Committee for Social Development

OFFICIAL REPORT (Hansard)

Pensions Bill: Departmental Briefing

25 November 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Mr Jim Allister
Ms Paula Bradley
Mr Maurice Devenney
Mr Stewart Dickson
Mr Fra McCann
Mr Sammy Wilson

Witnesses:

Mr Seamus Cassidy	Department for Social Development
Mr Gerry McCann	Department for Social Development
Ms Libby McIlwaine	Department for Social Development
Ms Doreen Roy	Department for Social Development

The Chairperson (Mr Maskey): Gerry McCann and Seamus Cassidy from the Department for Social Development (DSD) are here this morning to lead the briefing. Anne McCleary has had to attend another meeting but will join Gerry and Seamus in due course. Other officials may join as required. Members will have an opportunity to put questions to the Department on each clause. If any questions occur to members following the briefing, Committee staff will be very happy to follow that up in writing. The officials are here to get through as much of the Bill as possible. We could book the room only until 12.30 pm, so we will not be able to go beyond that time. The officials will be able to return at subsequent Tuesday meetings to cover the remaining Parts of the Bill if necessary.

I formally welcome Gerry, Seamus and Libby. I remind members that NIPSA will be here next week to provide its briefing. Gerry, it is over to you.

Mr Gerry McCann (Department for Social Development): Good morning, everybody. We aim to work our way through the Bill. Seamus will take Part 1 and give you a brief outline of the clauses. If at the end of each clause you have any issues that you wish to raise or to ask us about, we will be happy to try to answer them.

Mr Seamus Cassidy (Department for Social Development): Good morning, Mr Chairman. Members will be aware that the Pensions Bill poses changes to the state pension, private pension provision and bereavement benefits. Part 1 deals with the state pension.

Clause 1, "State pension", creates a new benefit — the state pension — for people who reach state pension age from 6 April 2016. A person reaching state pensionable age before 6 April 2016 will not be entitled to the new pension but may be entitled to benefits under the existing rules.

Clause 2, "Entitlement to state pension at full or reduced rate", sets out the basic entitlement conditions under the new scheme. To be entitled to a state pension at the full rate, a person must have reached pensionable age and have 35 or more qualifying years. State pension entitlement will be paid on a pro rata basis when a person has qualifying years between the minimum and maximum levels. The minimum number of qualifying years will be set by regulations but will not be more than 10 years. The clause also defines "qualifying year" as:

> *"a tax year, during a person's working life, in which the person's earnings factor ... is equal to or greater than the qualifying earnings factor for the year."*

For a qualifying year, a person will need to have paid and been credited with contributions or earnings equal to 52 times the lower earnings level in that given year. The qualifying earnings factor in 2014-15 was about £5,772 in order for that year to count for state pension purposes.

Clause 3, "Full and reduced rates of state pension", provides that the full rate of state pension will be specified in regulations, which will be subject to the confirmatory procedure and require Assembly approval. Once set, the rate cannot be reduced. The clause sets out that the reduced rate of state pension is one thirty-fifth of the full rate multiplied by the number of qualifying years that an individual has accumulated. That, of course, is subject to the minimum qualifying rule of 10 years.

Clause 4, "Entitlement to state pension at transitional rate", provides for a transitional rate of the new state pension and sets out the conditions that a person must satisfy to be entitled to it. A person must have reached state pension age, have more than the minimum number of qualifying years and have at least one pre-commencement qualifying year — that is, a year post 6 April 1978 and before 6 April 2016.

The Chairperson (Mr Maskey): Seamus, I do not want to interrupt your flow, but you have gone straight into the clauses. For my information, is it possible to get a brief synopsis of what the Bill is about? Gerry, you did that, but only very briefly.

Mr Cassidy: As I stated, and as you said, it is a mixed bag. There are changes to the state pension, private pension provision and bereavement benefits. Specifically, the Bill will introduce a new state pension, and a number of consequential matters are attached to that. There will be an option for people to boost their state pension under the existing rules. That will be people who do not qualify for the higher new state pension. The Bill will also deal with accelerating the increase in state pension age to 67. The Committee has previously dealt with the increase to the age of 66, so this is a further step in that direction. It will also phase out the assessed income period for state pension credit and will introduce the new bereavement support payment to replace current bereavement benefits. There are also a number of changes to private pension provision. Is that sufficient, Mr Chairman?

The Chairperson (Mr Maskey): Maybe you could give us a flavour of what are described as the negative and the positive implications?

Mr Cassidy: The positive aspects of the new state pension will, of course, include the fact that it will be set at a level that is higher than current means-tested benefits. There are some negatives, in that the number of qualifying years will increase from 30 to 35, and there will be a minimum of 10 years for a person to qualify for any state pension whatsoever under the rules.

The Chairperson (Mr Maskey): Thank you. Mickey.

Mr Cassidy: The option to boost the additional state pension is —

Mr Brady: Sorry, Seamus, is it set higher than the —

Mr Cassidy: Pension credit level?

Mr Brady: Yes. Obviously, with pension credit, there are fringe benefits. Does that mean that, if you are slightly above the pension credit level that would have existed, there will be no fringe benefits accruing to your state pension?

Mr Cassidy: What it will mean in most cases is that people will have to apply for things like housing benefit. There will be no automatic passport through to it.

Mr Brady: Presumably, pension credit is to supplement a low income. You are talking about it being slightly higher than the existing benefit, which is at subsistence level. So it will be slightly higher than subsistence level, but people may then lose the fringe benefits that currently accrue to pension credit?

Mr G McCann: We do not expect anybody to lose any of those fringe benefits. It is just as Seamus says. As opposed to people moving straight onto those, they would have to put in an application form for the likes of housing benefit.

Mr Brady: So the obligation will be on the claimant?

Mr G McCann: Again, once people claim their various benefits, they are also told that they can get other benefits and, if they wish to claim, how to do it.

Mr Brady: When people were on benefit, they automatically qualified for a rate rebate. It was then introduced that people had to apply, and loads of them were losing out because they simply assumed that, because they were on benefit, they automatically got it. There would need to be a campaign to ensure that people are made aware of that.

Mr G McCann: On that general issue, our colleagues in the Social Security Agency (SSA) will be doing a very extensive communications campaign. If you might find it helpful, I am sure that they would be happy to come before the Committee to advise as to how that will be done.

