Pensions Bill 2011 – final stages

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Author: Djuna Thurley
Section Business and Transport Section

Clause 1 of the *Pensions Bill 2011* would accelerate the timetable in existing legislation (*Pensions Act 1995* as amended by the *Pensions Act 2007)* for increasing the SPA to 66. In debate, concern was expressed at the impact of the revised timetable on those women who see their SPA increase by more than a year (in some cases by as much as two years) as a result. In the Second Reading debate in the House of Commons, Work and Pensions Secretary, Iain Duncan Smith, said the Government was committed to the SPA being equalised in 2018 and rising to 66 in 2020 but would work to "get the transition right".

The Government amended the Bill at Report Stage to cap the maximum increase in the SPA at 18 months relative to the legislated timetable. The Opposition tabled amendments that would have retained the timetable in the *Pensions Act 1995* for increasing women's SPA to 65 by 2020 but then brought forward the increase from 65 to 66 to between 2020 and 2022. These were negatived on division. The Opposition voted against the Bill at Third Reading on the grounds that the Government amendments, although welcome, did not go far enough.

The Government made three other amendments to the Bill in its final stages. The first clarified what is meant by a "money purchase benefit", to ensure scheme members are protected appropriately. The second extended an existing reserve power to cap charges for deferred members. The third was a technical amendment to protect individuals who become automatically enrolled into a personal pension scheme when their employer closes a defined benefit or hybrid scheme to new members.

The House of Lords agreed to the amendments made to the Bill in the House of Commons on 31 October 2011. An Opposition amendment regarding the revised timetable for increasing the State Pension age was again negatived on division. The *Pensions Act 2011* received Royal Assent on 3 November 2011.

This note is designed to complement and update Library Research *Paper* RP 11/68 *Pensions Bill: Committee Stage Report* (October 2011) and RP 11/52 *Pensions Bill* (June 2011), which go into more detail on the background.

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1 State Pension age

1.1 Clause 1

Under existing legislation, the SPA for women is set to increase from 60 to 65 between April 2010 and 2020, to bring it into line with that for men. The equalised SPA is then scheduled to increase to 66, over two years from April 2024, to 67 over two years from April 2034 and to 68 over two years from April 2044. [1]

Following the 2010 election, the Conservative-Liberal Democrat Coalition Government reviewed the timetable for increasing the SPA and decided to bring forward the increase to 66.[2] Legislation to implement this was included in the *Pensions Bill 2011.* **Clause 1** and **Schedule 1** would amend the existing timetable for increasing the SPA to 66. The Explanatory Notes say:

> Under the *PA 2007*, the increase to 66 was due to take effect between 2024 and 2026. This Bill will bring forward the increase so that state pension age for both men and women will begin rising from 65 in December 2018 to reach 66 by April 2020. As a result of bringing forward the increase to 66, the timetable contained in the PA 1995 for equalising women's state pension age with men's at 65 by April 2020 will be accelerated, so that women's state pension age reaches 65 by November 2018.[3]

The "qualifying age" for claiming Pension Credit (Guarantee Credit) is linked to the SPA for women. This means that it also rises according to the revised timetable in the Bill.[4]

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[1] P*ensions Act 1995,* section 126 and schedule 4 as amended by *Pensions Act 2007,* section 13

[2] DWP, *A sustainable State Pension: when the State Pension age will increase to 66,* CM 7956, November 2010

[3] Bill 183 - EN, para 8 and paragraphs 20 to 26. The Keeling version of the Bill show Schedule 4 of the 1995 Act as it would be amended by clause 1 of the current Bill

[4] *State Pension Credit Act 2002,* section 1; DWP, *A sustainable State Pension: when the State Pension age will increase to 66,* CM 7956, November 2010, Executive Summary, para 5

The Government estimated that the key fiscal benefits of speeding the increase in the State Pension age to 66 are that it delivers net benefits-related savings to DWP of £31.7 billion in £2011/12 prices (£30 billion in 2010/11 prices) over the period 2016/17 to 2025/26.[5]

1.2 Debate at Second Reading and Committee Stage

The Bill started its passage through Parliament in the House of Lords. Concern was expressed about the impact on those women who would see their SPA increase by more than a year and, in some cases, by as much as two years.[6]

Responding to these concerns at Second Reading in the House of Commons, Secretary of State for Work and Pensions, Iain Duncan Smith, set out the Government's position as follows:

