

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

PUBLIC SERVICE PENSIONS AND JUDICIAL OFFICES BILL [*LORDS*]

First Sitting

Thursday 27 January 2022

(Morning)

CONTENTS

Programme motion agreed to.
Written evidence (Reporting to the House) motion agreed to.
CLAUSES 1 TO 76 agreed to, some with amendments.
CLAUSES 77 AND 78 disagreed to.
CLAUSES 79 TO 85 agreed to, one with amendments.
CLAUSE 86 disagreed to.
CLAUSES 87 TO 98 agreed to, some with amendments.
Adjourned till this day at Two o'clock.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 31 January 2022

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The Committee consisted of the following Members:*Chairs:* SIR GRAHAM BRADY, † MR VIRENDRA SHARMAAbrahams, Debbie (*Oldham East and Saddleworth*)
(Lab)† Clarke, Mr Simon (*Chief Secretary to the Treasury*)† Coutinho, Claire (*East Surrey*) (Con)† Daly, James (*Bury North*) (Con)† Evans, Dr Luke (*Bosworth*) (Con)† French, Mr Louie (*Old Bexley and Sidcup*) (Con)† Grant, Peter (*Glenrothes*) (SNP)† Lewis, Clive (*Norwich South*) (Lab)† Mak, Alan (*Lord Commissioner of Her Majesty's*
Treasury)† Moore, Robbie (*Keighley*) (Con)† Mortimer, Jill (*Hartlepool*) (Con)† Mullan, Dr Kieran (*Crewe and Nantwich*) (Con)† Rodda, Matt (*Reading East*) (Lab)† Siddiq, Tulip (*Hampstead and Kilburn*) (Lab)† Simmonds, David (*Ruislip, Northwood and Pinner*)
(Con)† Stephens, Chris (*Glasgow South West*) (SNP)† Twist, Liz (*Blaydon*) (Lab)Bethan Harding, Huw Yardley, *Committee Clerks*† **attended the Committee**

Public Bill Committee

Thursday 27 January 2022

(Morning)

[MR VIRENDRA SHARMA *in the Chair*]

Public Service Pensions and Judicial Offices Bill [Lords]

11.30 am

The Chair: Before we begin, I have a few preliminary announcements. I remind Members to observe social distancing and to wear masks. Members are asked by the House to have a covid lateral flow test twice a week if coming onto the parliamentary estate. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings.

Today, 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, before proceeding to line-by-line scrutiny of the Bill. I call the Minister to move the programme motion standing in his name, which was discussed on Tuesday by the programming sub-committee for the Bill.

Ordered,

That—

1. the Committee shall (in addition to its first meeting at 11.30 am on Thursday 27 January 2022) meet—

- (a) at 2.00 pm on Thursday 27 January 2022;
- (b) at 9.25 am and 2.00 pm on Tuesday 1 February 2022.

2. the proceedings shall be taken in the following order: Clauses 1 to 109; Schedule 1; Clause 110; Schedule 2; Clause 111; Schedule 3; Clauses 112 to 116; Schedule 4; Clauses 117 to 120; 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 Tuesday 1 February 2022.—(*Mr Clarke.*)

The Chair: I call the Minister to move the motion on written evidence.

Resolved,

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.—(*Mr Clarke.*)

The Chair: Copies of written evidence that the Committee receives will be made available in the Committee Room and will be circulated to Committee members by email.

We now begin line-by-line scrutiny 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 a similar issue. 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 debate. Decisions on each amendment are taken when we come to the clause to which the amendment relates.

The Member who has put their name to the lead amendment is called first, or the Minister if clause stand part leads the group. Other Members are then free to catch my eye to speak on all or any of the amendments, clauses or new clauses within the group. A Member may speak more than once in a single debate. At the end of a debate on a group, I shall call the Member who opened the debate to wind up.

Clause 1

MEANING OF “REMEDIABLE SERVICE”

The Chief Secretary to the Treasury (Mr Simon Clarke): I beg to move amendment 2, in clause 1, page 2, line 3, leave out subsection (4) and insert—

- “(4) The second condition is that the service in question is—
- (a) pensionable service under a Chapter 1 legacy scheme,
 - (b) pensionable service under a Chapter 1 new scheme that would have been pensionable service under a Chapter 1 legacy scheme but for the person's failure to meet a condition relating to the person's attainment of normal pension age, or another specified age, by a specified date, or
 - (c) excess teacher service.

The second condition is met if all of the service in question falls within paragraphs (a) to (c) (even if it does not all fall within only one of those paragraphs).”

This amendment updates the second condition in clause 1 so that it catches “excess teacher service” (a definition of which is inserted into clause 98 by a separate amendment) and clarifies that service meets that condition even if it falls within more than one of paragraphs (a) to (c).

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

- Government amendments 3 and 4.
- Clause stand part.
- Government amendments 34, 36 and 38.

Mr Clarke: It is a pleasure to serve under your chairmanship, Mr Sharma. I thank colleagues on both sides and those in the other place for the constructive way in which we have proceeded with this Bill so far. I thank my officials, who have done an exemplary job on a complex piece of legislation.

At the heart of the Bill is fairness and equal treatment for the public servants on whom we all rely. To ensure we achieve that objective, the Bill is underpinned by the core principles of greater fairness between taxpayers, fairness for lower and higher earners, and the future sustainability and affordability of public sector pensions. I would like to take a moment to explain why the approach to bring forward a number of amendments at this stage has proved necessary—indeed, crucial—to provide a robust and effective remedy.

As I am sure Committee members will agree, this is a highly complex and technical matter. The Bill covers more than 40 schemes. Each, individually, has its own layers of detail and complexity. We are dealing with a somewhat unprecedented issue. Retrospective changes of this scale have not previously been required for occupational pension schemes. However, it is undoubtedly vital that we get it right. Since the Bill was introduced, the Government have continued to work with the individual schemes, stakeholders and Departments to check and recheck the Bill to ensure that it will deliver our commitments to remove the discrimination and offer a complete and effective remedy.

Clause 1 identifies periods of service that are in scope to be remedied under the Bill by placing a number of conditions that must be met. The first condition is that the service took place during the period that the discrimination arose. The second condition is that the service is pensionable under a public service scheme and would have been pensionable under a chapter 1 legacy scheme had the discrimination not occurred.

The third condition is that the person was, on or before 31 March 2012, a member of a legacy scheme or—in the case of certain schemes for firefighters—eligible to be a member of such a scheme. Members who first joined any public service pension scheme after that date were ineligible for transitional protection regardless of their age, and therefore were not subject to the discrimination identified by the court.

The fourth and final condition is that there is no disqualifying gap between the service to which the third condition relates and the period in question. For reference, a disqualifying break in service is defined as a period of more than five years, which reflects the rules of public service pension schemes but allows members who leave to subsequently rejoin when the gap between leaving and rejoining is five years or less.

Amendment 2 concerns an issue that is specific to the teachers' pension scheme involving teachers with excess service. If a teacher with a full-time teaching contract has an additional part-time contract or contracts, the additional part-time contract constitutes the excess service. Excess service is pensionable in the new teachers' pension scheme but not in the legacy scheme. However, where the relevant employer has an existing relationship with the local government pension scheme, the regulations of the LGPS provide that the excess service is pensionable in that scheme instead. The teacher will automatically be entitled to enrol into the LGPS in relation to their excess service, therefore providing a home for those accrued rights.

The amendment updates the second condition in chapter 1 to cover excess teacher service, meaning that excess teacher service is a remediable service and, therefore, subject to the provisions in clause 2(1). It will ensure that a member's excess service can be rolled back to the appropriate scheme. Amendment 4 is consequential on amendment 2, and amendments 34 and 38 define excess teacher service.

Amendment 3 is designed to ensure that the remedy applies correctly to former local government staff who have compulsorily transferred from their employer as a result of outsourcing and were entitled to pensions protection. If such members subsequently became a member of a chapter 1 scheme, the amendment provides that the time they spent in a private sector pension scheme would not count towards the disqualifying gap in service when assessing their eligibility for remedy, which is consistent with the approach provided in respect of transfers and central Government fair deal arrangements.

Chris Stephens (Glasgow South West) (SNP): I am speaking as someone who was a local government employee in Glasgow before I came to this place. Is the Minister saying that, as a consequence of this amendment, if an employee working for the local authority finds that their service is outsourced by a decision of the local authority, that employee would not have pension rights

as a result of the service that they would have if they transferred to that outsourced company? Could he clarify that?

Mr Clarke: To reassure the hon. Gentleman, the amendment is designed to prevent that from occurring. In other words, the fact that their employment was outsourced during that period would not constitute a gap of longer than five years, which would put that out of the scope of remedy. It is designed precisely to ensure that they do have protection, rather than that they do not.

Finally, amendment 36 defines a local government contracting-out transfer for the purposes of what I was just alluding to.

Tulip Siddiq (Hampstead and Kilburn) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. I will start by talking about our public sector workforce and the service they give to this country. The pandemic has highlighted how much we depend on the NHS and on teachers, police and other frontline professionals who keep us and our loved ones safe. It is only right that the state ensures that our public servants are secure in retirement by providing a decent pension on a fair and equal basis.

Labour therefore welcomes the main provisions in clause 1, in particular the attempt to introduce a remedy for the discrimination of younger members in the new pension schemes established by the coalition Government between 2014 and 2016. I recognise that the remedy the Government have opted to include in the Bill—the deferred choice underpin, or DCU—was the preferred option of the overwhelming majority of respondents to the Government's consultation, including Unison and GMB—my trade union. However, I want to draw the Minister's attention to the fact that trade unions continue to have concerns about the lack of clarity on how the remedy, expected to cost around £17 billion, will impact the future value of members' pension schemes.

On Second Reading on 5 January, the Under-Secretary of State for Justice, the hon. Member for South Suffolk (James Cartlidge) said

"liability... will fall on the Exchequer."—[*Official Report*, 5 January 2022; Vol. 706, c. 112.]

That is an important commitment, but as Lord Davies of Brixton, a Member of the other place and one of the country's foremost pension experts, has said, it does not address the question of whether the remedy will be included in the cost control mechanism at a later date. If this cost were to be included in a future cost control mechanism valuation, it would result in members receiving lower benefits and having to make higher contributions to their pension schemes. As the Public Accounts Committee has warned, this would, in effect, be unfairly penalising our public sector workforce for the Government's economic incompetence by passing on some of the cost of the Treasury's £17 billion mistake to members.

Can I ask the Minister to confirm, once and for all, whether the estimated £17 billion cost of the remedy will be included in future valuations of the pension schemes under the cost-control mechanism? If it is to be included, can he please set out how that will impact on the future value of members' benefits and contribution rates? I think he will agree with me that our public servants deserve better than to be left in the dark, so I hope he will clarify this in detail.