Mr Brady: It is a big issue for people.

Mr G McCann: There will be a very long and staged campaign.

Mr Brady: Even today, they are dealing with people who assume that they will get a rate rebate. Those people then receive a bill and cannot understand that, because they are on income support.

Mr G McCann: Under the new scheme, our aim is that everybody will be on £148·40. I am using that figure as an example; it is above the pension credit level. Therefore, we could not just move all those people straight onto housing benefit, because most of them would not be entitled to it. If you want us to arrange for somebody to brief the Committee about the communications strategy, we are very happy to do so.

Mr Brady: I think that that might be helpful.

Mr Wilson: The other side of the coin is that, given that a large number of people could currently be claiming pension credit but are not doing so, by taking the basic pension up above pension credit level, there is no need for people to apply for pension credit.

Mr G McCann: That is very true. I know this from my own mother: I could not get her to claim state pension credit. She just would not do it. She asked, "Why would I have to give in my bank book?"

Mr Brady: Almost £2 million a week — £1·9 million — is unclaimed in pension credit. That money goes back to the Treasury; it does not come back to the Executive.

Mr Wilson: The benefit of some of the changes is that people are automatically put on a level that they would have been put on had they applied for pension credit, so there is no need for that.

Mr Brady: That is an optimistic use of the word "benefit".

Mr G McCann: Our colleagues in the SSA have had to do quite a bit of work to try to help people who claim state pension credit. There is a lot of work going on there as well.

Mr Cassidy: The uptake programme has been operating since about 2005, and it is estimated that an additional £50 million has been spent to date on some 15,000 older people.

Mr Wilson: What is that figure again?

Mr Cassidy: It is about £50 million additional since 2005, benefiting about 15,500 people. The programme is already running for this year, with a target of about 25,000 older people.

The Chairperson (Mr Maskey): Thanks for that. Let us get back to our clauses.

Mr Cassidy: I will start where we finished.

The Chairperson (Mr Maskey): Please do, Seamus.

Mr Cassidy: Clause 3, "Full and reduced rates of state pension", provides for the full rate of state pension as specified in regulations, and, once the rate is set, it cannot be reduced. The clause sets out that the reduced rate of state pension is one thirty-fifth of the full rate, multiplied by the number of qualifying years that an individual has accumulated. Again, that is subject to the minimum qualifying time of 10 years.

Clause 4, "Entitlement to state pension at transitional rate", provides for a transitional rate of the new state pension. It sets out the conditions that a person must satisfy to be entitled to it. The person must have reached state pension age, have the minimum number of qualifying years and have at least one pre-commencement qualifying year — that is, post 6 April 1978 and before 6 April 2016. If a person is entitled to state pension at the transitional rate, he or she will not be entitled to a new state pension under clause 2. The clause provides that the minimum number of qualifying years will be set by regulations but will not be more than 10 years. Pre-1978 reckonable years will count towards meeting the minimum qualifying period and pre-commencement qualifying year requirement. Transitional rate calculations are set out in schedule 1 in detail to ensure that nobody will get a state pension lower than the value of their National Insurance record in the existing scheme, subject to meeting the qualifying period requirement.

Clause 5, "Transitional rate of state pension", complements clause 4 and sets out the basic calculation of the transitional rate of state pension and cross-refers to other provisions in the Bill with which it interacts. When the foundation amount is more than the full new state pension amount, the excess is paid as an additional component through the transitional rate, and that is known as the "protected payment". When the foundation amount is less than the full new state pension amount, post-commencement qualifying years count towards the transitional rate up to the full new state pension amount. The transitional rate is to be operated under the applicable paragraph of schedule 2, and the amount corresponding to the full rate of the new state pension will be upgraded in line with earnings. Any excess will be upgraded in line with prices.

Clause 6, "Recalculation and backdating of transitional rate in special cases", is a technical provision that enables the transitional rate of state pension to be adjusted after the person reaches state pension age and reflects backdated changes made to a person's National Insurance record. It applies when a person's employer has paid the state pension premium to reinstate a person's additional pension in lieu of private pension benefits, and they were contracted out for a short period. To ensure that the valuation is correct, clause 6 enables the transitional rate of the new state pension to be recalculated and backdated when a premium has been paid. Without this clause, the transitional rate of the new state pension may be undervalued, as amounts are deducted to reflect periods of contracting out.

Clause 7, "Survivor’s pension based on inheritance of additional old state pension", makes transitional arrangements for the inheritance of a deceased spouse's or civil partner's current scheme additional pension. A person is entitled to a survivor's pension based on inheritance of an additional old state scheme, if they have reached state pension age, their spouse or civil partner died when they were still married or in a civil partnership, and they are entitled to an inherited amount under schedule 3, based on the deceased spouse's or civil partner's additional pension entitlement. The state pension under this clause is payable at a rate equal to the inherited amount and is to be upgraded in accordance with

schedule 4. The clause provides for a regulation-making power to set an upper limit to the total amount of a survivor's own state pension plus their inherited state pension.

Clause 8, "Choice of lump sum or survivor's pension under section 9 in certain cases", sets out the qualifying conditions for the clause to inherit either a lump sum or a survivor's pension from a late spouse or civil partner when the deceased had deferred their old scheme state pension, and it provides for the calculation of the lump sum.

Mr Brady: Seamus, could a person have a lump sum or a pension?

Mr G McCann: In the deferral?

Mr Brady: People would have to calculate how long they were going to live to see whether they would benefit more from a lump sum.

Mr G McCann: It is for people who, under the old scheme, have not taken their pension. At the moment, you can opt either to take a lump sum payment or to have extra pension every week. All the clause is doing is to carry that forward.

Mr Brady: However, it is the same principle. People would have to decide —

Mr G McCann: It is the same principle. Some people will want the lump sum. Other people, for tax purposes, might not want a lump sum paid to them in one year, so they would opt for extra pension.

Mr Cassidy: Clause 9, "Survivor's pension based on inheritance of deferred old state pension", follows on from clause 8 and replicates the existing legislation by setting out the qualifying conditions for inheritance of a survivor's pension from their late spouse or civil partner when the deceased had deferred their old scheme pension. Under this clause, the state pension is payable at a rate equal to the inherited amount and will be operated in line with prices as now. The clause provides that a person may be entitled to inherit more than one pension under these provisions. It also sets out that there are other provisions that may affect the entitlement to an inheriting increment — for example, under clause 19 where prisoners are concerned.