> The impact of the changes on women has been debated enormously, focusing particularly on certain cohorts. All but 12% of those affected will see their state pension age increase by 18 months or less. I recognise that some 1% of those impacted will have a state pension age increase of two years, but it none the less remains the case that those reaching state pension age in 2020 will spend the same amount of time in retirement as expected when the 2007 Act timetable was being drawn up. That is an important factor. There will be no change to the amount of time that they will spend in retirement—some 24 years, on average. In fact, the women who are affected by the maximum increase will still, on average, receive their state pension for two and a half years longer than a man reaching state pension age in the same year.[7]

He said the Government intended to press ahead with the timetable in the Bill but would consider transitional arrangements:

> I recognise the need to implement the change fairly and manage the transition smoothly. I hear the specific concern about a relatively small number of women, and I have said that I will consider it. I say to my colleagues that I am willing to work to get the transition right, and we will. Some have called for us to delay the date of equalisation of the pension age, but I wish to be clear again that this matter is the challenge of our generation, and we must face it. That is why we are committed to the state pension age being equalised in 2018 and rising to 66 in 2020. That policy is enshrined in the Bill.[8]

Shadow Work and Pensions Secretary, Liam Byrne, said the Opposition would vote against the Bill due to concerns about the impact of the revised timetable for increasing the SPA. He referred to the ongoing consultation on the appropriate mechanism for introducing future increases:

> That is an issue that should have been brought to the House for debate before we were asked to debate egregious measures that will hit half a million women. We should re-examine the timetable for the raising of the retirement age to 67, but that must be done on the basis of equal treatment of the sexes, and the principle that people should be given time to prepare.[9]

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5 DWP, Pensions Bill 2011 – Impacts – Annex A: State Pension age, p 11, para 28

6 See, House of Commons Library Research Paper RP 11/52 Pensions Bill, section 2.4

7 HC Deb, 20 June 2011, c48; See also, c126 [Steve Webb]

8 Ibid, c50

9 Ibid, c61; DWP, *A State Pension for the 21st Century,* CM 8053, April 2011

The House voted to give the Bill a Second Reading by 302 votes to 232.[10]

At Committee Stage, the then Shadow Pensions Minister, Rachel Reeves, expressed her concerns about clause 1:

> We know that the timetable proposed in the Bill will affect some 4.9 million people: 2.6 million of them are women, 2.3 million are men. But most worryingly—this is the cause that so many people have taken up—500,000 women will have to wait more than a year to receive their state pension, and of those, 300,000 women will have to wait 18 months or more. Thirty-three thousand women unlucky enough to have been born between 6 March 1954 and 5 April 1954 will have to wait exactly two years longer before they receive their state pension. A delay of two years translates to a loss of income of over £10,000 for all recipients of the basic state pension. For those in receipt of pension credit, that figure is nearer to £15,000.[11]

She moved amendments which would preserve the timetable in the *Pensions Act 1995* for increasing women's SPA to 65, but bring forward the increase to 66 for both men and women:

> Our amendment brings forward the increase for men and women to 66, accelerating that by four years to between 2020 and 2022 rather than between 2024 and 2026. That will ensure a decent notice period is given, that men and women are affected equally, and that no single person has their state pension delayed by more than a year.[12]

Responding, Pensions Minister, Steve Webb, said the Opposition's amendments would cost £10 billion in public expenditure.[13] He said increasing longevity meant it was fair that the SPA should increase and that the Government was willing to look at the transition:

> The fundamental point is that, since the 2007 Act was published, based on 2004 projections, life expectancy has improved not just a bit, but like an express train. In four years, between 2004 and 2008, roughly a year and a half was added to life expectancy at pension age. The bill attached to that is tens of billions of pounds. The question is, who pays it? Does it all fall on the next generation of national insurance payers, taxpayers, and interest on debt payers or does some of it fall upon those who will benefit from the increased longevity?
>
> [...]
>
> Clearly there are trade-offs and we have aired them quite extensively in Committee. I simply say that we are mindful of the very specific group and the very specific issues that my hon. Friends and Opposition Members have raised. We will work to get that transition right, but I resolutely stand by the principle of grasping those difficult issues today rather than putting them off till tomorrow for someone else to tackle.[14]

Rachel Reeves' amendments were defeated on division by 11 votes to 7.[15]