[*Tulip Siddiq*]

Today, the Government have failed to address concerns about how pension scheme members will be protected from unscrupulous advisers. I know that Ministers have been reluctant to include pension scams in the draft Online Safety Bill, despite the spiralling costs of pension fraud and mis-selling. I would like the Minister to set out what steps he is taking to protect members from scammers, who may try to exploit the greater choice that this Bill provides by getting people to transfer out of the pension schemes in a way that is not in their best interest.

Peter Grant (Glenrothes) (SNP): It is a great pleasure to serve under your chairmanship, Mr Sharma. Some of the comments that I will make today will repeat the assurances I asked for on Second Reading. Looking back over the *Hansard* record, I think I was the only Member who spoke in that debate who did not have their queries addressed in the Minister's summing up—not that I was keeping track or feeling got at, at all.

I am grateful to the Minister for clarifying the query from my hon. Friend the Member for Glasgow South West; it should concern all of us that such a massive injustice almost slipped through the net. There have been dozens of chances for amendments to be made and for this Bill to be got right. I said on Second Reading that I was concerned that the number of very late amendments that the Government tabled in the Lords was an indication that there were still big gaps. Something as vital as not denying a public service worker their pension rights was missed because, as a result of a dreadful piece of legislation, their job was sold off to the private sector and then brought back in house again. For that potential injustice to have got this far, until the Government spotted it and brought them in, will leave us all at the end of today's proceedings—and Tuesday's if we sit then—still wondering what else is left that has not been picked up.

It is quite clear that, with some of the later amendments, the Government did not identify issues for teachers, whose length of service provision and their age sometimes will not fall into line with each other in a way that would be expected. Some of the later amendments suggest that the Government forgot that sometimes the Treasury does not decide things in Northern Ireland, but rather, it is the Northern Ireland Department of Finance that decides. How could such a crucially important piece of legislation have got to that stage without basic facts of the UK constitution having been picked up somewhere within Government?

I hope that when we come to those sections that the Minister will have the good grace to admit that sometimes there have been simple blunders by the Government, that mean we will have to consider these things as amendments rather than them being part of the substantive Bill.

Chris Stephens: Does my hon. Friend agree that we are talking about deferred pay for public sector workers, and therefore we should be treating this Bill with a great deal of care and attention?

Peter Grant: I absolutely agree. I made it clear during my comments on Second Reading that I do not doubt the sincerity of the Minister's and the Government's

intention to do the right thing. However, I believe it is a fundamental principle that if someone signs up to a pension scheme, they get what they were promised, even if it becomes inconvenient or the Government discover afterwards that it is going to cost more than they expected. That is why it is important we get clarity on who is going to pick up the tab for the £17 billion, for example. It concerns me that a group of workers who were very badly treated by legislation in the past would have lost even more than they thought they had done if the Bill had not been amended at such a late stage.

I hope that these will be the last substantive amendments that we need to see, but I suspect that on Report the Government will have another raft of big amendments for things that nobody spotted until now.

11.45 am

Matt Rodda (Reading East) (Lab): It is a pleasure to serve under your chairmanship, Mr Sharma. I also declare an interest: there are members of my family who may be affected by the Bill. I am not entirely sure, but I believe that they may be affected.

I also pay tribute to our public sector workers. As my hon. Friend the Member for Hampstead and Kilburn said earlier, and colleagues across the House have mentioned, we owe an enormous debt of gratitude to our public sector workers. We are talking about hard-working police officers, firefighters, teachers, local government workers and many others who have been at the forefront of the country's efforts during the pandemic—and, indeed, over many years—and offer so much to our community. We need to treat the Bill with the utmost gravity, and I am grateful for the tone of the debate overall.

I would like to point out the importance of intergenerational fairness. I appreciate that the Government and the Minister have quite rightly highlighted the importance of the remedy. The Government lost a court case and are now seeking to remedy that significant mistake by the Treasury. However, the risk in the Bill is that inadvertently the Government may impose another unfairness on a younger group of workers. Later on in the course of today's proceedings, could the Minister reassure those younger workers once again? It is really important for them to have clarity and reassurance about their pensions—that they will not have to pay far greater sums to receive the pensions that they rightly deserve. As part of that reassurance, it is very important that the Government address the issue of the cost control mechanism and are absolutely clear about how it will work. We hope that they will provide further reassurance and information on that matter during the course of today's discussions.

Finally, I reassure members of the public that these schemes are by and large pay-as-you-go pension schemes, to which teachers, police officers and others make significant contributions during the course of their service. They are not wholly underwritten by the Government. That is a very important point for people who do not work in public services to remember and be reassured by: as another hon. Member mentioned, we are talking about deferred payments to public servants and ensuring that they receive the pensions that they rightly deserve, to which they have contributed over many years of service to our community.

David Simmonds (Ruislip, Northwood and Pinner) (Con): I want to put on the record my interest in the matter before us: I am a member in scope of one of the pension schemes, I am married to a member in scope of one of the others, and a former scheme board member of another of the schemes.

Mr Clarke: I thank all hon. Members for their contributions. It is important to clarify one of the misapprehensions about what has happened over the course of the passage of this legislation to the issue that we are working to address. The Government did not, as it has been described, make a mistake. We inserted transitional protections into the scheme after the recommendations of Lord Hutton, expressly at the request of the trade union movement. It is important to establish that the request for transitional protections to be inserted was a trade union-led request. That is what triggered the discrimination action against the Government, which we are now working to address. I would defend the Government's record here quite strongly; this is not something that we have brought about. None the less, we are obviously working in good faith to seek to address it.

Peter Grant: It just will not wash for the Minister to blame the trade unions. If this Government were in the habit of paying a blind bit of attention to anything else the trade unions say, that might be credible. But the trade unions did not make the regulations that were proved to be unlawful; the Government made them. Why can the Minister not accept that the Government took the decision and got it wrong?

Mr Clarke: The Government obviously take responsibility for all of those things, but it is important to establish the full context. We inserted the changes at the request of the trade union movement, and they were found to be discriminatory in a way that could not have realistically been anticipated at the time that the legislation was brought forward. None the less, we are where we are, and I want to address some of the substantive concerns raised in particular about the cost of remedy. We will come back to this later as well in the course of the Committee, because it will arise again in the context of some of the other clauses.

It is really worth clarifying definitively that the Exchequer is responsible for paying out pensions due from unfunded public service pension schemes, to which this relates. This works in practice by current employer and member contribution incomes being used to meet the costs of paying current pensioners. Where contribution income does not match the cost of pensions in payments in any given year, the Treasury has to make the balancing payment. In this way, the Exchequer guarantees the benefit that members worked so hard to earn, as the hon. Member for Glenrothes rightly said, during their time in service.

Remedy increases the pension rights of eligible members over the period in question—2015 to 2022. As the hon. Member for Hampstead and Kilburn said, the estimated cost of this remedy for unfunded schemes is in the region of £17 billion, in terms of long-term liabilities for the Exchequer. The Exchequer will therefore pay out these increased pension benefits due to members over several decades as members retire. There should be no doubt that the ultimately liability sits with the Exchequer,

rather than scheme members. It is worth noting that, overall, these reforms are estimated to save the Exchequer some £400 billion in long-term liabilities, which is important for the long-term sustainability of our public service pension schemes in an age of rising life expectancy.

On the question of remedy, which is really important in the cost control mechanism, I should be clear that member benefit levels and contribution rates are set out in individual scheme rules and can be adjusted through the cost control mechanism at scheme valuations. The cost control mechanism—again, I will expand on this later—is designed to both protect the value of schemes to members and to protect the Exchequer from unforeseen costs.

At each scheme valuation, the mechanism assesses the benefits that have accrued and are accruing to members to determine whether future benefit levels of member contribution rates need to be adjusted to manage the cost of the scheme. By increasing the pension rights of eligible members, the remedy we are talking about today increases the value of those schemes to members, which is why it is right that it is reflected in the cost control mechanism for the 2016 valuations.

However, because we are waiving the ceiling breaches while honouring floor breaches of the mechanism, it is vital that we establish now, for the avoidance of any doubt, that no member benefits will be cut and no member contribution rates will increase as a result of the 2016 valuations. Any benefit improvements due will be honoured, but no additional costs will be imposed. I reassure the hon. Lady, on her important question, that the costs of our remedy genuinely sit with the Exchequer, not scheme members.

I entirely agree with the hon. Lady's important point regarding people not being caught up by pension fraud. Public service pensions schemes do not allow members to transfer to such arrangements, only to equivalent defined-benefit schemes, so there is a degree of protection against the most egregious fraud, but we are always happy to work with individual schemes and the industry to try to promote best practice and make sure that people do not fall victim to any form of mis-selling.

As I set out, this is a highly complex and technical Bill. The amendments in this group, and some we will come on to discuss, are crucial to ensuring that a robust remedy is in place—in this particular instance, for teachers with excess service and those who have a period of service that was subject to a local government contracting-out transfer. On the point that the hon. Member for Glenrothes raised, it is important to note that many of these amendments result from close discussion with individual schemes and stakeholders right up until this moment, not because we had not anticipated many of these questions but because, in truth, how best to resolve them—there are sometimes multiple ways—has been a matter for close discussion. We are confident that the remedies we are bringing forward and the amendments that fall within the scope of today's proceedings are the optimal way of making sure that we have a new system that is fair and, crucially, provides the most robust possible remedy to the concerns being raised.

Amendment 2 agreed to.

Amendments made: 3, in clause 1, page 2, line 37, at end insert

[Mr Simon Clarke]

“, or

- (c) is, as a result of a local government contracting-out transfer, pensionable service under a pension scheme that offers pension arrangements that are broadly comparable with those offered to the person before the transfer.”.

This amendment amends the definition of “disqualifying gap in service” so that it includes a period during which the person was transferred to a private sector employer under local government contracting out arrangements.

Amendment 4, in clause 1, page 3, line 3, after “scheme” insert “or excess teacher service”.—(Mr Clarke.)

This amendment is consequential on the amendment of the second condition in this clause made by separate government amendment.

Clause 1, as amended, ordered to stand part of the Bill.

Clause 2

REMIABLE SERVICE TREATED AS PENSIONABLE UNDER CHAPTER 1 LEGACY SCHEMES

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

The Chair: With this it will be convenient to discuss clause 3 stand part.

Mr Clarke: Clause 2 is a crucial provision that implements the retrospective remedy. It provides that any period of remediable service that was under a new scheme is treated as being, and always having been, service under a legacy scheme instead. That ensures that a person with remediable service is placed, with retrospective effect, in the legacy pension scheme that they would have been eligible to be a member of had they not been moved to a new scheme in or after 2015.