Clause 10, "Inheritance of graduated retirement benefit", provides for a regulation-making power that will set out the circumstances in which a new state pension recipient may inherit entitlement to a graduated retirement benefit, including a deferral sum from their late spouse or civil partner who had accrued entitlement under the old scheme. This replicates existing legislation for the old state scheme, in particular the power to amend the clause by regulations.

Regulations may provide for the surviving spouse or civil partner to exercise a choice of inherited payment when the deceased has built up entitlement to a lump sum payment or an increment under the old scheme. In the current system, regulations provide for a person to inherit half their late spouse's or civil partner's graduated retirement benefit. The intention is to use the regulation-making power to replicate the effect of the transitional arrangements for mainstream inheritance as provided for under clause 7 and schedule 3. In other words, when the spouse is in the current system, the survivor will still be able to inherit half their graduated retirement benefit provided, as with the main transitional arrangements, the marriage predated 2016. When the spouse is also in a new state pension system, their graduated retirement benefit will form part of the current system evaluation and will be subsumed in their new state pension. A survivor will inherit half of any protected payment.

Clause 11, "Reduced rate elections: effect on section 4 pensions", provides transitional arrangements to address the impact of abolishing deferred entitlement to a basic state pension on women who opted to pay the married woman's stamp — that is, the reduced rate National Insurance contributions. The provision is made for women with reduced rate election current at 35 years before pensionable age and subsequently had qualifying years before A day, and, therefore, they have some entitlement under clause 4. A minimum qualifying period does not apply, and a woman who qualifies will get at least additional pension plus category BL, if married, or category A.

Mr Wilson: What does that mean?

Mr G McCann: It means that they will be able to get an amount that is equal to what they would have got under the old system. Category BL is the rate that is paid to a spouse based on what had been

paid by their spouse. It is currently payable at about £67·60 a week. If the spouse is dead, a higher rate of £113·10 is payable.

Mr Cassidy: Clause 12, "Reduced rate elections: pension for women with no section 4 pension", provides transitional arrangements for women with a reduced rate election in force within 35 years of reaching pension age but with no pre-commencement qualifying years.

Mr Brady: Is the reduced rate election anything to do with what used to be called the small stamp?

Mr G McCann: Yes. It is before 1977. It applied to a married woman, who could opt to pay a small stamp.

Mr Brady: The idea was that that would go towards a pension for women who stopped work to have a family. Is that a different thing?

Mr G McCann: It was linked to the idea that, at that stage, the woman would be able to get a pension based on what her spouse had paid.

Mr Brady: So the small stamp is taken into account.

Mr G McCann: It meant that the woman did not earn any rights to pension at all, which is why we are now making special provision for it.

Mr Brady: I think that that changed in 1973.

Mr G McCann: Women could opt for that up to 1977, and, after that time, they could not. Any woman who was caught in that situation had to have made the option before 1977.

Mr Cassidy: In essence, the conditions in the title mimic the current rules. Therefore, if a woman is married or has a civil partner, her pension is payable at category BL rate. If she is divorced or widowed before pensionable age or a marriage or civil partnership ends after pensionable age, it is payable at category A rate, which is £113·10. The only difference is that the basic amount will not directly depend on the husband's National Insurance record. Instead, in the interests of simplicity, it will be standardised at the full rate. Most men will have a full record by 2016 anyway. If a woman has any qualifying years for the period between A day, when she reaches state pension age, she will get the higher of the new state pension under clause 2 or her basic amount under this clause and schedule 7.

Clause 13, "Shared state pension on divorce etc.", allows the sharing of some state pension between divorcing couples by creating a pension credit. It provides for all state pension credit when a person is entitled to a credit because of a shared additional pension. With the new state pension credit, a person is entitled to a credit of a shared weekly amount, because of a shared excess amount under section 4. Schedule 8 sets out the appropriate rate, and schedule 9 provides for uprating. If the total state pension, including the credit, is less than or equal to the full rate state pension, it is uprated by earnings. If it is equal to more than the full state pension, pension credit is uprated by prices. If the pension is less than the full rate but greater than the pension credit added, it is uprated by earnings up to the full rate and then by prices.

Clause 14, "Pension sharing: reduction in the sharer’s section 4 pension", creates a pension debit that allows a person's pension to be reduced to comply with the state scheme pension debit, and that is to allow the pension to be shared for the state pension credit. Pension sharing credits and debits apply only to the protected payment in the new state pension scheme and additional pension in the existing scheme.

Clause 15, "Pension sharing: amendments", introduces schedule 11, which amends the relevant legislation to reflect the introduction of the new state pension scheme and to give effect to pension sharing under the new scheme on a transitional rate basis. The effect of the amendment is to retain the existing arrangements for pension sharing orders made prior to 6 April 2016 and to enable the protected payment to be shared in pension sharing orders made on or after 6 April 2014.In particular, entitlement to a shared additional pension, under the current scheme, will be confined to people reaching state pension age before pay day. It does not affect the validity of pension-sharing orders issued before pay day.

Clause 16, "Pensioner's option to suspend state pension", permits a pensioner in the new scheme to qualify for an increment by suspending their entitlement to a new state pension for a time. It replicates existing arrangements for old-scheme pensioners. Increments earned will be upgraded by prices. That is the case at present. As with the current state pension deferral scheme, they can do that only once. There is no time limit on how long a person may defer, and people may be able to change their mind and backdate decisions for up to 12 months and get arrears.

Clause 17, "Effect of pensioner postponing or suspending state pension" provides for what happens as a result of a person choosing not to claim their new state pension, which is known as postponing, or choosing to give up their new state pension for a period after it has been awarded, which is suspending. It stipulates the criteria to be satisfied in order for a new state pension to be deferred. The person who defers will be entitled to increments, and they will be subject to a de minimis rule of 1%. The percentage rate will be set in regulations. Such a person will be entitled to have one increment for each whole week in the period during which that person's entitlement to a state pension was deferred.

Mr Brady: You mentioned postponing or suspending. At the moment, under the old scheme, somebody can defer until they are, I think, 70. A man does not have to take it when he turns 65. So, there is no end period in this. Could somebody who is working into their 70s defer their pension? Or is there a time by which they have to take it?

