrow and focus the intention of the clause and ensure that protection is given to people who are legitimately carrying out their duties to the pension scheme and who have related business or commercial interests, and, indeed, Government bodies that interact with employers or a scheme. I therefore intend to divide the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 10.

Division No. 1]

AYES

Gray, Neil
Thomson, Richard

NOES

Bailey, Shaun
Baker, Duncan
Baldwin, Harriett
Bell, Aaron
Davies, Gareth
Drummond, Mrs Flick
Griffiths, Kate
Morris, James
Opperman, Guy
Roberts, Rob

Question accordingly negatived.

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.