Clause 3 provides that where benefits have been paid they are to be treated as having been paid from the appropriate legacy scheme instead, being the scheme that the person is, and always was, a member of, by virtue of Clause 2. The clause itself does not affect the value or amounts of the benefits already paid. It simply ensures that payments are aligned with the appropriate scheme. Any correction to benefits, as a result of a member choosing to receive legacy benefits instead of the new scheme benefits already paid, is dealt with later in the Bill.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Clause 4

MEANING OF “THE RELEVANT CHAPTER 1 LEGACY SCHEME” ETC

Mr Clarke: I beg to move amendment 5, in clause 4, page 5, line 4, at end insert—

“(3A) In a case in which any of the person’s remediable service in the employment or office in question is excess teacher service, “the relevant Chapter 1 legacy scheme”, in relation to so much of the person’s remediable service as is excess teacher service, means the local government new scheme mentioned in section 98(2).”.

This amendment updates the definition of “the relevant Chapter 1 legacy scheme” for a case in which a teacher has excess teacher service. A definition of “excess teacher service” is inserted into clause 98 by a separate government amendment.

The amendment concerns only the interaction between the Teachers’ Pension Scheme and the Local Government Pension Scheme and covers the complex issue of future pension service. It updates the definition of the relevant Chapter 1 legacy scheme for a case in which a teacher has excess teacher service and specifies that that is the Local Government Pension Scheme—the LGPS. That allows the member’s excess service to be rolled back to the LGPS, where the member would have been eligible to join the LGPS had they not been moved to the reformed scheme. This ensures that the member’s excess service is rolled back to the correct scheme.

Tulip Siddiq: We very much support the clause.

Amendment 5 agreed to.

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

Mr Clarke: Clause 4 ensures that members are returned to the appropriate legacy scheme, which is the scheme that they would have been entitled to be a member of if they had not been moved to a new scheme on or after 1 April 2015. The apparently complex drafting does nothing more than that. The clause simply reflects that some legacy schemes contain different eligibility provisions.

Question put and agreed to.

Clause 4, as amended, accordingly ordered to stand part of the Bill.

Clause 5

ELECTION FOR RETROSPECTIVE PROVISION TO APPLY TO OPTED-OUT SERVICE

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

Mr Clarke: Clause 5 requires scheme regulations to make provision to allow a member who opted out in relation to a period between 1 April 2015 and 31 March 2022 to elect for that service to be reinstated as though they had not opted out, if they satisfy conditions that may be specified in the regulations. This ensures that the member can be put back in the position that they would have been in had they not chosen to opt-out as a result of the discrimination.

Peter Grant: Can I raise with the Minister the concern that I raised on Second Reading but did not get an answer to? I welcome the vast majority of clause 5, because it is right that if a member of a pension scheme took a decision about opting in or out based on circumstances that have now changed beyond their control they should be given the opportunity to reconsider that decision. That is absolutely correct. And there has to be some kind of provision as to the conditions about when that right is put in place; I do not have a problem with that.

However, paragraphs (5)(c) and (6)(a) refer to conditions potentially being applied that would require the applicant to submit certain information before the application could be accepted? The House of Commons Library has suggested that one type of information that could be asked for would be for the individual to demonstrate that the reason that they took action was because of what we now know to have been unlawful discrimination built into the scheme.

My question to the Minister is this: is it reasonable to expect somebody to be able to demonstrate that? What standard of proof will be required? I need to remind the Minister that the Windrush scandal happened because the Government retrospectively decided to demand that citizens produce certain information in order to have their rights of citizens respected and they made completely unreasonable expectations on people to have retained information.

Okay, we are talking now about something five or seven years ago instead of 30, 40, 50 years ago, but the principle is still the same. Is it reasonable to assume that people will have kept documentation to demonstrate that they acted on the basis of information at the time and not for some other reason? Can we have an assurance that any regulations will not put an unreasonable burden of proof on people who may well have acted for the reasons set out in the clause, because the chance of them having kept any evidence to prove it five or 10 years later is pretty slim?

12 noon

Mr Clarke: I can provide the hon. Gentleman with that reassurance. It is simply the case, under the operation of these provisions, that we want people to be able to make a decision at the point of retirement as to which scheme they wish they had been in for the purposes of this seven-year period. There will not be an onerous standard of proof; it will simply be for them to make that determination. I can reassure him that there is nothing that will be, if you like, in any way a high bar for people to satisfy. It is simply for people to make the decision based on their own circumstances and the advice they get at retirement about which scheme would have been best for them.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6

IMMEDIATE CHOICE TO RECEIVE NEW SCHEME BENEFITS

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

The Chair: With this, it will be convenient to discuss clauses 7 to 9 stand part.

Mr Clarke: Clause 6 provides that scheme regulations must make provision for pensioner members and beneficiaries of deceased members to make an immediate choice: whether to elect to receive new scheme benefits in relation to the member's remediable service, or to receive the default of legacy scheme benefits instead.

Clause 7 provides that an election under clause 6 must be made within one year of the member—or, if the member is deceased, their personal representatives—being provided with details about the benefits available to them in relation to their remediable service, or such longer time as the scheme manager considers appropriate.

Clause 8 provides power for scheme regulations to make provision about situations where a member or their beneficiary fail to communicate to the scheme whether they wish to receive legacy or new scheme benefits in relation to remediable service.

Clause 9 provides that where a person has remediable service in an employment or office that is pensionable under more than one legacy scheme, an election under clause 6 applies in all of those schemes.

Peter Grant: Again, I have a question that I put on Second Reading that was not truly answered then.

In the background papers for the Bill, the Government suggested that clause 6(7) would apply to a fairly small number of people—I think that was how they described them. These are the people who would have a better deal if they were able to mix and match some provisions from one scheme and some from another, and they are now being told that they can opt for entirely one scheme or the other.

I understand the Government's position, which is that these are people who have been given a benefit that they would not have had if there had not been unlawful discrimination, so they can have no reasonable objection if it is taken away. I suspect that the people who will lose that benefit will take a different view.

However, my real question was this: how many people are potentially affected? The information I have seen—this is the figure I quoted on Second Reading—is that we could be looking at somewhere up to 245,000 people. That is a small percentage of the total number of pensioners affected by this legislation, but a quarter of a million people cannot be described as a small number. Will the Minister confirm how many people he expects to be affected particularly by the restriction in clause 6(7)?

Mr Clarke: I can commit to write to the hon. Member with our best estimate, although it may be that my officials can provide me with such an estimate. In that case, I will relay it to him in a later answer as we make progress on the Bill.

Question put and agreed to.

Clause 6 accordingly ordered to stand part of the Bill.

Clauses 7 to 9 ordered to stand part of the Bill.

Clause 10

DEFERRED CHOICE TO RECEIVE NEW SCHEME BENEFITS

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

The Chair: With this it will be convenient to discuss clauses 11 to 13 stand part.

Mr Clarke: Clause 10 delivers the Government's commitment to provide a deferred choice to receive legacy or new scheme benefits in relation to active and deferred members' remediable service. Having had their remediable service returned to the legacy schemes by virtue of clause 2, once that provision comes into force, clause 10 requires scheme regulations to provide that an election to receive new scheme benefits may subsequently be made in relation to the remediable service of active and deferred members.

Clause 11 provides that scheme regulations must specify a deadline by which an election must be made. That deadline must be no earlier than one year before the day on which the member is reasonably expected to become entitled to a pension in accordance with an election. That is why this is referred to as a deferred choice.

Clause 12 replicates the power in clause 8, but is for active and deferred members, rather than pensioner or deceased members. The power is for scheme regulations

[Mr Simon Clarke]

to make provision about situations where a member or their beneficiary fails to communicate to the scheme whether they wish to receive legacy or new scheme benefits in relation to the remediable service.

Clause 13 provides that where a person has remediable service in an employment or office that is pensionable under more than one legacy scheme, an election under clause 10 applies in all of those schemes.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clauses 11 to 13 ordered to stand part of the Bill.

Clause 14

PENSION BENEFITS AND LUMP SUM BENEFITS: PENSIONER AND DECEASED MEMBERS

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

The Chair: With this it will be convenient to discuss clauses 15 to 18 stand part.

Mr Clarke: Clause 14 requires any overpayment or underpayment of pension benefits or lump-sum benefits in relation to a pensioner or a deceased member to be corrected, and sets out how and when that will be done.

Clause 15 applies to pensioner and deceased members to align any member contributions payable in relation to their remediable service with the benefits, legacy or new scheme that are ultimately taken.

Clause 16 provides that any difference between the member contributions paid during the member's remediable service and those that would have been paid had they always paid legacy scheme member contributions is corrected, on the coming into force of clause 2. Where the member is deceased, their personal representatives will be responsible. Clause 17 provides for member contributions in relation to a deferred or active member's remediable service to be aligned with the decision under clause 10—that is, the deferred choice—as to which benefits are ultimately paid.

Clause 18 provides a power to allow scheme regulations to make provision to reduce or waive that member's liability where a member owes overpaid pension or lump-sum benefits to a scheme. It also makes further provision to allow overpaid or underpaid contributions owed by or to a scheme to be reduced to reflect tax relief. That is simply to ensure that the member is returned in the correct position net of tax.

Finally, clause 18 allows amounts in relation to overpaid contributions owed to a member under clause 16 to be reduced or waived by agreement. That is simply to allow members who expect to elect to receive new scheme benefits when they retire to avoid paying legacy scheme contributions in relation to their remediable service during the intervening period.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clauses 15 to 18 ordered to stand part of the Bill.

Clause 19

PENSION CREDIT MEMBERS

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

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

Clauses 20 and 21 stand part.

Government amendments 6 to 12.

Clause 22 stand part.

Government amendment 37.

Mr Clarke: The amendments in this group deal with various specific scenarios which may apply to members with remediable service. Clause 19 provides that scheme regulations may make provision in relation to a member who has divorced or dissolved a civil partnership, and, where a pension sharing order is in place, to enable their pension to be shared with their former spouse or civil partner. Clause 20 provides for scheme regulations to make provision in relation to additional voluntary contributions paid during a member's remediable service.

Clause 21 ensures that, where a member transfers their pension rights from one public service pension scheme to another, they still receive a deferred choice in respect of any remediable service that was subject to the transfer. Clause 22 provides that scheme regulations may make further provision about special cases. The provision that may be made under this clause, or under clauses 19, 20 or 21, includes provision corresponding to any provision in chapter 1 of the Bill or applying any provision of this chapter to persons specified in the regulations.

Clause 22(2) sets out a number of areas where provision may be needed in scheme regulations. These include matters such as the benefits payable to members who had tapered protection, which is termed "mixed service" here, and to members who had a right to buy out an actuarial reduction in relation to early payment of benefits in respect of their remediable service in a new scheme. The amendments that I am about to explain add four areas to ensure that schemes have the necessary powers to deal with specific cases in relation to children's pensions, partnership pension accounts, redundancy and teachers' excess service.

Amendment 6 delivers the commitment in the Government's consultation and consultation response. It set out that where a member has died and a child pension is already in payment, which would otherwise be impacted by a decision taken by someone outside the child's household, that pension will be protected. The amendment confers power to enable provisions to be made in scheme regulations about the benefits payable where a member dies in respect of surviving children who do not live in the same household as a surviving adult. Amendments 10 and 11 provide clarification by defining "adult survivor" and "child" respectively.