Mr G McCann: No, they are now free to leave it for as long as they wish.

Mr Brady: So, they can leave it as long as they want.

Mr G McCann: It is the same with the private pension because, sometimes, people hit that age and they do not want to take it, for various reasons. So, they should be able to carry on.

Mr Brady: There is no end date, as such.

Mr G McCann: That is correct.

Mr Wilson: Is there any reason why they can take it only as an increase in their pension or a lump sum?

Mr G McCann: That is just part of the new scheme. At the moment, the lump sum is very generous. People get back everything that they have got, and they get interest paid at about 2% above the Bank of England rate. That was set at a time when interest rates were much higher and we were living in a very different world.

Mr Brady: You could almost use it as a form of savings.

Mr G McCann: That is true for this, but it is also true for other forms of pensions; people use them as a savings vehicle. I suppose that it applies more so for the private, because there are extra breaks for tax purposes.

Mr Brady: But it increases the longer you defer it.

Mr G McCann: Yes. You will carry on earning more and more.

Mr Cassidy: A person will not be entitled to any state pension for the period that they have deferred it. They have to defer all their state pension entitlement, not just part of it. Pension is deferred if it is suspended under section 17 or not claimed.

Clause 18, "Section 17 supplementary: calculating weeks, overseas residents, etc." contains the power to modify the calculation of the increment due when a person has received another social security benefit or there has been a change of circumstances during the period of deferral. In particular, it provides for calculating weeks, etc. For example, clause 18 stipulates that regulations may provide for circumstances in which a part of a week is to be treated as a whole week and a day does not count in determining a whole week. It also allows section 17(4) to be modified where a

person has been an overseas resident and has, for example, lived in a frozen-rate country, and the rate is calculated on what would have been payable if that country is not up-rated.

Clause 19, "Prisoners", provides that where a person is in prison or lawful custody or is unlawfully at large pension is not payable. Regulations may prescribe that this applies only if a sentence of a specified description is imposed, i.e. that it is suspended if on remand and repaid if appropriate. It maintains the current position, which has been in place for more than a hundred years.

If a conviction is quashed, it is considered on a case-by-case basis, taking account of any other compensation. This clause does not remove entitlement, but the payability of the pension whilst the person is in prison, in legal custody or unlawfully at large.

Mr Brady: There have been a lot of prisoners over the years, and they will not have contributions credited for the period for which they were in prison. Presumably, they will have difficulty in qualifying for the 35 years when they reach pensionable age because their record is short.

Mr G McCann: It would depend on the length of time that a person has spent in prison and what they did afterwards.

Mr Brady: If someone has done 20 years, say, and they then go to work, they will have a number of contributions, but not for the period when they were in prison. They will not qualify. It will apply to a fair number of people in the North who have spent time in prison and who are approaching pensionable age.

Mr G McCann: Assume that you left school at age 16. State pension age will be 66 within a couple of years. That still gives you 50 years in your working life. So even if a person has been jailed for periods, there still would be other years to allow them to make up —

Mr Brady: I am thinking of people who spent quite a number of years —

Mr G McCann: This rule has been around for about 100 years — since the first Pensions Act of 1908.

Mr Brady: But I think that it would become more relevant for more people.

Mr G McCann: This rule is what is there at the moment and is being taken over from the current rules.

Mr Cassidy: There are provisions that credit people where convictions have been overturned or quashed. They are already —

Mr Brady: That is fine, thank you.

Mr Allister: Does that include where the royal prerogative of mercy has been exercised?

Mr G McCann: I do not know; we would have to check that out.

Mr Cassidy: Clause 20, "Overseas residents", provides a regulation-making power to provide that overseas residents are not entitled to up-rating, depending on their country of residence. That mirrors the current policy. The clause defines an overseas resident for this purpose as someone who is not ordinarily resident in Northern Ireland or in any other territory specified in the regulations. People in specified territories, e.g. European Economic Area (EEA) countries and those countries with which the UK has reciprocal arrangements, will be entitled. Again, this maintains the current position.

Clause 21, "'Overseas residents'", defines the old state pension as used in part 1 to mean a category-A and category-B retirement pension.

Clause 22, "General definitions etc", provides general definitions of terms used in part 1. It also provides that in the case of a polygamous marriage, the inherited amount is payable only where there is only one surviving spouse.

Clause 23, "Amendments", introduces schedule 12 and contains amendments relating to the introduction of the new state pension.

Clause 24, "Abolition of contracting-out for salary related schemes etc.", gives effect to schedule 13, which contains amendments to abolish contracting out of salary-related schemes. Contracting out ends because, under the new state pension, there will be no second state pension to contract out of. As additional pension will no longer accrue, the option to contract out will no longer be available.

The end of contracting out means that employees and employers will no longer be entitled to the national insurance rebate; they will pay the same national insurance rate as other employees and employers.

Private-sector employers may amend schemes to take account of their increased liability. Schedule 14 sets out details of how that power may be used. It cannot be used in relation to public-service schemes or schemes of a prescribed description; it can be used only to recoup actual costs of increased national insurance contributions. Schedule 13 removes redundant provisions and protects contracted-out rights already accrued.

We move on to part 2, which is the option to boost old retirement pensions. Clause 25 —

Mr Wilson: Can I take you back, please, to clause 24 and the ability of employers to amend an occupational scheme? They have to make increased national insurance contributions for this scheme. Does that mean that the cost of the additional employer contributions can then be passed on to the employee through an amendment to, or a reduction in, the occupational scheme? The increase in the employer's national insurance contributions may not be an increase at all, but a penalty on the employee.

Mr Cassidy: Effectively that is the case. The power will exist for only five years. The intention is to try to preserve the salary-related schemes that we have; they have been in decline for a number of years now. Many people expressed the view that schemes could close if there was no —

Mr G McCann: The point about a defined benefit scheme is that the employer does it, as it were, of his own goodwill. There is nothing in law to say that they have to run a scheme; it is entirely voluntary. Most of the defined benefit schemes are what we would class as very good schemes, and so the last thing that we want is to find that any schemes are being shut down because of what we are doing. This is therefore aimed at helping the schemes to stay open and keep running.

In answer to your question, the effect could be that the employee either has to pay in more to the scheme or get out slightly less. However, the amount that he pays more or the amount that he gets less in pension can only be the same as the extra cost of the national insurance contribution. The scheme has to issue a certificate to say that that is the case.