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[10] Ibid, c128
[11] PBC Deb, 5 July 2010 (morning), c5
[12] Ibid
[13] Ibid, c54
[14] Ibid, c62
[15] Ibid, c67

1.3 Report Stage and Third Reading

Government amendments

On 13 October 2011, in advance of Report Stage, the Government tabled an amendment to clause 1 of the Bill that would cap the maximum increase in women's SPA at 18 months. Pensions Minister, Steve Webb, explained:

> I shall today table Government amendments to the *Pensions Bill 2011,* including one that caps the maximum increase in women's State Pension age at 18 months, relative to the legislated timetable.
>
> The amendment to Clause 1 will ameliorate the increase in State Pension age for around 245,000 women and 240,000 men and reduce total savings from the increase to 66 by around £1.1 billion (in 2011/12 prices). It will maintain our policy to equalise the State Pension age for men and women in 2018 and increase to 66 by 2020.[16]

The amendment would delay the increase to 66 by sixth months:

> The revised timetable maintains equalisation by November 2018, but then phases in the transition from 65 to 66 more slowly, so that the State Pension age reaches 66 in October, rather than in April 2020. As a result, the maximum delay to state pension age that any individual will face is 18 months.[17]

DWP explained the impact on the length of time people would have to wait until State Pension age, as follows: [18]

> Under the timetable currently contained in the Pensions Bill:
>
> - Approximately 4.5 million men and women will have their State Pension age increased by a year or less;
> - Approximately 500,000 women would have their State Pension age increased by more than one year, of whom;
> - Approximately 300,000 women would experience an increase in state pension age of 18 months or over, of whom;
> - Approximately 33,000 would experience an increase of exactly two years.
>
> Under the proposed amendment:
>
> - Approximately 245,000 women would see the increase in their State Pension age reduced to 18 months. 240,000 men would also benefit from a reduced increase
> - The numbers who benefit from a lower State Pension age is summarised by month in Table 1, and the impact on specific cohorts is shown in Table 2, below
>
> **Table 1: Numbers who benefit from the revised transition, by number of months their pension age is reduced, in 1,000s**

[16] HC Deb, 13 October 2011, c46-8WS; See also, DWP press release, No women will face two year increase in State Pension age, 13 October 2011

[17] Pensions Bill 2011 fact sheet 1 – Government amendment to Clause 1 of *Pensions Bill 2011*, 17 October 2011

[18] Ibid

SPa reduced by (months)	1	2	3	4	5	6
Women	29.1	61.1	30.3	62.0	31.0	32.5
Men	28.3	59.3	29.4	60.3	30.1	31.6
Total	**57.4**	**120.4**	**59.7**	**122.3**	**61.1**	**64.1**

Table 2: Cohorts who benefit from the revised transition, by number of months their pension age is reduced

Date of birth:	6/1/54 to 5/2/54	6/2/54 to 5/3/54	6/3/54 to 5/4/54	6/4/54 to 5/5/54	6/5/54 to 5/6/54	6/6/54 to 5/7/54	6/7/54 to 5/8/54	6/8/54 to 5/9/54
Women								
Old increase	20	22	24	23	22	21	20	19
New increase	18	18	18	18	18	18	18	18
Difference	**2**	**4**	**6**	**5**	**4**	**3**	**2**	**1**
Men								
Old increase	6	9	12	12	12	12	12	12
New increase	4	5	6	7	8	9	10	11
Difference	**2**	**4**	**6**	**5**	**4**	**3**	**2**	**1**

Under clause 1, as amended, the revised SPA timetable for those affected by the Bill is as follows:

Table 1 Changes to State Pension equalisation timetable (women)

Period within which birthday falls	**Date new State Pension age reached**	**New State Pension age (years, months)**
6 April 1953 - 5 May 1953	6 July 2016	63.2 - 63.3
6 May 1953 - 5 June 1953	6 November 2016	63.5 - 63.6
6 June 1953 - 5 July 1953	6 March 2017	63.8 - 63.9
6 July 1953 - 5 August 1953	6 July 2017	63.11 - 64
6 August 1953 - 5 September 1953	6 November 2017	64.2 - 64.3
6 September 1953 - 5 October 1953	6 March 2018	64.5 - 64.6
6 October 1953 - 5 November 1953	6 July 2018	64.8 - 64.9
6 November 1953 - 5 December 1953	6 November 2018	64.11 - 65.0