Amendment 7 extends the power to make provision about special cases in clause 22 to enable provision to be made in scheme regulations about excess teacher service. These amendments will allow the teachers' pension scheme to process excess service cases using existing provisions of the Bill, such as clauses 14 to 17, to

correct contributions and benefits whether the service is pensionable in the local government pension scheme or not. Amendment 37 defines “teacher”.

Amendment 8 concerns partnership pension accounts. The Bill already provides for members of the civil service who opted to have a partnership pension account to be reinstated to the appropriate legacy scheme where they so wish. However, there may be cases where that is not possible—for example where the member has died. The amendment therefore provides schemes with powers to make provision to take a different approach where needed to provide a remedy in such cases.

Finally, amendment 9 further amends clause 22 to permit scheme regulations to make provision for cases in which a person who has remediable service is made redundant. This will ensure that schemes are able to make provision for a member to make their deferred choice to receive new scheme benefits at the time their employment ends. This approach will be needed in cases where the member’s redundancy payment is calculated by reference to the pension scheme in which they have remediable service, which is the case, for example, in the armed forces. Amendment 12 inserts a definition of “made redundant”. I beg to move.

Tulip Siddiq: I understand that clause 22 permits changes to the existing and traditional pension scheme and allows for the deregistering of these schemes for tax purposes so that a lifetime allowance tax charge does not apply on the basis that judges are an exceptional case. In making that exception, is the Minister confident that it will not open the door to legal action from other professionals, such as senior doctors, perhaps, who may argue that they want similar treatment?

Mr Clarke: Yes, I can provide the hon. Lady with that reassurance. There is obviously the question whether what we are putting in place for judges is replicable for other professions, and we are confident it is not. That is due to the unique career path of judges, many of whom leave lengthy careers in the private sector to enter public service at the culmination of their careers, and where there is an expectation that, after having served as a judge, there can be no return to private practice. That is precluded uniquely for judges. Once they have made their decision to go to the bench, they cannot then return to practice. That distinction accounts for their very particular career path and very particular constrained options, which means there is a strong case that judges are a unique group for these purposes and therefore there is not discrimination for other professions.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clauses 20 and 21 ordered to stand part of the Bill.

Clause 22

FURTHER POWERS TO MAKE PROVISION ABOUT SPECIAL
CASES

Amendments made: 6, in clause 22, page 19, line 20, at end insert—

- “(da) provision about the benefits payable in respect of a child of a deceased member where—
- (i) the member has remediable service in an employment or office, and

- (ii) the child is not living in the same household as an adult survivor of the member;”

This amendment confers power to enable provision to be made about the benefits payable, where a member dies, in respect of surviving children who do not live in the same household as a surviving adult.

Government amendment 7, in clause 22, page 19, line 20, at end insert—

- “(db) provision about cases in which a person has remediable service in an employment or office any of which is excess teacher service;
- (dc) provision about cases in which a person has remediable service in an employment or office and also has service in an employment or office as a teacher which—
- (i) takes place in the period beginning with the day after the closing date and ending with 31 March 2022,
 - (ii) is pensionable service under a Chapter 1 new scheme, and
 - (iii) is not remediable service;”

This amendment enables provision to be made where a teacher has excess teacher service or has service which takes place in the remedy period, is pensionable under a Chapter 1 new scheme, but would not have been pensionable under a Chapter 1 legacy scheme, or under a local government new scheme, if the unlawful discrimination rectified by the Bill had not taken place.

Government amendment 8, in clause 22, page 19, line 20, at end insert—

- “(dd) provision about cases in which a person has a partnership pension account;”

This amendment confers power to enable further provision to be made about cases in which a person has a partnership pension account.

Government amendment 9, in clause 22, page 19, line 20, at end insert—

- “(de) provision about cases in which a person is made redundant;”

This amendment confers power to enable further provision to be made about cases in which a person is made redundant.

Government amendment 10, in clause 22, page 20, line 17, at end insert—

- ““adult survivor”, in relation to a member of a Chapter 1 scheme who has remediable service, means a surviving spouse, civil partner or other adult who is entitled under the scheme to a pension determined (to any extent) by reference to the member’s remediable service;”

This amendment contains a definition required for the amendment of this clause that confers power to enable provision to be made about the benefits payable, where a member dies, in respect of surviving children who do not live in the same household as a surviving adult.

Government amendment 11, in clause 22, page 20, line 19, at end insert—

- ““child”, in relation to a member of a Chapter 1 scheme, means any individual who—
- (a) is entitled to receive benefits under the scheme in their capacity as a child of the member, or
 - (b) would have been entitled to receive benefits under the scheme in that capacity on the assumption that any election under this Chapter was, or was not, made in respect of the member;”

This amendment contains a definition required for the amendment of this clause that confers power to enable provision to be made about the benefits payable, where a member dies, in respect of surviving children who do not live in the same household as a surviving adult.

Government amendment 12, in clause 22, page 20, line 19, at end insert—

- ““made redundant”: a reference to a person being “made redundant” includes, in relation to a member of the armed forces, a person becoming entitled to a redundancy payment under—
- (a) Part 2 of the Armed Forces (Redundancy, Resettlement and Gratuity Earnings Schemes) (No 2) Order 2010 (S.I. 2010/832),

- (b) the Armed Forces Redundancy Scheme Order 2006 (S.I. 2006/55), or
- (c) the Armed Forces Redundancy Scheme Order 2020 (S.I. 2020/1298);”—(*Mr Clarke.*)

This amendment ensures that the power to make provision about cases in which a person is made redundant covers any case in which a member of the armed forces becomes entitled to a redundancy payment under the instruments listed.

Clause 22, as amended, ordered to stand part of the Bill.

Clause 23

POWER TO PAY COMPENSATION

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

The Chair: With this it will be convenient to discuss clauses 24 and 25 stand part.

12.15 pm

Mr Clarke: Clauses 23 to 25 are concerned with ensuring that schemes have further powers to remedy the discrimination that arose. Clause 23 provides a power for scheme managers to pay compensation in respect of any compensatable losses incurred by members as a result of the discrimination suffered. Clause 24 provides a power for scheme regulations to award a member additional benefits where a member has suffered a tax loss because of the discrimination. Finally, clause 25 provides that scheme regulations for a chapter 1 legacy scheme may make provision to give members with remediable service the facility to enter into new arrangements to pay voluntary contributions, to further address the discrimination.

Peter Grant: I have some similar questions to the one that I asked on clause 10, although the wording here is much more specific. I am looking at clause 25(3), where, again, there is a requirement that if someone wants to pay the additional voluntary contributions that they would have paid earlier but for the change in the scheme regulations, they can do so

“only if the scheme manager is satisfied that it is more likely than not”

that they would have chosen to pay them had they known that the change was coming.

I have a few questions for the Minister. First, how do we ensure consistency of treatment if we have scheme members applying to different scheme managers? Perhaps more importantly, what is the route of redress if someone is unhappy with the decision of the scheme manager? Do the Government plan to legislate in order to set out clearly what the redress is in those circumstances, or do members have to fall back on the grievance and dispute procedures that are built into their terms of employment or the terms of individual schemes? That could mean that we get inconsistency when people in similar circumstances put in similar applications, so that one is approved under the rules of one scheme, and one is not approved under the rules of another. That does not deliver the equality of treatment that the Bill is intended to deliver.

Mr Clarke: I thank the hon. Gentleman for his questions. The short answer is that we will use Treasury directions, which involve technical advice to scheme managers, so that we can ensure that the inconsistency to which he alludes is not broken.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Clauses 24 and 25 ordered to stand part of the Bill.

Clause 26

INTEREST AND PROCESS

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

Mr Clarke: Clause 26 provides that scheme regulations may make provision about interest on sums owed to, and by, schemes and the process by which such sums are paid.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Clause 27

TREASURY DIRECTIONS

Mr Clarke: I beg to move amendment 13, in clause 27, page 24, line 20, leave out “given by the Treasury”.

This amendment ensures that the consultation requirement in subsection (4) of this clause applies to directions given under the clause by the Department of Finance in Northern Ireland.

The Chair: With this it will be convenient to discuss Government amendment 14.

Mr Clarke: Clause 27 provides that scheme regulations under clauses 18 to 26 must be exercised in accordance with Treasury directions. Where the Northern Ireland Executive have devolved competence for public service pension schemes, directions for those schemes will be issued by the Department for Finance. That ensures that, where Ministers who are responsible for overall policy on public service pensions consider that a consistent approach is necessary, the relevant Department may give directions to schemes about how these powers are exercised in their scheme regulations, further to my point a moment ago.

Amendments 13 and 14 clarify that the Department of Finance in Northern Ireland must consult the Government Actuary before issuing directions concerning the calculation and payment of interest. The change simply ensures consistency with directions given by the Treasury in respect of Great Britain.

Amendment 13 agreed to.

Amendment made: 14, in clause 27, page 24, line 22, leave out “the Treasury has consulted” and insert “consultation with”.—(*Mr Clarke.*)

This amendment ensures that the consultation requirement in subsection (4) of this clause applies to directions given under the clause by the Department of Finance in Northern Ireland.

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

Clause 28SCHEME RULES THAT PROHIBIT UNAUTHORISED
PAYMENTS

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

Mr Clarke: The purpose of the clause is to override any scheme rules that prevent an unauthorised payment being made where such a payment is permitted or required by the Bill. Treasury directions will specify the type of payments permitted or required.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

REMEDIABLE SERVICE STATEMENTS

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

Mr Clarke: The clause requires schemes to provide members with information about their rights in relation to their remediable service, in the form of a remediable service statement. It is this information that will inform member decisions about whether to elect to receive new scheme benefits or to retain legacy benefits instead, whether to opt for service to be reinstated under clause 5 and whether to opt into remediable arrangements to pay voluntary contributions to a legacy scheme under clause 25. The clause sets out to whom remediable service statements should be provided, what they must include, what they may include and when they must be provided.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

SECTION 61 OF THE EQUALITY ACT 2010 ETC

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

Mr Clarke: The purpose of the clause is to prevent any inconsistency in interpretation or application between section 61 of the Equality Act 2010 and its equivalent in Northern Ireland and the provisions contained in or made under this Bill. The clause ensures that the Bill, rather than section 61 of the 2010 Act, provides a remedy for persons affected by the discrimination. Section 61 ceases to have effect immediately before clause 2(1) of the Bill comes into force.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Clause 31APPLICATION OF CHAPTER TO IMMEDIATE DETRIMENT
CASES

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

The Chair: With this it will be convenient to discuss clause 32 stand part.

Mr Clarke: The clause concerns the application of the Bill to so-called immediate detriment cases. The clause ensures that chapter 1 does not automatically apply where an immediate detriment remedy has been obtained. That prevents duplication of compensation, ensures that the Bill does not override any previous court or tribunal orders and provides powers for the scheme regulations to make provision to correct or top up any aspects of the remedy already provided to ensure consistent and fair treatment.

