



The Pension Schemes [Lords] Bill

IFoA response to the House of Commons Public Bill Committee

The Institute and Faculty of Actuaries (IFoA) is a royal chartered, not-for-profit, professional body. We represent and regulate over 32,000 actuaries worldwide, and oversee their education at all stages of qualification and development throughout their careers.

Key points:

The Institute and Faculty of Actuaries (IFoA) welcomes the introduction of the Pension Schemes Bill, which rightly seeks to ease some of the challenges that savers face in the defined contribution (DC) environment. Since the introduction of the 'Freedom and Choice' agenda, individuals have more flexibility in how they use their pension in retirement. This presents challenges for individuals, as they now find themselves managing their own longevity and investment risk in later life; risks that would have previously been shouldered by pension providers and life insurance companies.

The introduction of Collective Money Purchase Benefits or Collective Defined Contribution (CDC) schemes and the Pensions Dashboard will be a welcome step in helping individuals manage the financial risks they face as they approach retirement. However, the measures in the Bill need to be coupled with a wider campaign to help people ensure that they know how much they need to save for retirement.

The IFoA's main concern with the Bill surrounds the criminal powers laid out in Clause 107. We welcome the Bill's intention to extend TPR's powers. However, as currently drafted, the Bill has the potential to criminalise routine behaviour by parties involved with pension schemes and those who are not involved directly at all, such as lenders and those doing business with a pension scheme's employers. This could have damaging knock-on effects for the viability of the pension scheme, if those who deal with the scheme or employer deem this legal risk to be intolerable. We have therefore suggested a minor amendment to this clause which seeks to clarify the extent of the powers.

The IFoA also strongly supports Clause 123, as amended by Baroness Bowles in the House of Lords, which aims to protect members of large funded defined benefit (DB) schemes from their schemes closing, and we would ask that this provision is retained in the Bill during its passage through the Commons.

Should you wish to discuss any of the points raised in this submission in more detail please contact Katy Little, Policy and Public Affairs Assistant (katy.little@actuaries.org.uk / 07944525276) in the first instance.

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Comments on specific parts of the Bill:

Part 1 & 2: Collective Money Purchase Benefits (Collective Defined Contribution schemes)

1. The enablement of Collective Defined Contribution (CDC) schemes should be seen as a positive development for UK pensions. UK pension provision currently involves a stark choice between DB and individual DC schemes. The enablement of CDC would represent a third option which could better suit many workers compared with standard DC provision if their employers are not willing to bear the long-term risks associated with DB and would prefer to contribute a fixed cost. Accumulating sufficient funds for retirement could also be helped by the introduction of CDC schemes as, for a given level of contribution, CDC schemes are expected to generate higher pensions than DB and individual DC schemes.
2. The IFoA therefore welcomes the Bill's intention to provide a framework for the operation of CDC schemes. Particular features of the Bill that we support are:
 - The inclusion of CDC schemes within 'money purchase' legislation, to give employers certainty that CDC contribution rates will be fixed
 - The fact that the Bill does not restrict CDC design to that to be provided by the Royal Mail. We see this flexibility as a helpful start to the introduction of CDC for employers which wish to set up their own CDC trusts. In addition we welcome the provisions in the Bill for further regulations in time which might allow other kinds of CDC schemes such as industry wide schemes or master trusts.
 - The provisions for authorisation and ongoing supervision of CDC schemes by the Pensions Regulator, which will be important to ensure CDC schemes are used only as appropriate. The Pensions Regulator will need sufficient resources to apply appropriate scrutiny.
3. There is the potential for millions of workers to benefit from greater retirement security via CDC vehicles. However, appropriate member communications are important to ensure members understand the nature of the vehicle in which they are investing. In particular, it is essential that members understand that there may be times when their pension increases may reduce or their pensions may be cut.
4. For those CDC schemes which allow members to transfer in legacy benefits from DB schemes, members considering a material transfer should, as a minimum, be strongly recommended to take advice from an IFA, as by doing so members would be giving up their previous employer's guarantee of their DB benefits.
5. Actuaries will be key advisers for the design and running of CDC schemes, and that is reflected in the Bill in the provisions for actuarial certification of design viability, and for the use of actuarial valuations to determine each year's benefit adjustment. It is important to ensure the regime within which actuaries will operate will be practical and in the collective interests of CDC scheme members, and we would like to work with DWP to ensure the regulations will meet these requirements.
6. One of the main concerns raised during the Lords Stage centred around the issues of safeguarding the intergenerational fairness of CDC schemes. We agree that CDC schemes must be demonstrably fair. This issue of 'fairness' is however a complex area - there are different ways to define fairness, and different ways to achieve it. The regulations are already intended to ensure intergenerational fairness based on a particular definition. This will include use of central estimate assumptions for determining and benefit adjustments, and requiring that there is no difference in the treatment of

different cohorts of members (i.e. they have the same accumulation rate, and each year all members receive the same benefit adjustment). In addition, in the process of the Regulator's authorisation of each scheme, we would expect the Regulator to check that the scheme's funding and investment strategy do not lead to a bias in benefits between cohorts of members. We support this existing approach to fairness. However we note that there could be demand for other CDC designs (which achieve fairness in different ways), which would require additional regulations to facilitate.