Table 2 Increase in State Pension age from 65 to 66 (men and women)

Period within which birthday falls	Date new State Pension age reached	New State Pension age (years, months)
6 January 1954 - 5 February 1954	6 May 2019	65.3 - 65.4
6 February 1954 - 5 March 1954	6 July 2019	65.4 - 65.5
6 March 1954 - 5 April 1954	6 September 2019	65.5 - 65.6
6 April 1954 - 5 May 1954	6 November 2019	65.6 - 65.7
6 May 1954 - 5 June 1954	6 January 2020	65.7 - 65.8
6 June 1954 - 5 July 1954	6 March 2020	65.8 - 65.9
06 July 1954 to 05 August 1954	6 May 2020	65.9 - 65.10
6 August 1954 to 5 September 1954	6 July 2020	65.10 - 65.11
6 September 1954 to 5 October 1954	6 September 2020	65.11 - 66
From 6 October 1954	66th birthday	66

Under provisions in the *Pensions Act 2007,* the State Pension age is due to begin rising to 67 from 6 April 2034, which will affect men and women born on or after 6 April 1968.

Responses

The amendment was welcomed by chair of the Liberal Democrat Committee on Work and Pensions, Jenny Willott:

> "Today's announcement shows the government has listened to thousands of women and capped the maximum increase that women will see. Liberal Democrats had made clear to the Government that the proposal to raise the age of the state pension was unfair on many women and we were joined by campaigners in urging a rethink."[19]

Organisations such as Age UK and the National Association of Pension Funds also welcomed the change but would have liked the Government to go further:

> Michelle Mitchell, Charity Director of Age UK said: "We welcome the changes that have been made, they have listened to our concerns and we appreciate that it is a significant financial commitment from the Government at a difficult time. This will give a much needed 6-month respite to all the women who would have had to work an extra 2 years. We would have liked the changes being made to have gone further. Having faced uncertainty twice already, these women must not be affected by any further changes to their state pension age again without sufficient notice."[20]

Opposition amendments

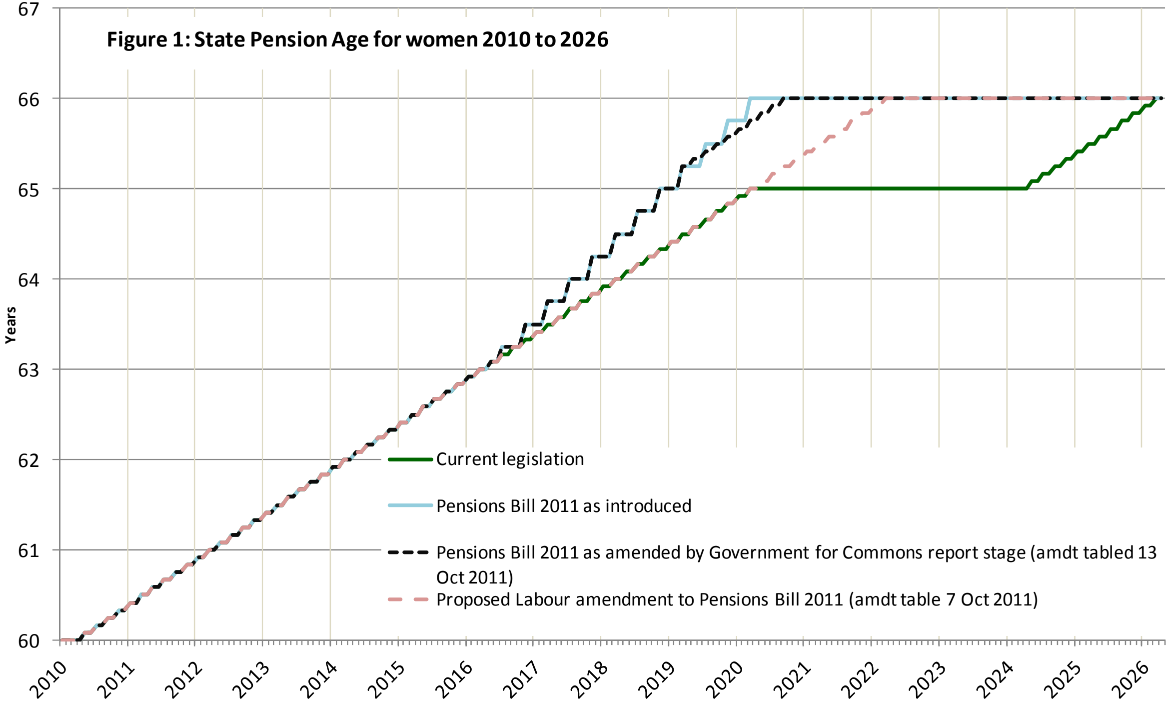
Responding to news of the Government amendments, Rachel Reeves, who was Shadow Pensions Minister during the Bill's Committee Stage, welcomed the concession but said