Mr Wilson: But part of these pension reforms have been sold on the basis that the improvements in the basic pension are as a result of a combination of changes to the retirement age and increases in contributions by employers. What you are saying about this clause is that the costs of the increase in the basic pension can be passed on to the employee by an employer running a private pension scheme.

Mr G McCann: Yes. Essentially that is what we are saying. The reason is that we do not think that it would be in anybody's interest for those schemes to close, as most of them are very good. Say that we were to force the private-sector employer to pick up the costs. He might say: "Well, that is it. I am not running this scheme any more". That does not benefit the member; in fact, it will probably harm him significantly. Again, as we said at the start, the Bill is a mixed bag. If you are making changes, there is always an element of trade-off. That is why we are anxious not to end up with schemes closing.

Mr Wilson: Yes, but you said that the actuary would ensure that the employee would not be any worse off because the defined pension scheme could be reduced more than the additional contributions to the employer. However, if you look at it overall, you will see that your private pension scheme is protected by some of the additional contributions being passed on to you.

Mr G McCann: The other point that you have to bear in mind, from the point of view of the employer, is that he has to make up any gap that there might be in the scheme funding. The employer has entered into a contract that is almost open-ended. That is why these schemes have been shutting down over the past number of years: the costs to employers are so high. There is an element of balancing act.

Mr Wilson: If that does happen, are you saying that there is a guarantee? Could the employer still plead that circumstances had changed so much that he had to change the shape of the final pension, even after making this kind of adjustment? Or, if he makes this adjustment, will that exclude the employer from pleading that, since making that adjustment and since passing some of his additional contributions on to the employee, things have changed so much that he will still have to cut back on the employee's private pension scheme? Once he does that, is the guarantee given to the employee that the employer cannot offer him his private pension?

Mr G McCann: For a contracted-out scheme to be a defined benefit scheme, which is what they have been up to now, it has to meet a test scheme standard. The scheme should provide x, y and z. If your scheme is doing that, it meets the test-scheme standard, and that is fine. Most schemes will pay out more than the test-scheme standard. An employer is always free to enter into negotiation with his members and say, "I can't afford to carry on paying", and he can enter into a consultation process with his members to change. Even if the overall benefit ends up being cut slightly, it is, sometimes, better than the scheme going totally.

Mr Wilson: Are you saying that, in this case, an employer could say, "I've got additional national insurance contributions to make, and I'm going to amend your scheme to reflect that", and still, at the end of the day, say, "By the way, I am going up to have to negotiate an even lesser scheme because, since I passed the effects of those national insurance contributions on to you, the situation with the returns on the pension scheme have got worse, so we are going to have to look at a reduction in your final benefit."?

Mr G McCann: In a way, those are two separate issues. One is what we are doing in the Bill, which is saying that it is possible for the scheme rules to be altered to allow these contributions to be recouped. That is one issue. Your second issue relates to what could happen at any time for any scheme. If an employer is already meeting everything that he has to under law, and the rates of benefit that he is paying are more than he has to pay under law, he is, at any time, free to go to his scheme members and say "I can't afford this any longer. We are not having the best of times, so I think, for the scheme to keep on running, we should alter the benefit structure slightly.". Again, you have to ask yourself which is worse. Is it worse for the benefit schemes to be altered slightly or for the scheme to go totally? The employer is free to walk away at any time; he is bearing all the risk for the scheme funding. I do not think that employers are getting a free ball from this because it is the employer who has to bear the ultimate risk.

Mr Brady: But you could argue that the policy intent is to protect the employer rather than the employee, which is hardly surprising given the source that it emanates from.

Mr Cassidy: It is to protect the scheme.

Mr G McCann: No, I think that it is to protect the scheme and to do our best to ensure that these schemes, which are, by and large, very good —

Mr Brady: It is not always easy to defend the indefensible. Carry on, Gerry.

Mr Allister: Your party should know.

The Chairperson (Mr Maskey): Stick to the agenda, folks.

Mr Cassidy: It is estimated that 90% of people reaching state-pension age in the first two decades under the new scheme will get more from the new scheme to offset higher national insurance contributions and reduced occupational pensions. However, under this clause, the protection of the scheme is the primary concern.

The Chairperson (Mr Maskey): OK. Thank you.

Mr Cassidy: Part 2 deals with the option to boost old retirement pensions. Clause 25, gives effect to schedule 15, which contains amendments to the Social Security Contributions and Benefits Act 1992. Schedule 15 allows for the payment of extra units of additional state pension to individuals who have made class 3(a) voluntary national insurance contributions. Class 3(a) contributions were introduced by the Pensions Act 2014, which this Bill corresponds to. As national insurance contributions are an excepted matter, the provisions in the 2014 Act extend to Northern Ireland.

The purpose of the amendment is to allow people who reached or who are due to reach state pension age before 6 April 2016 to gain an increase in their additional state pension by paying voluntary national insurance contributions. It will provide groups such as women, the self-employed, low earners and carers who have poor state pension outcomes under existing rules due to low levels of additional state pension entitlement the opportunity to pay for additional state pension if they wish to do so. The scheme is due to start in October 2015; therefore the Bill must be in place before then. The state pension top-up scheme, as it will be known, is due to be available from 12 October 2015 to 1 April 2017.

Part 3 deals with pensionable age. Clause 26 deals with the increase in state-pension age to 67; it will be between April 2016 and March 2028, which is eight years earlier than under existing legislation. It amends paragraph 1 of schedule 2 to the Pensions (Northern Ireland) Order 1995 and the timetable for moving to a state-pension age of 67, which was added by the Pensions Act (Northern Ireland) 2008. Individuals in each one-month cohort will reach pensionable age when they reach 66 and a specified number of months. Do members have any questions?

The Chairperson (Mr Maskey): If you do not mind, members will indicate when they have questions as we move along.

Mr Cassidy: OK. We move to part 4, which is on state-pension credit and the phasing out of the assessed income period. This clause amends the State Pension Credit Act (Northern Ireland) 2002 to provide for the abolition of the assessed income period in pension-credit cases from April 2016. The assessed income period removes the requirement for an individual to notify the Department of changes to their retirement provision. That is broadly defined as capital, annuities and retirement pension. They are excused this for a defined period for the purposes of assessing their entitlement to pension credit. However, fixing retirement provision for such long periods has led to inaccuracies in benefit awards that have remained in the system for some time. That provision will be removed.

