Baroness Thomas of Winchester  
c/o The Clerk of the Delegated Powers and 
Regulatory Reform Committee  
Delegated Legislation Office  
House of Lords  
SW1A 0PW

Dear [Name],

The Pension Schemes Bill

I am grateful for the Delegated Powers and Regulatory Reform Committee’s twelfth report of session 2014-15, which was published on 19 December, and the recommendations it contained. I am responding as lead Minister for the Bill.

The report makes four recommendations for regulations to be subject to the affirmative parliamentary procedure. On two of these, regarding clause 76 (pensions for fee-paid judges) and clauses 9-11 and 21 (regulations regarding the arrangements for collective benefits), we propose to accept the Committee’s recommendations in full.

Of the remaining two recommendations, I would like to first of all set out how we would like to respond to the report’s recommendation that the power in clause 8(3)(b) which allows regulations to exclude the provisions relating to collective benefits applying to certain benefits, be subject to the affirmative procedure.

This power was included in the Bill to ensure that we could, from the outset, ensure the definition of “collective benefits” would not catch any personal pension schemes set up by insurers that offer “with profits” arrangements which might otherwise fall within the definition. We may also need to use the power at a later date if new developments in scheme and benefit design result in benefits falling within the definition contrary to policy intention. This latter use of the power might require a very quick response to avoid members’ benefits being affected and to avoid schemes being subject to expensive requirements around the setting of targets, actuarial valuations etc. which are not appropriate.
Therefore, whilst it would be possible to accept the recommendation that this power be subject to the affirmative procedure, this could limit our ability to respond quickly to industry developments should we need to. We therefore think it appropriate to amend the Bill so this power is subject to the affirmative procedure for the first use only.

Finally, we have also carefully considered the report’s recommendation that the powers taken under subsections (3) and (7) of clause 48 should be subject to the affirmative parliamentary procedure.

Clause 48 deals with the safeguard requiring schemes to check that individuals have received ‘appropriate independent advice’ before transferring safeguarded benefits (i.e. benefits other than cash balance or money purchase benefits) to schemes in which they could be taken flexibly using the range of options being introduced by the Taxation of Pensions Act 2014. The pensions tax flexibilities delivered by the Act, will come into force in April 2015. Regulations under subsection (7) of clause 48 of the Pensions Schemes Bill, will set out the definition of ‘appropriate independent advice’ that underpins the advice safeguard, ensuring this safeguard is operational by April 2015 when the new flexibilities come into force.

We recognise the concerns raised in relation to the lack of the definition of “appropriate independent advice” in the Bill. In the response document to the consultation on freedom and choice in pensions we set out that ‘appropriate independent advice’ would be delivered by an advisor who is ‘authorised by the Financial Conduct Authority (FCA)’. In response to the concerns raised we are looking into bringing forward an amendment to clause 48 at Report stage to provide more detail about the meaning of “appropriate independent advice” on the face of the Bill.

I can now tell you that our intention is to define ‘appropriate independent advice’ in regulations by reference to activity regulated by the Financial Conduct Authority. To facilitate this, the Treasury intends to legislate to add a new activity to the FCA’s Regulated Activity Order. This will be done by means of a statutory instrument, amending the Financial Services and Markets Act (Regulated Activity) Order 2000. It is not possible to refer to this on the face of the Pension Schemes Bill, but this statutory instrument, which we intend to lay in the New Year, will be subject to the affirmative procedure. In order to ensure that the definition in the Bill fits with any definition in the Regulated Activity Order, we will still need to leave at least some of the detail of the definition in clause 48 to regulations. We think that it is appropriate that such regulations be subject to negative procedure especially if the parameters of the definition can be expanded upon on the face of the Bill.

Clause 48 can deliver a meaningful safeguard only if the definition of ‘appropriate independent advice’ is fully in place by 6 April 2015. The process
that I have outlined above will ensure that the House has the opportunity to comment and scrutinise the new definition, whilst ensuring that regulations to be made under subsection (2) setting out what trustees and managers must do to check that an individual had received appropriate independent advice operate as intended. This will ensure that those who wish to transfer in the context of the new flexibilities are properly advised to support members to make an informed choice.

Subsection (3) of clause 48 provides for regulations to be made which set out exceptions to the ‘appropriate independent advice’ safeguard. If regulations made under clause 48(3) were subject to the affirmative procedure, they would not be in place by April 2015. We set out in the consultation response document on freedom and choice in pensions, published July 2014, that we intended to exempt those with pensions wealth below £30,000 from having to obtain advice if they wished to transfer safeguarded benefits. This remains our only intended use of the exemption, however, once the new flexibilities come into force, it may prove necessary to create an exemption for other special circumstances. If the regulations under subsection (3) were not in place by April 2015, individuals with small amounts of safeguarded benefits, would not be able to transfer without taking advice. The cost of advice could represent a significant proportion of their wealth, therefore this provision not being ready by April may act as a significant barrier to those who wish to transfer to access their funds in the manner they thought most appropriate and, of course, have a current legal right to transfer.

The freedom and choice in pension consultation response document describes in more detail the only exception we currently intend to make to the advice requirement - for members with small amounts of safeguarded benefits. The consultation document indicated this exemption threshold would be £30,000 and below. which will need to adjusted and up-rated over time, and therefore we feel the affirmative procedure would not be suitable. However, we care also looking into bringing forward an amendment at report stage to subsection (3) to ensure that exemptions to the advice safeguard, other than for members with small amounts of safeguarded benefits, would be subject to the affirmative procedure. This would ensure that the House had the opportunity to scrutinise any further exemptions that are required to the appropriate advice safeguard.

I hope you find this response to the Delegated Powers and Regulatory Reform’s report satisfactory. I will place a copy of this letter in the Libraries of both Houses.

RT HON STEVE WEBB MP
MINISTER OF STATE FOR PENSIONS