[19] Kiran Stacey, 'Rethink on pension age benefits women', *Financial Times,* 13 October 2011

[20] Age UK press release, Government delays State Pension rise to help women, 12 October 2011; BBC News, Ministers delay State Pension age rise to 66 to help women, 13 October 2011; TUC press release, Amendment shows government has got women's pension age increase wrong, 13 October 2011

there would still be a “big financial hit” for those women in their late 50s who would have to wait 18 months before they could get their State Pension.[21] Amendments to clause 1 tabled by the Opposition for debate at Report Stage would retain the 1995 Act timetable for increasing women’s SPA to 65 but then bring forward the increase to 66 for both men and women to between 2020 and 2022.[22] Amendments previously tabled by the Opposition in both Houses had the same object (see section 1.2 above).[23]

Figure 1 below shows the timetable for SPA increases: a) under existing legislation; b) under clause 1 as originally drafted; c) under clause 1 taking account of the amendment; and d) under the amendment tabled by the Opposition.



Report Stage and Third Reading Debate

Opening the Report Stage debate, the new Shadow Pensions Minister, Gregg McClymont, said the amendments were welcome but did not go far enough. Some 500,000 women would still have to have up to 18 months longer before reaching State Pension age:

> The two tests that we have set are: do the Government’s plans give fair and due notice to the women concerned, and do those plans bear proportionately on all women affected? The answer is no and no. The Bill continues to place the longevity burden disproportionately heavily on women in their later 50s.[24]

He said the Opposition amendments (which would retain the *Pensions Act 1995* timetable for increasing women’s SPA to 65 by April 2020, but then bring forward the increase to 66 for

[21] Ibid

[22] Notices of amendments giving up to and including Friday 14 October 2011 – Amendments 1 to 4

[23] HL Deb, 1 March 2011, GC 110-125; HL Deb, 30 March 2011, c1250-1; and PBC Deb, 5 July 2010 (morning), c4-67.

[24] HC Deb, 18 October 2011, c780-2

both men and women to between 2020 and 2022) offered the Government “one last chance to show women that they get it.”[25]

Responding, Pensions Minister Steve Webb described the Government amendments as a “huge achievement” in the circumstances:

> [...] my right hon. Friend the Secretary of State said that the basic principle of the Bill is right—that we move to equality sooner and to aged 66 in 2020. We have been entirely consistent with what he said, but he also said that we need to make sure that the transition is fair and that those most adversely affected are helped. That is exactly what we deliver on today with the amendments.
>
> We have identified, notwithstanding the difficult fiscal position, £1.1 billion to ensure that half a million people face a shorter increase in their pension age, and that a quarter of a million women who could have faced up to 24 months will now face a maximum of 18 months. It is worth keeping in context the fact that nine out of 10 people affected by the Bill will see an increase of one year or less in their state pension age.[26]

The Opposition amendments were negatived on division by 291 votes to 244. The Government’s amendments to the Bill were made.[27]

Opening the debate on Third Reading, Secretary of State, Iain Duncan Smith, said the Government had responded to concerns:

> The House will be aware that we have listened and responded to concerns about the women most affected by the accelerated rise in the state pension age. Last week we announced that no women will see their state pension age increase by more than 18 months. We have always been clear that our policy will not change and we will still equalise the state pension age by 2018 and increase it to 66 by 2020. We have, however, honoured the commitment I gave on Second Reading to ease the transition process for those who are most affected. I listened with interest to the debate, but the point that is sometimes missed is that the adjustment means that nearly 250,000 women will have a lower state pension age as a result of the change, as will a similar number of men: 500,000 people at a cost of just over £1 billion in the next spending period. We should not sniff at that.[28]