Clause 32 defines where an immediate detriment remedy has been obtained in relation to a person's remediable service. Persons who meet this definition will have received either a full or a partial remedy for the discrimination identified by a court or a tribunal prior to the Bill and the scheme regulations coming into force in relation to that scheme.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Clause 32 ordered to stand part of the Bill.

Clause 33

MEANING OF "CHAPTER 1 SCHEME" ETC

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

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

Clauses 34 to 37 stand part.

Government amendments 15 to 17.

Clause 38 stand part.

Government amendments 33 and 35.

Mr Clarke: I begin by briefly explaining the clauses that are being amended. Clause 33 defines terms such as "Chapter 1 scheme", "Chapter 1 new scheme" and "Chapter 1 legacy scheme", to ensure a consistent understanding and application by all readers.

Clause 34 defines "new scheme benefits". Where a member has remediable service and they elect to receive new scheme benefits, they are entitled to receive benefits that are the same as those that would have been payable in relation to that service had they been a member of the new scheme. Further, if a member elects to receive new scheme benefits, they will be paid from the legacy scheme.

Clause 35 defines "legacy scheme contributions" and "new scheme contributions". Those terms are defined in relation to a member's remediable service, and are relevant to clauses 15 to 17, which are concerned with the correction of overpaid and underpaid contributions.

Clause 36 defines "opted-out service". An opted-out service is a service that would have been a remediable service under clause 1 but for the fact that the member chose to opt out of it being a pensionable service. The definition of "opted-out service" includes a service that would have been a remediable service but for the fact that the member opted to participate in a partnership pension account instead.

Clause 37 defines "scheme regulations", and provides that it has the same meaning as set out in the Public Service Pensions Act 2013 and the Public Service Pensions Act (Northern Ireland) 2014.

[Mr Simon Clarke]

Clause 38 sets out further definitions for various terms used in chapter 1.

The amendment in this group are principally minor technical changes to move certain definitions to chapter 4 so that they can have effect on the whole of part 1 of the Bill, and can therefore apply to all public service pension schemes. The changes are consequential to the introduction of several amendments relating to the remedy in local government, which I will describe further under chapter 3.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clauses 34 to 37 ordered to stand part of the Bill.

Clause 38

INTERPRETATION OF CHAPTER

Amendments made: 15, in clause 38, page 30, leave out lines 28 to 33.

This amendment moves a definition from this clause to clause 98 so that it applies for the purposes of the whole Part.

16, in clause 38, page 30, line 44, leave out from beginning to end of line 11 on page 31.

This amendment moves some definitions from this clause to clause 98 so that they apply for the purposes of the whole Part.

17, in clause 38, page 31, line 48, leave out “Part” and insert “Chapter”.—(Mr Clarke.)

This amendment confines the scope of the interpretation provision in subsection (2) of clause 38 so that it applies only for the purposes of the Chapter.

Clause 38, as amended, ordered to stand part of the Bill.

Clause 39

MEANING OF “REMEDIABLE SERVICE”

Mr Clarke: I beg to move amendment 18, in clause 39, page 32, line 12, leave out “all of”

This amendment clarifies that service meets the second condition in clause 39 even if it falls within more than one of the paragraphs contained in the condition.

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

Government amendment 19.

Clause stand part.

Mr Clarke: Clause 39 sets out the conditions that members of a judicial scheme must satisfy to be within scope of the remedy and have their pensionable service considered remediable service.

The two minor amendments to clause 39 are simply clarificatory changes to ensure that a service in scope of the remedy is correctly identified. That ensures that all members within the remedy’s scope can be accurately captured.

Amendment 18 agreed to.

Amendment made: 19, in clause 39, page 32, line 17, at end insert—

“The second condition is met if all of the service in question falls within paragraphs (a) and (b) (even if it does not all fall within only one of those paragraphs).”—(Mr Clarke.)

This amendment clarifies that service meets the second condition in clause 39 even if it falls within more than one of the paragraphs contained in the condition.

Clause 39, as amended, ordered to stand part of the Bill.

Clause 40

LEGACY SCHEME ELECTIONS

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

The Chair: With this it will be convenient to discuss clauses 41 to 46 stand part.

12.30 pm

Mr Clarke: Clauses 40 to 46 relate to the judicial options exercise, where judges will elect whether to receive legacy scheme benefits or 2015 scheme benefits for the relevant service. The clauses set out the conditions for making an election, who may make an election, and the effect of making an election. They also make specific provision for judges who have contributed to a partnership pension account.

Question put and agreed to.

Clause 40 accordingly ordered to stand part of the Bill.

Clauses 41 to 46 ordered to stand part of the Bill.

Clause 47

CASES IN WHICH 2015 SCHEME ELECTION TREATED AS MADE

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

The Chair: With this it will be convenient to discuss clauses 48 to 50 stand part.

Mr Clarke: Clauses 47 to 50 deal further with the effects of a judge’s choice of pension scheme, including where pension benefits have already been paid from, or contributions paid to, a different scheme from the one chosen. They also address the entitlement of child pension benefits and provide for a default in certain circumstances where an election is not made.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clauses 48 to 50 ordered to stand part of the Bill.

Clause 51

PENSION BENEFITS AND LUMP SUMS BENEFITS

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

The Chair: With this it will be convenient to discuss clauses 52 to 56 stand part.

Mr Clarke: Clauses 51 to 56 allow for corrections to be made where pension benefits, including lump sums, and contributions have already been paid and as a result a judge owes money to the scheme or is owed money by the scheme. They also make specific provision where certain sums need to be repaid to the judge or the

pension scheme, and provide powers to make provision for a judge's liability to be reduced, waived or recovered by way of reduction in pension benefits.

Question put and agreed to.

Clause 51 accordingly ordered to stand part of the Bill.

Clauses 52 to 56 ordered to stand part of the Bill.

Clause 57

PENSION CREDIT MEMBERS

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

The Chair: With this it will be convenient to discuss clause 58 stand part.

Mr Clarke: Clauses 57 and 58 provide the Ministry of Justice with the power to make provision in relation to pension credit members in the case of divorce, as well as special cases. These clauses are the judicial scheme equivalents of clauses 19 and 22 in chapter 1 of the Bill.

Clause 57 accordingly ordered to stand part of the Bill.

Clause 58 ordered to stand part of the Bill.

Clause 59

POWER TO PAY COMPENSATION

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

The Chair: With this it will be convenient to discuss clause 60 stand part.

Mr Clarke: Clauses 59 and 60 address the matter of compensation, enabling a scheme manager to compensate members for losses they may have incurred as a result of the discrimination. They also provide powers to provide that members may now make voluntary contributions to judicial schemes where they would have done so but for the discrimination.

Question put and agreed to.

Clause 59 accordingly ordered to stand part of the Bill.

Clause 60 ordered to stand part of the Bill.

Clause 61

INTEREST AND PROCESS

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

The Chair: With this it will be convenient to discuss: Government amendments 20 and 21.
Clause 62 stand part.

Mr Clarke: Clauses 61 and 62 allow for judicial schemes to apply interest to amounts owed either to or by members as a result of the remedy. They also address the process for making payments that are owed to the scheme. Amendments 20 and 21 will ensure that the consultation requirement in clause 62(4) applies to directions

given under the clause by the Department of Finance in Northern Ireland. This requires the Department of Finance in Northern Ireland to consult the Government Actuary before issuing directions concerning the calculation and payment of interest. The change ensures consistency with directions given by the Treasury in respect of Great Britain.

Clause 61 accordingly ordered to stand part of the Bill.

Clause 62

TREASURY DIRECTIONS

Amendments made: 20, in clause 62, page 50, line 47, leave out "given by the Treasury".

This amendment ensures that the consultation requirement in subsection (4) of this clause applies to directions given under the clause by the Department of Finance in Northern Ireland.

Amendment 21, in clause 62, page 51, line 1, leave out "the Treasury has consulted" and insert "consultation with".—(*Mr Clarke.*)

This amendment ensures that the consultation requirement in subsection (4) of this clause applies to directions given under the clause by the Department of Finance in Northern Ireland.

Clause 62, as amended, ordered to stand part of the Bill.

Clause 63

SCHEME RULES THAT PROHIBIT UNAUTHORISED PAYMENTS

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

The Chair: With this it will be convenient to discuss clauses 64 to 66 stand part.

Mr Clarke: Clauses 63 to 66 make similar miscellaneous provision as in clauses 28 to 30 in chapter 1. They also ensure that members with remediable service are able to make an informed decision before making their election and enable appropriate delegation to ensure efficient implementation of the options exercise.

Question put and agreed to.

Clause 63 accordingly ordered to stand part of the Bill.

Clauses 64 to 66 ordered to stand part of the Bill.

Clause 67

APPLICATION OF CHAPTER TO IMMEDIATE DETRIMENT CASES

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

The Chair: With this it will be convenient to discuss clause 68 stand part.

Mr Clarke: Clauses 67 and 68 relate to judges who have already had their remedy determined by a court or tribunal or by agreement with the scheme manager. The default position is that these judges are not covered by previous clauses of the Bill. Clauses 67 and 68 therefore provide the power to make provisions mirroring previous clauses in respect of these judges. That is to ensure that they are returned to the position they would have been in had the discrimination not occurred.

Question put and agreed to.

Clause 67 accordingly ordered to stand part of the Bill.

Clause 68 ordered to stand part of the Bill.

Clause 69

MEANING OF “THE ELECTION PERIOD”

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

The Chair: With this it will be convenient to discuss: Clauses 70 to 74 stand part. Government amendment 22. Clauses 75 and 76 stand part.

Mr Clarke: Clauses 69 to 73 define the meanings of various terms used in chapter 2 relating to the judicial schemes. Amendment 22 simply moves a definition from clause 75 to clause 98 so that it applies for the purposes of the whole of part 1 of the Bill.

Question put and agreed to.

Clause 69 accordingly ordered to stand part of the Bill.

Clauses 70 to 74 ordered to stand part of the Bill.

Clause 75

INTERPRETATION OF CHAPTER

Amendment made: 22, in clause 75, page 55, leave out lines 34 to 39.—(*Mr Clarke.*)

This amendment moves a definition from this clause to clause 98 so that it applies for the purposes of the whole Part.

Clause 75, as amended, ordered to stand part of the Bill.

Clause 76 ordered to stand part of the Bill.

Clause 77

MEANING OF “REMEDIABLE SERVICE”

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

The Chair: With this it will be convenient to discuss: Clauses 78 and 79 stand part.

Government new clause 3—*Meaning of “remediable service”.*

Government new clause 4—*Power to pay final salary benefits.*

Government new clause 5—*Section (Power to pay final salary benefits): transitional provision.*

Government new clause 6—*Pension credit members.*

Government new clause 7—*Further powers to make provision about special cases.*

Government new clause 8—*Power to pay compensation.*

Government new clause 9—*Indirect compensation.*

Government new clause 10—*Interest and process.*

Government new clause 11—*Treasury directions.*

Government new clause 12—*Interpretation of Chapter.*

Mr Clarke: This group of amendments relates to chapter 3, concerning the remedy to the discrimination for local government workers. Let me begin by setting out why there are separate provisions in the Bill relating to local government schemes.