Clause 28, "Preserving indefinite status of certain existing assessed income periods", clarifies that existing indefinite assessed income periods will remain valid. Again, the indefinite assessed income period was introduced in the Pensions Act (Northern Ireland) 2008.

Clause 29, "Bereavement support payment", contains measures to replace the current bereavement benefits with a bereavement support payment. Bereavement benefits form an important part of the state safety net. However, the current system is based on a complicated system of payments and contributions to determine eligibility. A single bereavement payment, with simplified contribution conditions, should reduce the complexity in the system.

The new benefit will focus on support in the period immediately after bereavement and will consist of a lump sum, with instalments over 12 months. The precise amount will be determined nearer to introduction. However, indicative values are in the region of a lump sum of £5,000 and a monthly payment of £400 for 12 months for those with dependent children. Those without children will receive a lump sum of about £2,500 and a monthly payment of £150 for 12 months.

Mr Brady: I just want to clarify about pensioners who have dependent children because they are overlapping benefits, presumably.

Mr G McCann: I think that we wrote to the Committee on that point. It shall be paid via the state pension credit system.

Mr Brady: Right, and will child benefit still be the controlling benefit as long as child benefit is payable for the children?

Mr G McCann: I could not answer that detail —

Mr Brady: Because that is the norm at the moment.

Mr G McCann: — but I would certainly make the assumption that that is the case. However, it shall be paid through the state pension credit system.

Mr Brady: That's fine. Thanks.

Mr Cassidy: Clause 29 outlines the conditions of entitlement. The claimant has to be married or in a civil partnership when their partner dies, be ordinarily resident in Northern Ireland or in another territory specified in regulations, and be under pension age at the time of death of the spouse or civil partner.

Clause 30, "Bereavement support payment: contribution condition and amendments", will entitle people to receive the full payment as long as their late spouse or civil partner paid class-1 or class-2 national insurance contributions at 25 times the lower earnings limit for any one tax year prior to their death.

The clause makes provision for the contribution condition to be treated as met if the deceased was an employed earner and died as a result of personal injury or a prescribed disease.

Clause 31, "Bereavement support payment: prisoners", gives the Department the power to make regulations to disqualify prisoners from receiving bereavement support payment. The clause mirrors the current legislation in disqualifying prisoners from receiving bereavement benefits and ensures that the bereavement support payment is treated in line with the rest of the benefit system.

Bereavement support payment is not payable to a prisoner, that is someone in custody or unlawfully at large. For persons on remand, it may be repaid if they are not guilty or a certain severity of sentence is not imposed.

That brings us to the end of the state pension changes. The next section is for private pensions.

Mr G McCann: OK, are we all happy about the state pension side?

The Chairperson (Mr Maskey): Yes, go ahead.

Mr G McCann: We have been joined by Doreen, who will take us through the private pensions part.

Ms Doreen Roy (Department for Social Development): Clause 32 and schedule 17 require the Department to make regulations to establish a system of automatic transfers of pensions pots of less than £10,000. That amount is to be revalued every five years.

Clause 32 tackles the problem of small, dormant pension pots, which arises when people change jobs and join their new employer's pension schemes without transferring their pension pot. It will help people to keep track of their pension savings and plan more effectively for their retirement. Clause 33 provides a power to allow regulations to be made to prohibit incentives being offered to members of salary-related schemes to transfer their rights to another scheme or arrangement. A code of practice to encourage pension schemes to avoid offering non-pension inducements exists. Schemes breaching the code face reputational damage. Regulations to prohibit cash incentives will be made only if the voluntary code of practice proves ineffective.

Clause 34 provides for the automatic repeal of clause 33 if no regulations have been made under the clause after seven years. It is a sunset clause. It is anticipated that self-regulation by the industry and adherence to the code of practice will result in the demise of non-pension cash incentives as a tool to induce members to transfer their rights to another scheme or arrangement against financial advice and their own best interest. Clause 34 ensures that the powers in clause 33 will be used only if the voluntary code of practice proves ineffective.

Clause 35 ensures that there will be an entitlement to a short-service benefit immediately after a member has completed the 30 days' qualifying membership of the scheme. As you are probably aware, short-service refunds are no longer available. Currently, a person with less than two years' membership can get a refund on leaving the scheme. This applies only to those who become active members after the date of change or who rejoin after that date having already taken a refund.

Mr Wilson: Can I just take you back to clauses 33 and 34? The Department may make regulations to stop people being given incentives to move out of their current pension arrangements, but the intention, from what you are saying, is that no regulations will be introduced immediately. If they are not introduced after seven years, according to clause 34, that power will be removed. What will trigger the introduction of regulations?

Mr G McCann: I think that Doreen mentioned that what is being issued is a code of practice for the industry to say that it should not be offering people a lump sum of cash as a way to get them to move out of the scheme. What had been happening was that people said, "OK, well, I am getting X thousand pounds — I will certainly take that", but they were not looking at their long-term interest. Certainly, we do not have any issue with a person's being offered extra pension by way of an incentive or to go to a scheme that would offer more; it is just to stop these upfront cash payments or indeed something other than cash, like a new car, being given.

What is happening at the moment is that this is actually being kept under review. The Pensions Regulator is keeping an eye to ensure that that is not going on and that the code of practice is actually working. If it turns out that the code of practice is not working and that this practice is still happening, then, at that point, we will make the regulations. The assumption is that we should know after seven years whether schemes are actually following the code of practice.

Mr Wilson: That was really the question that I was trying to get at: what will be the criteria for deeming that it is not working? For example, there are 10 of us in the room here who are employers. I offer incentives, but the rest of them do not. Is the code of practice still deemed to be working, and if there are no regulations, what is to stop me continuing to do that to ensure that I get out of difficult pension responsibilities for my employees whilst the rest of the employers abide by the code?

Mr G McCann: This is something that we will be looking at in conjunction with our DWP colleagues in Britain. We will look at the whole scenario across the UK. If you are asking me whether one scheme's being a rogue scheme is enough to introduce regulations, what would first happen is that you would look at the actual case, the amount of money involved and what it meant. As I was saying earlier, for all of this field, we have a balancing act which we try to walk between putting extra burdens on schemes and ensuring that the actual rights and pensions of scheme members are being safeguarded.