Shadow Minister for Employment Stephen Timms explained that the Opposition had decided to vote against the Bill:

> [...] our objection to this part of the Bill is that it achieves these very large savings solely at the expense of one age cohort of women, apparently on a wholly arbitrary basis. The data are very clear. Women have substantially lower savings than men, yet a group of women—older women who have the least time to plan for the change—are being asked to bear the cost. The Bill simply fails the fairness test, and for that reason, in particular, we cannot support its Third Reading. We understand that Ministers are worried about rapidly plunging popularity among women voters and we are told that they are puzzled about why that is happening. They should just take a careful look at the unfairness in this Bill, and they will find a ready explanation there. We will not

[25] Ibid, c789
[26] HC Deb, 18 October 2011, c823
[27] Ibid, c823-8
[28] HC Deb, 18 October 2010, c849

> support that unfairness in the Lobby tonight, and no one else who values fairness should do so either.[29]

The House voted to give the Bill a Third Reading by 287 votes to 242.[30]

Debate in the Lords

The amendments made in the House of Commons were debated in the Lords on 31 October 2011. Again an Opposition amendment sought to retain the timetable in the *Pensions Act 1995* for increasing women's SPA so that it reached 65 by April 2020 and then to bring forward the increase in the equalised SPA to 66 by April 2022.[31] This was negatived on division by 235 votes to 183. The motion to accept the Government's amendment was agreed to.[32]

2 Other Government amendments

2.1 Qualifying schemes: administration charges

The *Pensions Act 2008* provided for a duty on employers to automatically enrol employees into, and to contribute to, a qualifying workplace pension scheme. Employers can auto-enrol employees into the National Employment Savings Trust (NEST) (also established under the 2008 Act) or, if they already provide a scheme for their employees, they can continue to use it, provided it is a "qualifying scheme", which satisfies certain minimum standards and quality requirements.[33]

At Committee stage that deferred members might be potentially at risk of inappropriately high charges. Labour MP Teresa Pearce had said:

> Consumer groups such as Which? are particularly concerned about the increase in charges levied by some insurance companies for people who change jobs. Which? research has found that some companies are charging 0.5% to 0.7% in annual management charges to active members but, once the person leaves, the charges can then double to 1.2% to 1.5%. Many people move jobs from time to time, and around 60% of people who start contributing to group personal pensions have stopped contributions after four years. A substantial proportion of people will end up paying higher charges, far exceeding the charges that they would be paying were they involved in NEST. Such high charges could have a big impact on the pension received by the consumer, and would be counterproductive to what we are trying to achieve, which is renewed confidence in pension schemes. Insurance companies that operate the practice call it an active member discount, but a more appropriate name would be a deferred member penalty. Whether the change needed is regulatory or legislative, the Government need to address the fact that no one seems to be looking after the interests of past employees, or deferred members.[34]

Pensions Minister, Steve Webb said he would continue to reflect on the issue:

> The issue of what are charitably called active member discounts or deferred member penalties was raised on Tuesday. That is to say, once the firm is no longer interested in me, because I work for somebody else, it jacks up the charges. I heard recently of a

[29] HC Deb, 18 October 2011, c856
[30] Ibid, c864
[31] HL Deb, 31 October 2011, c984
[32] Ibid, c996
[33] *Pensions Act 2008*, s16 and 20-27
[34] PBC Deb, 12 July 2011, c252

> leading member of a financial institution, who had only just discovered how much the active member discount or deferred member penalties were on his own pension. He had not realised, since he left the firm that he had worked for, how much the charges had gone up. Again, we insist on transparency of costs and charges in default fund guidance. Our power to cap charges relates only to active members in qualifying schemes, but there is an issue about whether charge-capping powers should also extend to deferred members.[...] I will continue to reflect on the issue of deferred member penalties, which the Department is considering in the context of its wider work on transfers.[35]

An article in *Professional Pensions* commented:

> The change is a crack down on active member discounts, employed by major pension providers such as Standard Life and Aviva.
>
> TUC general secretary Brendan Barber said: "We strongly welcome the amendment to give the government greater powers to cap charges for deferred members of pension schemes. This shows ministers have heeded the warnings of unions and consumer groups that this is a scandal waiting to happen.
>
> "The industry may talk about active member discounts, but the correct term has always been deferred member penalties."
>
> Which? chief executive Peter Vicary-Smith said: "Few people stick with one employer for their whole working life, so it's great news that the government is taking steps to cap deferred member penalties.
>
> "There's simply no justification for charging higher fees for members who have left a pension scheme. Over a number of years, this really adds up and could knock as much as a quarter off your income once you retire.
>
> "The job is only half done though. Now the government must follow through by ensuring this amendment makes it into the final bill and cap deferred member fees at the earliest opportunity."[36]