In line with the reform processes applied in other parts of the public sector, local government schemes were reformed by the Government following the review undertaken by the Independent Public Service Pensions Commission. In the local government schemes, however, trade unions, employers and the Government agreed to implement transitional protections for members nearing retirement in a different way. Under that approach, all local government scheme members moved to the new and reformed career average schemes from 1 April 2014 in England and Wales and from 1 April 2015 in Scotland and Northern Ireland. That differed from the approach in other public service pension schemes, where protected members stayed in their legacy schemes.

In their reformed schemes, protected local government workers were given the benefit of underpin protection, providing them the value of their legacy final salary pension if that would have been higher than their reformed scheme pension. Following the Court of Appeal’s judgment, which held that transitional protection unlawfully discriminated against younger workers in the judicial and fire schemes, the Government accepted the wider implications that the judgment had for all schemes, including local government.

Policy consultations were undertaken for local government in 2020. Chapter 3 of the Bill provides the necessary powers to address the discrimination in those schemes, which will be done by extending the statutory underpin to younger members who did not originally have protection. The new clauses in this grouping are designed to ensure that a comprehensive remedy is in place for local government workers. The changes include replacements for clauses 77 and 78, which set out the main principles of the remedy as it will apply in local government.

As many of the new clauses are of a technical nature, I will not explain each in detail, but I hope that the Committee will find it helpful if I explain their themes. I will of course be happy to turn to specific new clauses if members of the Committee have any questions. The first theme is to ensure that, where appropriate, there is a consistent approach with other public service pension schemes. The new clauses will therefore provide equivalent powers to those that already exist in respect of the other public service pensions schemes covered in chapter 1. The new clauses cover technical matters, including compensation, special cases and interest payments. They are necessary to ensure that the complexities arising can be addressed robustly across all workforces.

New clause 3, which is a replacement for the existing clause 77, makes an important change to broaden the scope of eligibility for remedy in local government to align it with all other public service schemes. Under the amended approach, members who were in pensionable service on, before or after 31 March 2012 would be in scope of remedy if they leave local government and return within five years, as well as meeting qualifying criteria. The change ensures that, for example, women are not disadvantaged by their increased likelihood of having breaks in employment, which may be due to childcare.

The second theme is to ensure that the powers reflect the particular circumstances of the local government schemes and the differences in how remedy works there. New clause 4, which is a replacement for the existing clause 78, permits scheme regulations to require that

separate periods of pensionable service are aggregated or joined up for underpin protection to apply. That is an important principle in the local government pension scheme, which is locally administered. In England and Wales alone, there are 86 administering authorities. To avoid administrative complexity, established policy is that where scheme members have multiple periods of pensionable service, those are each treated separately unless they are aggregated together. Allowing scheme regulations to require aggregation will ensure that underpin protection can be provided in line with that policy, and that substantial administrative complications in the coming decades are avoided.

New clause 3 also ensures that scheme regulations can reflect another aspect of remedy that is unique to local government schemes. When transitional protections were originally negotiated in the sector, it was agreed that the period of protection should cease when a member reaches their legacy scheme normal pension age, usually 65. In line with the Government's 2020 consultation proposals, it is proposed that that approach is retained, subject to an overall requirement that underpin protection must cease for all members by 31 March 2022. That is crucial to ensure that, going forward, all LGPS members accrue pension on the same career average basis. The amended clause 77 would ensure that underpin protection reflects this policy intent.

The new clauses also make amendments to ensure that the remedy applies correctly to local government staff who were compulsorily transferred from their employer as a result of outsourcing and were entitled to pension protection. That change is consistent with that made in chapter 1, as we discussed earlier. For those members, the time they spent in a private sector pension scheme will not count towards a "disqualifying gap in service", which we discussed earlier, when assessing their eligibility for the remedy.

Turning to the final theme, some clarifying changes have been made to ensure that the Bill works as intended. In particular, new clause 5 sets out transitional arrangements making it clear that existing scheme regulations providing for underpin protection are to be treated as being made under the powers in the Bill. That change ensures that it is clear that the same legislative framework applies to the members originally protected and those who have been subject to the discrimination found by the courts. It means that scheme regulations can fully remove the differences between the two groups.

Finally, clause 79 provides important definitions for the terms "local government new scheme" and "local government legacy scheme" as they are used in chapter 3. They are important to the meaning and effective application of the clauses in the chapter, so I recommend that that clause stands part of the Bill. I hope that my explanations regarding the new clauses, which ensure a full and robust remedy for the local government workforce, have been helpful to the Committee.

Tulip Siddiq: I am grateful for the explanation given by the Minister. We support the changes to the local government pension scheme and the other technical amendments, in particular those that aim to broaden the scope of members' eligibility for the proposed remedy.

Mr Louie French (Old Bexley and Sidcup) (Con): I rise to declare an interest. Although I have no financial interest in the local government pension scheme, I am

still a sitting councillor until May this year, and I sit on the pensions committee. I apologise if I should have made my declaration sooner.

12.45 pm

Matt Rodda: I am grateful to the Minister for expanding on those points. I reiterate the importance of listening to the views of women workers in the public sector. They are obviously a large proportion of workers in the public sector, as he well knows. In particular, with this group of new clauses on the local government pension scheme, it is important for the Government to get that right. I urge him to continue to talk and listen carefully to the relevant unions. I should declare an interest as a member of the GMB, which is one of the relevant unions. I believe there is a great deal of knowledge in the local government profession and in the unions on such matters. Please will the Minister consult widely and listen on the fine detail, to ensure that we get it right for the many workers in local government? It is perhaps worth adding that there are a number of other issues with women's pensions as a whole and a wider context of ensuring that pensions for women are protected and funded properly.

Mr Clarke: I thank the hon. Gentleman for what he said. As a former Minister for Local Government, I absolutely agree with everything he says about the value of local government workers and that women form a disproportionately substantial part of the local government workforce. They make up more than 70% of the scheme's membership, so it is vital that their voice is listened to, and I commit that it will be.

Question put and negatived.

Clause 77 accordingly disagreed to.

Clause 78 disagreed to.

Clause 79 ordered to stand part of the Bill.

Clause 80

RESTRICTION OF EXISTING SCHEMES

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

The Chair: With this it will be convenient to discuss clauses 81 to 83 stand part.

Mr Clarke: Clauses 80 to 83 implement the prospective remedy. First, they close the main unfunded legacy pension schemes to future accrual and ensure that all members who continue in service will do so as members of the reformed schemes from 1 April 2022. Secondly, they close all other existing judicial pension schemes and one scheme for the intelligence agencies from the same date. Finally, they ensure that no new arrangements to pay voluntary contributions to a legacy scheme may be entered into after 31 March 2022.

Question put and agreed to.

Clause 80 accordingly ordered to stand part of the Bill.

Clauses 81 to 83 ordered to stand part of the Bill.

Clause 84

AMENDMENTS RELATING TO SCHEME REGULATIONS

Mr Clarke: I beg to move amendment 25, in clause 84, page 62, line 20, at end insert—

[Mr Simon Clarke]

“(6A) In section 8 of PSPA 2013 (types of scheme), after subsection (4) insert—

(4A) The extent to which a scheme under section 1 is a career average revalued earnings scheme is not affected by provision contained in scheme regulations that is made under section (Power to pay final salary benefits) of PSPJOA 2022 (local government schemes: power to pay final salary benefits).”

This amendment clarifies that the status of local government new schemes as career average revalued earnings schemes is unaffected by provision made under NCA.

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

Government amendment 26.

Clause stand part.

Mr Clarke: The clause allows scheme regulations to be made to make consequential, supplementary, incidental or transitional provision in relation to any provision of part 1 of the Bill. It clarifies the procedural requirements that apply to scheme regulations. Subsections (5) and (6) remove an exception to the requirement for Treasury consent in the making of scheme regulations by a responsible authority related to scheme regulations of the Welsh Ministers for fire and rescue workers. The clause also introduces a delegated power for the Treasury to make future amendments to the exceptions set out in section 3(6) of the Public Service Pensions Act 2013.

Amendment 25 is a technical amendment to section 8 of the Public Service Pensions Act 2013 to ensure it is clear that the remedy for local government schemes provided by the Bill does not affect the local government pension scheme’s status as a career average revalued earnings scheme. Amendment 26 contains an equivalent amendment to the Public Service Pensions Act (Northern Ireland) 2014 regarding the local government pension scheme in Northern Ireland.

Amendment 25 agreed to.

Amendment made: 26, in clause 84, page 63, line 18, at end insert—

“(13A) In section 8 of PSPA(NI) 2014 (types of scheme), after subsection (4) insert—

(4A) The extent to which a scheme under section 1 is a career average revalued earnings scheme is not affected by provision contained in scheme regulations that is made under section (Power to pay final salary benefits) of PSPJOA 2022 (local government schemes: power to pay final salary benefits).”—
(Mr Clarke.)

This amendment clarifies that the status of local government new schemes as career average revalued earnings schemes is unaffected by provision made under NCA.

Question put and agreed to.

Clause 84, as amended, accordingly ordered to stand part of the Bill.

Clause 85

AMENDMENTS RELATING TO THE ESTABLISHMENT OR
RESTRICTION OF SCHEMES

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

Mr Clarke: Clause 85 contains technical provisions relating to the establishment and closure of schemes made under the Public Service Pensions Act 2013 and the Public Service Pensions Act (Northern Ireland) 2014. The clause ensures that the governance and valuation frameworks for public service pension schemes operate correctly when schemes are closed and new ones established.

Question put and agreed to.

Clause 85 accordingly ordered to stand part of the Bill.

Clause 86

AMENDMENTS RELATING TO EMPLOYER COST CAP

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

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

Government new clause 1—*Amendments relating to employer cost cap.*

Government new clause 2—*Operation of employer cost cap in relation to 2016/17 valuation.*

Mr Clarke: The cost control mechanism is designed to ensure a fair balance of risk between public service pension scheme members and taxpayers with respect to the costs of those schemes. Clause 86 would ensure that there are no cuts to member benefits or increases to member contributions as a result of the cost control mechanism at the 2016 valuations. New clauses 1 and 2 are designed to replace and supplement the clause while preserving its existing effect. That goes to the point that I was discussing with the hon. Member for Hampstead and Kilburn at the outset of this morning’s proceedings.

The cost control mechanism was introduced following the recommendations of the Independent Public Service Pensions Commission in 2011. Although the commission recommended a mechanism to protect the Exchequer from increased costs, the Government went a step further and introduced a mechanism that is symmetrical, so also maintains the value of pensions to members when costs fall. At each scheme valuation, the mechanism assesses scheme costs against a base level. If those costs move beyond a certain amount compared with the base level, member benefits or contribution rates must be adjusted to bring costs back to target. All the main reformed public service pension schemes are subject to the cost control mechanism.