Mr Wilson: What I am worried about with the way this is left here is that you will always get a rogue employer, a rogue scheme or whatever. As it is left, there is no protection for people who happen to be employed by someone or are in a pension scheme in which those incentives are aggressively sold to them. That is how it will exist for the next seven years, anyway. After that, there is no safeguard if no regulation has been introduced. There are no sanctions on the rogue scheme or employer who tries to get out of difficult long-term pension obligations by doing this.

Mr G McCann: I cannot answer you as of today, but I did see, although it was a while back, certainly, at that stage, the evidence seemed to be that all schemes were actually complying with the code of practice. Against that, if you ever have a provision like a sunset clause, your risk is what happens after seven years. Do they then just go back to being rogue? Again, that would apply to every piece of law and every possible scenario. We do not think that it is a good idea to pass a law just to cover anything which may happen. If the evidence is that schemes are fully complying, our option is that we will not use our power to make the regulations. That having been said, if, at any point, we did think that there was a problem which the actual code had not sorted out, then, yes, we would make the regs.

I would say that we would aim to do this to align with what is going on in Britain, because most schemes which operate in Northern Ireland, outside of the public sector, are actually based in Britain. They are not based here at all. So, for the law to work, what we have to do is keep the two laws in line. Otherwise, we could end up with a scenario in which somebody here could find a hole in the law which they could exploit, or indeed vice versa. That is why we have to move forward *[Inaudible.]* for it to be effective.

Ms Roy: The voluntary code of practice was published in 2012. It was produced by the Government and the pensions industry. A lot of thought has gone into it.

Mr Wilson: Yes, but there really has not been much time to test it. It has only been in place for —

Mr G McCann: It has been in place for about two years now. I cannot give you the position as of today, but certainly, recently, it did look hopeful that it would work.

Ms Roy: We move on to clause 36. In certain circumstances, an employer may postpone auto-enrolment for up to three months and, in cases of defined benefit or hybrid schemes, defer until the

end of the transitional period, which is September 2017. Clause 36 removes the duty to re-enrol an eligible individual during a period when auto-enrolment has been validly postponed or deferred.

Clause 37 contains a power to give the employer the choice of whether to exclude prescribed types of workers, including workers in prescribed circumstances, from the scope of automatic enrolment, but not on the basis of the type or size of employer. This is to avoid situations that are counter to the policy intention. It also allows the duty to enrol to be a power to enrol if the employer wishes; for example, where the employee is working out his notice. It also includes the power to reinstate the automatic enrolment duty if the circumstances that triggered the exclusion come to an end; for example, if the worker withdraws his notice and the employer has chosen not to enrol them.

Clause 38 introduces alternative quality requirements for defined benefit schemes in order to make it easier for such schemes to demonstrate that they are good enough to be used for automatic enrolment. The main qualifying criterion for a defined benefit scheme is that it is either contracted out or meets the test scheme standard — that is, that it provides benefits that are broadly at least as good as those under the test scheme. Some schemes with mixed characteristics — that is, money purchase schemes with some guarantees — can find it difficult to meet test scheme standard, so there is a quality requirement. The requirements are: a scheme of prescribed description and total contributions of at least 8% — that is, 3% from employers — in line with the minimum level of total contributions into a qualifying money-purchase scheme. The cost of providing benefits for relevant members requires contributions of at least the percentage prescribed in the regulations, and the cost of providing benefits for at least 90% of relevant members requires contributions of at least the percentage prescribed in the regulations.

Clause 39 clarifies the law which sets out that transitional arrangements for implementing automatic enrolment into workplace pension arrangements for hybrid schemes — namely, the option of deferring enrolment until the end of the transitional period — only applies where defined benefit is offered. Where only money purchase is offered, deferment will not be an option, but the phasing of contributions is still available.

Mr Wilson: Is that phasing just until 2017 as well?

Ms Roy: Yes.

Mr G McCann: Yes, but again that was meant to help the employer; instead of him having to supplement all the contributions from day one, they will be gradually phased in.

Ms Roy: Clause 40 reinstates the original policy intention. A penalty notice for non-compliance with information requirements can only be used in relation to employer duties under Part 1 of the Pensions (No. 2) Act (Northern Ireland) 2008. Also, it ensures that the regulator can seek information in relation to all of its functions and not just in relation to the general non-compliance which is under the 2005 Order.

Clause 41 amends the Pension Schemes (Northern Ireland) Act 1993 to extend the protection currently available under section 119, regarding unpaid pension contributions where an employer becomes insolvent, to workers such as agency workers, as well as to employees. That protection allows schemes to make claims for payment from the National Insurance fund for pension contributions that remain unpaid in the 12 months leading up to the employer's insolvency. Currently, where an employer becomes insolvent, the Department for Employment and Learning can pay unpaid employer contributions and employee contributions deducted by the employer. This clause extends this protection to workers, such as agency workers, who are currently not covered, and the money comes from the National Insurance fund. Without extending the protection, two people doing similar or identical work for an employer, who are both automatically enrolled into a qualifying workplace pension scheme, could receive different treatment under the existing legislation, depending on whether they were classified as an employee, a worker or an agency worker.

Clause 42 gives effect to schedule 18, which sets out the detail to allow the Department to make regulations to set quality standards and restrict charges in workplace pension schemes. This is to ensure protection for members of schemes that may be used as automatic transfer — *[Inaudible.]* Qualifying schemes are schemes that are closed to due accruals, and the Pensions Regulator will have the power to enforce that.

Clause 43 places duties on the Department to make regulations that require the disclosure of certain information about the transaction costs incurred by money-purchase pension schemes. In addition, duties would be imposed in a similar way to require information on transaction costs and administrative charges to be published. That would allow comparisons between schemes.

Mr Wilson: However, no limits are being put on transaction costs; there is only the facility to make comparisons across them?

Mr G McCann: Under clause 42, there is a power to limit charges. Clauses 42 and 43 go hand in hand. Clause 43 makes sure that it is made public. It means that any member of the public can look at schemes A, B and C and see which charges least.

Mr Wilson: OK.

Ms Roy: Clause 44: in 2009, the European Commission ruled that the BT pension scheme's partial exemption from payment of the levies to the pension protection fund, arising from the Crown guarantee, constituted unlawful state aid. Following that, in 2010, regulations were made to ensure future compliance and payment of these two levies.