In his Written Statement on 13 October, Pensions Minister, Steve Webb said he would table an amendment to the *Pensions Bill 2011* to extend "an existing reserve power to cap charges for deferred members, which would enable Government to protect all scheme members from high charges, not just active members."[37]

In debate at Third Reading, he explained that the Government did have power to cap certain pension scheme charges. However:

> In considering this issue, we became aware of the anomaly that we do not have that power in relation to people who are no longer active members of pension schemes but who are deferred members, and in particular deferred members of qualifying schemes for auto-enrolment. If we want to cap charges—I will come back to that issue in a second—we do not currently have the power in primary legislation to cap them for deferred members of qualifying schemes for auto-enrolment. The purpose of Government new clause 2 is to give us that power, so that if we want to impose charge caps, we can do so systematically and without unintended omissions.[38]

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[35] PBC Deb, 14 July 2011, c263-4
[36] Jenna Towler, Govt legislates to cap deferred member charges, *Professional Pensions,* 13 October 2011
[37] HC Deb, 13 October 2011, c46-8WS
[38] HC Deb, 18 October 2010, c831

The amendment was made to the Bill.[39]

In debate in the Lords on 31 October, Opposition Peer and former Pensions Commission member, Baroness Drake, welcomed the amendment and urged the Government to take action, "not to wait to see what happens, because this is already an area that needs to be addressed.[40] Lord Freud responded that the cap allowed the Government to act if necessary. It would "remain vigilant about charges in the pensions industry."[41] The amendments made to the auto-enrolment provisions in the House of Commons were agreed to by the House of Lords.[42]

2.2 Definition of money purchase benefits

In July 2011, the Supreme Court issued its judgement in the case of *Houldsworth vs Bridge Trustees*.[43] DWP explained why it considered the judgment to be a problem:

> **What was the Court case about?**
>
> The Imperial Home Décor pension scheme began winding up in 2003. The trustees of the scheme sought a direction from the Court, as it was unclear how to divide the scheme assets between members. One of the key questions was whether certain classes of benefit should be treated as "money purchase benefits".
>
> The Supreme Court decided that certain benefits should be treated as "money purchase benefits", even though it was possible for them to develop funding deficits. For example, one class of benefits promised a rate of return related to a building society interest rate – but the underlying assets could not be guaranteed to deliver that rate of return.
>
> **Why is the judgment a problem?**
>
> Pensions law treats money purchase benefits differently from other benefits such as those offered by final salary schemes. A range of provisions exist to protect members of final salary schemes against the risk that their scheme is not able to meet the pensions promise – these include statutory regulation of funding, and the backstop of the Pension Protection Fund (PPF) if sponsoring employers become insolvent and schemes are underfunded.
>
> The Government takes the view that the term "money purchase benefits" should only refer to benefits where there is no risk of a funding deficit. That is why the legislative protections for benefits such as final salary benefits do not apply to money purchase benefits.
>
> If the Government had not acted following the judgment, members could find that their schemes were unable to pay their benefits – but they were still not eligible for help from the PPF. It could also have led to anomalous results when the assets of schemes in wind-up were distributed.[44]

[39] Ibid, c846
[40] Ibid, c1002
[41] Ibid, c1005
[42] HL Deb, 31 October 2011, c999-1006
[43] The Supreme Court produced a press summary of the decision
[44] Pensions Bill 2011 – factsheet 2 – Government amendments to the definition of "money purchase benefits", 17 October 2011

On 13 October, Pensions Minister, Steve Webb, said he would amend the Pensions Bill to "clarify the definition of 'money purchase benefit' to ensure scheme members are protected appropriately."[45] In more detail, DWP explained:

> The amendments do four things:
>
> - First, they ensure that the definition of "money purchase benefits", only includes those benefits which cannot develop a deficit in funding;
> - Second, they provide powers to make consequential or supplementary changes;
> - Third, they provide powers to make transitional provision; and
> - Finally, they provide a power to amend the definition of 'money purchase benefit' further.
>
> The amendments will have retrospective effect to 1 January 1997. This is to ensure that, in broad terms, all schemes that have wound up since the Pensions Act 1995 came into effect, and particularly all schemes that have qualified for help from the Financial Assistance Scheme, can be treated fairly and consistently.[46]

The implication for schemes is that some benefits previously considered to be money purchase benefits will now fall outside that definition and so be subject to the scheme funding legislation applying to Defined Benefit schemes:

> Any benefits that trustees have previously considered to be money purchase benefits, but would now fall outside the definition, will now be covered by the scheme funding legislation. This means that trustees will need to include these benefits in the triennial valuation process, and if they are in deficit, employers will need to make good the deficit. Schemes will also be subject to the Pension Protection Fund levy in respect of these benefits. Members may then benefit from PPF compensation in the event that the scheme's sponsoring employer fails and the scheme is underfunded.[47]

A pensions lawyer was quoted in *Professional Pensions* as saying that the change could be "big news" for the schemes affected:

> What they are doing is restricting the definition, saying a benefit only falls within this if the benefit is calculated solely by reference to these assets - if a deficit can arise it is not money purchase anymore. That makes it very clear, the problem is that you have schemes have do offer these other slightly odd benefits. It is not that uncommon for a money purchase scheme to offer members the option of buying a pension from within the scheme rather than going to an insurer. Classically that has been a good, paternal thing to do for members. An internally annuitised pension would now not count as a money purchase benefit."So suddenly a scheme is paying benefits that are not money purchase - that is going to put you in a very different camp in terms of scheme funding. That is going to be big news for trustees who are affected by that.[48]

However, the Government recognised that there may be a need for some transitional protection:

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[45] HC Deb, 13 October 2011, c46-8WS

[46] Pensions Bill 2011 – factsheet 2 – Government amendments to the definition of "money purchase benefits", 17 October 2011

[47] Ibid

[48] Jenna Towler, 'Government moves to restrict core money purchase definition', *Professional Pensions,* 14 October 2011

> The Government also recognises that trustees and others may have had a different understanding of "money purchase benefit" in the past, and that it may be appropriate to make transitional provision where past decisions cannot practically be revisited. For example, it is unlikely to be appropriate to reopen the decisions made in relation to schemes that completed wind up some years ago.[49]

The Government would consult on regulations and make transitional changes in due course. Regulations would follow the affirmative procedure (i.e. would need to be debated in both Houses before coming into force).[50]

The amendments were made to the Bill on 18 October 2011.[51]

In the House of Lords, Lord Freud provided a more detailed explanation, particularly regarding the transitional arrangements that might need to be made.[52] Baroness Drake asked about protection for members for whom an annuity might have been purchased by a pension scheme without it being ring-fenced for them.[53] Lord Freud responded that the Government would legislate to clarify the position if it proved necessary.[54] Baroness Drake also asked what restrictions there would be on the Government's power to amend the rules in the future.[55] Lord Freud responded that flexibility to respond to developments in the market was needed. The Government would be bound by the provisions of the 1980 Insolvency Directive. The amendment was agreed to.[56]

2.3 Technical amendments

The Government also made technical amendments to section 30 of the *Pensions Act 2008,* as amended by the *Pensions Bill 2011:*

> Government amendments 15 and 16 are technical amendments to clause 14, dealing with what would otherwise have been a problem in section 30 of the *Pensions Act 2008.* Although that section currently allows employers to use a defined benefit, hybrid or money purchase scheme as an alternative scheme, it does not allow them to use a workplace personal pension scheme. Clause 14 corrects that omission, but there is a risk that an individual might be automatically enrolled into a personal pension scheme, and then required to pay contributions immediately for up to four previous years. The amendments protect individuals from that scenario. They correct what we believe to be an error in previous legislation.[57]

These were agreed to in the House of Lords.[58]

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[49] Pensions Bill 2011 – factsheet 2 – Government amendments to the definition of "money purchase benefits", 17 October 2011
[50] Ibid
[51] HC Deb, 18 October 2011, c846-50
[52] HL Deb, 31 October 2011,c1010-3
[53] Ibid, c1014
[54] Ibid, c1016
[55] Ibid, c1015
[56] Ibid, c1017
[57] Ibid, c831
[58] HL Deb, 13 October 2011, c999-1006