Part 3: The Pensions Regulator

7. The IFoA welcomes the Bill's intention to extend the Pensions Regulator's powers, including: increasing its information gathering powers; introducing new civil penalties to deal with wrongdoing; and new criminal offences to punish wilful, reckless behaviour, and non-compliance with Contribution Notices.
8. We are supportive of the underlying principles of the proposals. However, the new criminal powers, as drafted within the bill, are wide-ranging and there is a risk that they overlook the basic premise that the current regime already works well for most schemes as stated by the Government itself. Given the existing challenges for trustees in running schemes for the benefit of members, it is important not to over-burden them with new legislative and regulatory requirements intended to penalise the few who are reckless or irresponsible, particularly if the costs are high (at the expense of members) and focus is lost. This is particularly pertinent for smaller schemes and the subsequent pressure it may place on trustees, although we recognise that members of small schemes equally require protection.
9. We are particularly concerned about the potential impact of Clause 107 of the Bill. The Government announced at the start of the year that it would be introducing pensions-related criminal offences aimed at the most extreme forms of misconduct. However the Bill operates at a much lower level: it potentially criminalises much more routine behaviour by parties involved with pension schemes. In addition, while most of the existing Regulator powers are targeted at employers and their associates, the new offences would apply to anyone involved with pension schemes, including trustees, banks that lend to employers, insurers and investment counterparties. The position for actuaries is not clear cut: an actuary exercising statutory functions, such as signing off a certificate or schedule of contributions, could be within scope.
10. Beyond the actuarial profession this clause could impact on other professionals including lawyers, administrators and accountants. It could also criminalise any third party who deals with the employer in some capacity, such as a bank, supplier or trade union. This could have damaging knock-on effects for the viability of the pension scheme, if those who deal with the scheme or employer deem this legal risk to be intolerable.
11. We would therefore ask the committee to amend the bill as follows:

Clause 107 Page 90, leave out lines 5 to 6 and insert:

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

Clause 107 Page 91, leave out lines 3 to 4 and insert:

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

12. The intended effect of this amendment is not to change the aims of the legislation but to clarify the extent of the powers, and in doing so, protect professional advisers from criminal liability for carrying out their role. This could be achieved in the Bill if the duties and responsibilities of an individual are considered when determining whether a person has 'intended' to commit an offence.

Part 4: Pensions Dashboards

13. The increasing prevalence of DC pensions means individuals are having to take increasing responsibility for the risks associated with saving for retirement. They must be equipped to do this from the most informed position possible. Pensions dashboards will therefore be an important tool to help people better understand their pension savings and the IFoA strongly supports the Government's commitment to making dashboards a reality.
14. The IFoA surveyed over 2,000 pension savers last October and the results suggest that dashboards could make a real difference to people's understanding of pension saving:
 - Many individuals do not know what constitutes a 'good pension pot'. A fifth of respondents said they considered a £100,000 pot to be sufficient to fund their retirement. IFoA modelling suggests that this would buy an annual pension of just £2,825 at age 68.
 - 48% of respondents to this survey also said they are not confident that they are on track to save enough money to build what they would consider to be a 'good' pension pot.
15. Research from the pensions industry also suggests that there are 1.6 million 'lost' pension pots, accounting for almost £20 billion^[1]. Dashboards could have the dual benefit of reuniting savers with their lost pension pots, and showing them a reliable and up-to-date picture of their total current pension saving. This should be a solid base of information that savers can use to plan for their retirement.
16. The Pension Bill paves the way for the establishment of pensions dashboards, and provides legislative framework that will enable the Government to compel pension providers to provide data to the dashboard within a reasonable timeframe to ensure its successful delivery.
17. Only a dashboard framework that provides universal coverage, allowing individuals to see *all* of their pension pots in one place, will give savers a truly complete picture of their potential retirement situation. This includes the State Pension, which for many people will make up a significant percentage of their income in retirement. It is therefore crucial that the Government makes good on its promise to ensure State Pension data is included on early iterations of dashboards.
18. The Bill will, however, impose a new regulatory burden on the pensions industry in making data available for the dashboard project. The Government should therefore consider the support offered to smaller and older 'legacy' schemes, the trustees of which may reasonably argue that the costs of providing information for the dashboard are not in the financial interests of their members.

Part 5: Further Provision relating to pension schemes

19. In March 2018 the Government consulted on a White Paper on Protecting Defined Benefit Pension Schemes which proposed a package of measures to deliver clearer more enforceable scheme funding standards in order to better protect members' pensions. Clause 123 sets out those proposals and relates to the statutory framework for defined benefit pension scheme funding.
20. The IFoA strongly supports clause 123, as amended by Baroness Bowles in the House of Lords, which aims to protect members of large funded defined benefit (DB) schemes from their schemes closing.
21. DB schemes provide valuable benefits to many UK workers, rewarding them for their service with a guaranteed income for life in retirement. Most UK DB schemes are closed to new members, but there

^[1] <https://www.pensionspolicyinstitute.org.uk/research/research-reports/2018/briefing-note-110-lost-pensions-whats-the-scale-and-impact/>

are a small number of schemes (around one in seven) that remain open to new members. While these schemes are small in number, they are typically very large schemes, with total membership of around 2 million.

22. Any employer that has left their DB scheme open to new entrants to date is highly likely to have done so as a conscious choice, and usually with strong support from members and associated trade unions. The risks inherent in DB are typically well understood not only by the employers but also by the scheme's members, and their trade union representatives.
23. These schemes should therefore not necessarily be treated the same, or need the same level of security, as closed schemes. In our view it is critically important that viable and successful open schemes are not caused to close through adverse legislative change or guidance from The Pensions Regulator. We see clause 123, as providing strong protection against this occurring. Even a less than fully funded DB scheme of an employer that goes insolvent is likely to ultimately provide members with better pension benefits than they are likely to secure from almost any DC scheme.