The intention was for the mechanism to be triggered only by unforeseen and unpredictable events. In 2018, the Government Actuary was asked to review the mechanism after the provisional results of the 2016 valuations suggested that the mechanism was too volatile and not operating in line with its objectives. The review commenced in 2020 and his final report was published in June 2021. It contained several recommendations on how to improve the mechanism. Following a full public consultation process, the Government confirmed in October last year that it would take forward three reforms to the mechanism in time for the next scheme valuations. All three reforms are recommendations by the Government Actuary.

New clause 1 sets the legislative framework for the implementation of two of those reforms: the reformed scheme only design and the economic check. A reformed

scheme only design means that costs associated with the old legacy schemes are excluded from the mechanism. That will make it more stable and reduce intergenerational unfairness, because comparatively younger members' benefits or contributions will not change based on the cost of legacy schemes to which they had little, or no, access. That transfers the risk associated with legacy scheme costs to the Exchequer, but ensures consistency between the set of benefits being assessed and the set of benefits potentially being adjusted.

The economic check will ensure consistency between member benefit or contribution changes and changes in the wider economic outlook of the country. There will be a higher bar for benefit reductions or contribution increases if the country's long-term economic outlook has improved. That will equally apply to benefit increases or contribution reductions if the long-term economic outlook has worsened. The economic check will therefore operate symmetrically for the benefit of both members and taxpayers. It will operate in a transparent way and be linked to an objective and independent measure of expected long-term earnings and GDP growth from the Office for Budget Responsibility. Given that the economic check can only offset or prevent breaches, not cause them, the likelihood of changes to member benefits or contributions will decline.

As some members of the Committee will know, the Government also consulted on a third proposal to widen what is called the cost corridor, which will be implemented through secondary legislation in due course. That, again, is designed to reduce volatility. All three proposals will make the mechanism more stable and allow it to operate more in line with its objectives, giving members greater certainty with respect to their retirement incomes. The changes also reproduce, with technical changes, some subsections of the clause as it stands.

New clause 2 replaces clause 86 as it stands in the Bill. The change will ensure that there will be no cuts to member benefits or increases to member contribution rates as a result of the 2016 valuations. Again, that goes to the important point that we discussed at the outset—members will not lose out. However, any benefit improvements that are due will be implemented.

Tulip Siddiq: We welcome the proposal in new clause 1 for a reformed scheme only design, which means that the cost of the legacy schemes will no longer be included in the cost control mechanism, but will the Minister provide clarity on a number of points? As he has said, it is a very technical Bill, so please bear with me.

On Second Reading, the Chief Secretary to the Treasury stated the Government's intention to introduce secondary legislation in due course to widen the margin of the cost corridor from 2% to 3% of pensionable pay. Labour broadly supports that, and I recognise that it aims to provide greater certainty for members and the taxpayer, but, were the cost corridor to be widened to 3%, any upward breach of the CCM might potentially have a larger impact on members, as I am sure he recognises. Will he be willing to commit to publishing impact assessments of the proposed changes to the cost corridor for each public service scheme, to evaluate how members would be affected? Additionally, will the Minister confirm what mechanisms are to be put in place to monitor potential breaches of the cost corridor in the scheme, to ensure that members are given advance notice of possible changes in the value of their benefits?

We have far more serious concerns about new clause 2, which introduces a symmetrical economic check to the cost control mechanism. We object to such a scheme being introduced at such a late stage. It appears as if Ministers are making last-minute amendments to steamroller controversial elements of the Bill through without proper scrutiny. I want reassurance from the Minister that that is definitely not the case.

1 pm

I will outline our main concerns about new clause 2. First, the Government's proposal for an economic check appears to breach the 25-year guarantee given to employees by the Treasury in November 2011, as well as explicit promises made to the trade unions in 2012 that public sector employers would meet any costs arising from changes to long-term economic assumptions. The Bill should aim to restore the faith of public servants in their pension scheme following the Government's £17 billion mistake in 2014. That has been echoed in Committee.

Instead, I fear that Ministers risk further undermining trust between the Government and public sector employees by ignoring the assurances given to public servants and their union representatives. The TUC, the National Education Union and PRS have all warned that the proposals unfairly penalise pension scheme members for lower than expected pay increases due to the public sector pay freeze and for the reduction in the expected growth of life expectancy.

In practice, that would likely prevent any improvement to public service pension schemes if costs fell below the cost control mechanism, as the Government would define such an outcome as perverse. However, the Government would be unlikely to view the opposite situation as perverse—where an upward breach of the cost control mechanism results in lower member benefits, coupled with a corresponding fall in employer contributions. The proposals appear to be one-sided and unfair. Will the Minister comment?

Finally, Labour Members are also concerned that the economic check is insufficiently transparent and provides too much room for ministerial interpretation of long-term economic assumptions, which could risk politicising the mechanism. I sincerely believe that the Government should rethink their approach to the economic check. We are opposed new clause 2 as it stands, and I will press it to a vote.

Peter Grant: I share a lot of the concerns that have just been expressed so eloquently from the Labour Front Bench. I have a couple of other issues with what is in the new clauses; perhaps the Minister will explain.

I understand why the Government want to build in growth in the economy, but at the same time I agree fully with the concerns expressed by the official Opposition. In new clause 1, in what circumstances does the Minister envisage

“or any sector of the economy”

becoming relevant? In which particular sectors of the economy does he think that growth will be particularly relevant to local government or other public sector pensions?

The provision goes on,

“the growth in the economy...of the United Kingdom or any part of the United Kingdom”.

[Peter Grant]

Who takes the decision that the economic performance of one particular part of the United Kingdom is relevant to a particular pension scheme or to all pension schemes? What do we mean by a “part” of the United Kingdom? Is that simply the four constituent nations? Can it be influenced more by the economy in London than the economy in Yorkshire?

As the hon. Member for Hampstead and Kilburn mentioned a minute ago, the Bill will be far too vague at this point. It will put far too much power into the hands of, presumably, Ministers. There is no guarantee of any accountability or transparency as to the way this is operated. For that reason, my understanding is that a number of unions, although they support the intention behind new clause 1 in its entirety—I am struggling over whether to oppose the entire new clause, as I want to see a lot of stuff in there in the Bill—have significant concerns about that particular part of the economic check. If I were not opposing the new clause, I would be minded to table a more significant amendment at a later stage in proceedings. Will the Minister explain when he envisages a particular sector of the UK economy to be relevant, and when he expects that to be the economy in a particular part of the United Kingdom?

Finally, the Minister was keen to tell us what the unions had said about the previous transition arrangements. Will he tell us what the unions are saying about the economic check in this part of the Bill? Will he explain why he listened to the unions previously, but does not seem to be listening to them now?

Matt Rodda: I rise to support my hon. Friend the Member for Hampstead and Kilburn. She is making an excellent point, and I am glad that she will press for a vote. The issue here relates to the need for transparency and trust, and the Government must reassure worried public servants, who have worked hard and have every right to expect a decent pension and retirement, that there is no sleight of hand here.

One of the three issues the Minister mentioned is to be dealt with in regulations, and the other two are on the face of the Bill. I would like him to reassure the Committee about the nature of those regulations, how they will be dealt with by the House and when they will be brought forward. I also remind him of the views of the independent Public Accounts Committee, which urged the Government to take the matter seriously, saying that the Government should

“quickly resolve the challenges presented by the McCloud judgment and cost control mechanism”

and that that was important to rebuild trust. I hope the Minister will consider the PAC’s thoughtful advice on this matter.

Mr Clarke: I thank all Members for their contributions, which I will take in turn. I hope to provide significant reassurance.

On the point that the hon. Member for Hampstead and Kilburn made about the widening of the cost corridor, the Government published a full impact evaluation as part of the consultation response on 4 October 2021, so that detail is available and is modelled.

To the point of the hon. Member for Reading East just now, the cost corridor is being addressed in regulations because the current 2% corridor exists under current powers, so we are simply amending 2% to 3% and do not need to introduce anything new.

As for the 25-year guarantee and the assurances given when the pension reforms were first introduced, the Government do not believe that the reforms breach that guarantee. The elements protected by the guarantee are set out in legislation and the cost control mechanism is not included among them. The Government are making these changes following an independent and thorough review of the mechanism by the Government Actuary’s Department and a full and open consultation process. As the GAD’s report makes clear, it does not seem possible for the mechanism to protect the taxpayer unless it considers the wider economic outlook, and the symmetrical operation of the economic check acts to protect members as well as the taxpayer.

The reforms will fundamentally lead to a more stable mechanism, with both benefit reductions and improvements becoming less likely. That aligns with the spirit of the guarantee which, as the hon. Member for Hampstead and Kilburn quite rightly said, is all about certainty. There is absolute conviction that that is in everyone’s interest including, most importantly, scheme members.

As for how the situation is assessed and to the point of the hon. Member for Glenrothes about how we manage the long-term GDP expectation, the check will be linked to the Office for Budget Responsibility’s independent and objective measure of expected long-term GDP growth and the long-term earnings assumptions. The check will operate purely mechanically with no scope for interference from individuals or groups from within Government or outside. It will be an independent, objectively assessed measure by the OBR. There is no sense in which any Minister from whatever party is in government at whatever time would have the ability to intervene in that process. I hope that provides reassurance on all those points.

Tulip Siddiq: I thank the Minister for that explanation. Is there an impact assessment for each scheme?

Mr Clarke: We have modelled the full detail. In so far as there is any particular point of clarification that the hon. Lady would like, I will happily write to her after these proceedings to provide whatever we can.

Peter Grant: Will the Minister clarify something about the other part of my question? Who will decide whether the appropriate measure to use is the growth in the economy of the entire UK, the growth of the economy of one sector, or the growth in the economy of one nation or region? Is that decision within the remit of the OBR?

Mr Clarke: It is the OBR’s decision to make.

Question put and negatived.

Clause 86 accordingly disagreed to.

Clause 87AMENDMENTS RELATING TO THE SECRET INTELLIGENCE
SERVICE ETC

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

Mr Clarke: Clause 87 amends the Public Service Pensions Act 2013 to reflect that the secret intelligence service and security service pension schemes have a closing date of 31 March 2016, rather than 2015, as in the other schemes. It also amends the 2013 Act to provide that the schemes are public service pension schemes, not public body pension schemes, and are therefore subject to the provisions of the Bill.

Question put and agreed to.

Clause 87 accordingly ordered to stand part of the Bill.

Clause 88

AMENDMENTS RELATING TO THE JUDICIARY

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

Mr Clarke: The clause concerns the addition of judicial offices to the judicial pension scheme. It allows the Secretary of State for Scotland or the Lord Chancellor, as appropriate, to add a devolved judicial office holder to the new, reformed judicial pension scheme in response to a request from Scottish Ministers or the Department of Justice. It also enables past service to be taken into account when new offices are added to the scheme.