Mr G McCann: This clause is to allow that these regulations are deemed to have always been there. If we did not do this, we would be in breach of European law, so we are just putting this right for that purpose.

Ms Roy: Clause 45 and the accompanying schedule 19 of consequential amendments7 build on the existing prohibition regime. The clause inserts a new article into the 1995 Order to prohibit a company from being a trustee if one or more of its directors have been prohibited from being a trustee by the regulator. If the director who has been prohibited, for example, subsequently leaves the board of the company, the prohibition will be immediately lifted. In addition, the company is allowed to apply to the regulator for the prohibition to be waived. The regulator has the power to suspend a trustee, pending consideration being given to the institution of proceedings against him, for an offence involving dishonesty or deception.

Clause 45(3) to (5) allows the Pensions Regulator to suspend a corporate trustee where it, or one of its directors, could be suspended under article 4(1)(aa) of the 1995 Order.

Clause 46 sets out an additional objective for the Pensions Regulator which states that, when carrying out its functions in relation to scheme funding, the Pensions Regulator should minimise any adverse impact on the sustainable growth of sponsoring employers. That puts on a statutory basis what is already implicit. This objective is in addition to the regulator's other objectives, set out in article 4(1) of the 2005 Order.

Clause 47: all occupational pension schemes are required to complete a scheme return at least once every three years. This is sent to the Pensions Regulator and provides up-to-date information about the scheme. This clause increases the maximum period between scheme returns to five years for schemes that have no more than four members. The number of members is determined either by the information sent to register the scheme or the last scheme return.

Clause 48 introduces schedule 20, to provide for a revised compensation cap, dependent on the person's age and length of pensionable service when the person first becomes entitled to compensation. The pension protection fund pays compensation to members of non-money-purchase occupational pension schemes where the employer becomes insolvent, leaving the scheme underfunded. Anyone under the scheme's normal pensionable age when the employer becomes insolvent is paid compensation based on 90% of their expected scheme pension, subject to a maximum cap, the "compensation cap", which is currently £36,401·19. The Bill introduces a new cap, based on age and length of service when a person first becomes entitled to compensation. There is a standard amount, similar to the compensation cap for 20 or fewer years; for 21 years or over, there is an additional 3% for each year of service over 20 years, capped at twice standard service.

Clause 49 relates to the application of the pension protection fund compensation cap to individuals who have entitlement to both an occupational pension and a pension credit arising from a divorce or civil partnership. Where a person becomes entitled to compensation in respect of two or more benefits, or a lump sum under their scheme or a connected scheme, on the same day, those benefits are added together before considering whether the compensation cap applies. However, where that

entitlement is derived from two different scheme entitlements, an individual's own pensionable service and a pension credit arising from a divorce or a dissolution settlement, the policy intent is that those entitlements are kept separate and the cap applied separately to each. While current pension protection fund practice is in line with this policy intent, the existing legislation requires the two amounts to be added together before the cap is applied, which could lead to a significantly lower payment.

Clause 49 aligns the existing legislation with the policy intent and the current practice. The provisions of clause 49 have retrospective effect to ensure that past payments of compensation, which were calculated in line with the policy intent but not in accordance with the legislation, are covered.

That is the end of the private pensions section.

Mr G McCann: Are we all happy with private pensions?

The Chairperson (Mr Maskey): Yes. We can move on. Thank you.

Mr Cassidy: We move on to Part 7, which covers the final provisions. Clause 50 provides the power to make, by order, provisions that are consequential, incidental or supplementary in relation to any provision in the Bill. Clause 50(2) includes a power to allow amendments to be made to any primary or secondary legislation.

Clause 51 makes a general provision in respect of the regulations and orders that will be made under powers in the Bill. It allows the inclusion of incidental, supplementary, consequential, transitionary or savings provisions. There are standard provisions of this type common to social security provision and social security and pensions legislation; for example, they can be used to make tactical amendments and transitional provisions.

Clause 52 is an interpretation clause that is purely technical.

Clauses 53(1) and 53(2) provide for the commencement of certain provisions in the Bill from the point when a commencement order is made by the Department. Clause 53(3) says that Part 1 of the Bill should come into operation on 6 April 2016, but provides that any or all clauses under this Part can be brought into operation earlier by way of a commencement order made under clause 53(1). Clause 53(4) provides a power to allow an order to be made to amend clause 53(3) to specify a new date for Part 1 of the Bill to come into operation, and to make corresponding amendments to Part 1 of the Bill and any other enactments amended by it. Clause 53(5) provides that the Department may by order make transitionary and saving provisions in connection with the coming into operation of any provisions in the Act. As usual, these powers are not subject to any procedure.

Clause 54 provides for the short title of the Bill.

The Chairperson (Mr Maskey): I think that you might have mentioned clause 52, but in clause 51, what might the parameters be for any possible secondary legislation?

Mr Cassidy: I am sorry, which part of clause 51 are you looking at?

The Chairperson (Mr Maskey): I think that you mentioned it under clause 52 but you meant to refer to clause 51. You mentioned the power to make secondary legislation, and I just wonder what the parameters might be for that.

Mr G McCann: Sorry, I think that he meant clause 50(2).

Mr Cassidy: I meant clause 50(1).

Mr G McCann: Sorry, think he meant clause 50(1).

The Chairperson (Mr Maskey): Sorry; OK.

Mr G McCann: The Department of Finance and Personnel may by order make consequential, incidental or supplementary provision in connection with any provision of the Bill. Each time that you alter any of this primary legislation, there will be other sets of regs that we will also have to update,

purely as a consequence of what has been agreed here, so it is really to allow us to make technical amendments.

The Chairperson (Mr Maskey): OK. Thanks for that.

Mr G McCann: That is it. The schedules were covered as part of the clauses, because the schedules look back into the clauses.

The Chairperson (Mr Maskey): OK. Are members content with that?

Members indicated assent.

The Chairperson (Mr Maskey): Next week, we have NIPSA here. On the basis of the presentation from NIPSA or, indeed, any other submissions that we might have from stakeholders, given that the advertisements are out today, will you be happy enough if we invite you back again?

Mr G McCann: Yes. Absolutely.

The Chairperson (Mr Maskey): There is a lot for members to take in, so we may invite you back so that we can tease further information out. Thank you very much.