Question put and agreed to.

Clause 88 accordingly ordered to stand part of the Bill.

Clause 89

AMENDMENTS RELATING TO NON-SCHEME BENEFITS

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

The Chair: With this it will be convenient to discuss Government new clause 13—*Amendments relating to pension schemes for members of the Senedd.*

Mr Clarke: New clause 13 relates to pension schemes for Members of the Senedd. It removes the requirement for Treasury consent to be obtained before a new scheme can be provided or an existing scheme can be modified. It also removes the requirements of the Public Service Pensions Act 2013 concerning scheme valuations and an employer cost cap from the Senedd scheme. The change is made to reflect the fact that pensions for Members of the Senedd is now a devolved matter for Wales.

The purpose of clause 89 is to clarify existing legislation with regards to eligibility rules of non-scheme benefits. It is an important policy objective that a responsible authority may not pay non-scheme benefits to persons who fall outside the description of eligible persons without prior Treasury consent.

Question put and agreed to.

Clause 89 accordingly ordered to stand part of the Bill.

Clause 90POWER OF TREASURY TO MAKE SCHEME FOR
COMPENSATION

Mr Clarke: I beg to move amendment 27, in clause 90, page 72, line 16, at end insert—

“, or

- (c) a compensatable loss for the purposes of section (Power to pay compensation) (power to pay compensation under Chapter 3).”

This amendment ensures that the Treasury’s power to make a compensation scheme under clause 91 covers compensation payable in respect of local government schemes.

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

Government amendments 28 and 29.

Clause stand part.

Government amendments 30 to 32.

Clause 91 stand part.

Mr Clarke: Clause 90 allows the Government to make regulations to create a compensation scheme in relation to any compensatable losses incurred by relevant members. Clause 85 provides equivalent powers to the Department of Finance in Northern Ireland. Clause 91 provides powers for the Department of Finance in Northern Ireland to create a compensation scheme to make payments under clauses 23 or 59. The provision is equivalent to that made in clause 84.

The amendments in this group are technical and ensure that the powers to create compensation schemes in clauses 90 and 91 could extend to the local government schemes, if considered necessary or desirable to do so.

Amendment 27 agreed to.

Amendments made: 28, in clause 90, page 72, line 22, at end insert—

‘, or

- (c) a member of a local government new scheme within section 79(2)(a) who has remediable service that is pensionable service under the scheme.’

This amendment ensures that the Treasury’s power to make a compensation scheme under clause 90 covers compensation payable in respect of local government schemes.

Amendment 29, in clause 90, page 72, line 27, at end insert—

- ‘(c) in paragraph (c), “local government new scheme” and “remediable service” have the same meaning as in Chapter 3.’—(*Mr Clarke.*)

This amendment ensures that the Treasury’s power to make a compensation scheme under clause 90 covers compensation payable in respect of local government schemes.

Clause 90, as amended, ordered to stand part of the Bill.

1.15 pm

Clause 91POWER OF DEPARTMENT OF FINANCE TO MAKE SCHEME
FOR COMPENSATION

Amendments made: 30, in clause 91, page 73, line 11, at end insert—

“, or

- (c) a compensatable loss for the purposes of section (Power to pay compensation) (power to pay compensation under Chapter 3).”

This amendment ensures that the power of the Department of Finance in Northern Ireland to make a compensation scheme under clause 91 covers compensation payable in respect of local government schemes.

Amendment 31, in clause 91, page 73, line 17, at end insert—

“, or

- (c) a member of a local government new scheme within section 79(2)(b) who has remediable service that is pensionable service under the scheme.”

This amendment ensures that the power of the Department of Finance in Northern Ireland to make a compensation scheme under clause 91 covers compensation payable in respect of local government schemes.

Amendment 32, in clause 91, page 73, line 22, at end insert—

- “(c) in paragraph (c), ‘local government new scheme’ and ‘remediable service’ have the same meaning as in Chapter 3.”—(*Mr Clarke.*)

This amendment ensures that the power of the Department of Finance in Northern Ireland to make a compensation scheme under clause 91 covers compensation payable in respect of local government schemes.

Clause 91, as amended, ordered to stand part of the Bill.

Clause 92

POWER TO MAKE PROVISION IN RELATION TO CERTAIN
FEE-PAID JUDGES

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

Mr Clarke: Clause 92 provides the power for scheme regulations to make provisions in relation to certain fee-paid judges who are not McCloud judges but whom it is accepted should have service in the legacy schemes from April 2015. To return them to the position that they should have been in, the provisions will mirror, where possible, the provision for the retrospective judicial remedy in part 1, chapter 2 of the Bill.

Question put and agreed to.

Clause 92 accordingly ordered to stand part of the Bill.

Clause 93

HMRC INFORMATION-SHARING AND OTHER
FUNCTIONS RELATING TO COMPENSATION ETC

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

Mr Clarke: The purpose of clause 93 is to provide a new function enabling HMRC, or anyone acting on its behalf, to exchange information with a relevant person for the purpose of facilitating the exercise of any compensation function, or to do anything else that HMRC thinks necessary or expedient for that purpose. It also extends the criminal offence of wrongful disclosure that applies to confidential taxpayer information to any such information that HMRC provides under the clause.

Question put and agreed to.

Clause 93 accordingly ordered to stand part of the Bill.

Clause 94

SECTION 91 OF PENSIONS ACT 1995 AND SECTION 356
OF ARMED FORCES ACT 2006

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

Mr Clarke: Clause 94 disapplies section 91 of the Pensions Act 1995 and article 89 of the Pensions (Northern Ireland) Order 1995 to ensure that benefits in relation to a partnership pension may be surrendered where a member makes an election under clauses 5 or 41. It also clarifies that section 356 of the Armed Forces Act 2006 does not apply to anything done under this part of the Bill.

Question put and agreed to.

Clause 94 accordingly ordered to stand part of the Bill.

Clause 95

MINOR AMENDMENT

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

Mr Clarke: Clause 95 corrects a minor error in a section of the Judicial Pensions and Retirement Act 1993 pertaining to ill-health retirement benefits.

Question put and agreed to.

Clause 95 accordingly ordered to stand part of the Bill.

Clause 96

POWER TO MAKE CONSEQUENTIAL PROVISION

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

Mr Clarke: Clause 96 provides Treasury ministers with the power to make regulations that amend, repeal, revoke or modify other statutes where the need to do so is consequential on provision made by the Bill. Where such regulations affect primary legislation, including devolved legislation, they will be subject to the affirmative procedure. Any amendments to or repeals or revocations of secondary legislation are subject to the negative procedure.

Question put and agreed to.

Clause 96 accordingly ordered to stand part of the Bill.

Clause 97

MEANING OF “MEMBER” ETC

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

The Chair: With this it will be convenient to discuss clause 98 stand part.

Mr Clarke: Clause 97 defines the terms “member”, “active member”, “pensioner member” and “deferred member” in part 1 of the Bill.

Clause 98, entitled “Interpretation of Part”, provides definitions for terms used in the Bill.

Question put and agreed to.

Clause 97 accordingly ordered to stand part of the Bill.

Clause 98

INTERPRETATION OF PART

Amendments made: 33, in clause 98, page 77, line 15, at end insert—

“‘connected’ means—

- (a) connected within the meaning of PSPA 2013 (see section 4(6) and (7) of that Act), or
- (b) connected within the meaning of PSPA(NI) 2014 (see section 4(6) and (7) of that Act);”

This amendment defines “connected” for the purposes of the whole of Part 1 of the Bill.

Amendment 34, in clause 98, page 77, line 48, at end insert—

“‘excess teacher service’ has the meaning given by subsection (2)”

This amendment refers to the definition of “excess teacher service” inserted into subsection (2) of this clause by separate government amendment.

Amendment 35, in clause 98, page 77, line 49, at end insert—

“‘Fair Deal scheme’ means—

- (a) a pension scheme that, in accordance with the Fair Deal Statement of Practice, has been certified by the Government Actuary’s Department as offering, to persons who have been subject to a Fair Deal transfer, pension arrangements that are broadly comparable with those offered to them before the transfer, or
- (b) a pension scheme in relation to which the obligation to give such a certificate has been waived in accordance with that statement of practice;

‘Fair Deal Statement of Practice’ means the statement of practice entitled “Staff Transfers in the Public Sector” issued by the Cabinet Office in January 2000, as supplemented and modified from time to time;

‘Fair Deal transfer’ means a transfer of a person’s employment from a public sector employer to a private sector employer in accordance with the Fair Deal Statement of Practice;”

This amendment moves some definitions from clause 38 to this clause so that they apply for the purposes of the whole Part.

Amendment 36, in clause 98, page 78, line 7, at end insert—

“‘local government contracting-out transfer’ means a transfer of a person’s employment that was

required to be conducted—

- (a) in accordance with directions given, and having regard to guidance issued, for the purposes of section 101(1) of the Local Government Act 2003 (contracting out: staff transfer matters), or
- (b) having regard to guidance issued for the purposes of section 52 of the Local Government in Scotland Act 2003 (asp 1) (guidance on contractual matters);”

This amendment defines “local government contracting-out transfer”. This is an expression used in government amendments of clause 1 and NC3.

Amendment 37, in clause 98, page 79, line 14, at end insert—

“‘teacher’ means teacher within the meaning of PSPA 2013 (see paragraph 4 of Schedule 1 to that Act) or PSPA(NI) 2014 (see paragraph 4 of Schedule 1 to that Act);”

This amendment defines “teacher” for the purposes of Part 1. This is required for other government amendments.

Amendment 38, in clause 98, page 79, line 21, at end insert—

“(2) In this Part ‘excess teacher service’ means a person’s service in an employment or office as a teacher where (disregarding section 2(1))—

- (a) the service is pensionable service under a local government new scheme, or
- (b) the service—
 - (i) is pensionable service under a Chapter 1 new scheme for teachers, and
 - (ii) would have been pensionable service under a local government new scheme but for the person’s failure to meet a condition relating to the person’s attainment of normal pension age, or another specified age, by a specified date.

Service in an employment or office is ‘excess teacher service’ if all of the service falls within paragraphs (a) and (b) (even if it does not all fall within only one of those paragraphs).

(3) In subsection (2)—

‘Chapter 1 new scheme’ has the same meaning as in Chapter 1;

‘local government new scheme’ has the same meaning as in Chapter 3.”—(*Mr Clarke.*)

This amendment defines “excess teacher service”. This is service as a teacher which is in excess of the maximum that could be accrued under the teachers’ Chapter 1 legacy scheme, but where the service is (or, in certain circumstances would have been) pensionable under a local government new scheme.

Clause 98, as amended, ordered to stand part of the Bill.

1.21 pm

Ordered, That further consideration be now adjourned.—(Alan Mak.)

Adjourned till this day at Two o’clock.

