



BRIEFING PAPER

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Nuclear Decommissioning Authority pensions

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1. Background

Summary

In early 2017, the Nuclear Decommissioning Authority (NDA) and employers across the NDA estate consulted on reforms to two final salary schemes:

- Combined Nuclear Pension Plan (CNPP)
- Magnox Electric Group of the Electricity Supply Pension Scheme (MEG ESPS).

The purpose of the consultation was to seek the views of members on reforms including moving to a Career Averaged Revalued Earnings (CARE) arrangement and a cap on pensionable pay.

Members of these schemes are covered by protection arrangements put in place at privatisation, requiring the new private sector employers to continue to provide pension benefits for those employed at the time of privatisation which are “at least as good as those they were receiving in the public sector.”

However, the current Government has decided that – because the NDA is classified as public sector - the schemes fall to be reformed under the *Public Service Pensions Act 2013*. In response, the trade unions argue that i) they are not public sector pension schemes; ii) they have already gone through far more radical reform (in that they were closed to new entrants in the mid-2000s); and that scheme members are covered by statutory protection put in place at privatisation.

In early March 2017, the trade unions said they had received an improved offer on which they would ballot their members.

1.1 The schemes

In early 2017, the Nuclear Decommissioning Authority (NDA) and employers across the NDA estate consulted on proposed changes to two final salary schemes:

- The Magnox Electric Group of the Electricity Supply Pension Scheme (MEG ESPS);
- Combined Nuclear Pension Plan (CNPP).¹

Both schemes closed to new entrants in the mid-2000s.

¹ [NDA brief, January 2017](#)

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The Magnox Electric Group of the Electricity Supply Pension Scheme (MEG ESPS) is an industry-wide scheme in which the participating employers are “companies formed upon the privatisation of the electricity industry in 1990 or their successors.” It was closed to new entrants in 2007, when alternative arrangements were put in place.²

The [Combined Nuclear Pension Plan \(CNPP\)](#) was set up in 2006 as the industry-wide arrangement for eligible workers in the nuclear decommissioning industry. Key features of the defined benefit (DB) section, which is closed to new entrants, are that:

- Members contribute 5% of pensionable pay;
- At retirement, the scheme pays a lump sum of 3/80th of final salary and pension benefits based on 1/80th of final salary in each year of earnings;
- Pension age is 60.³

1.2 Arrangements at privatisation

In both cases, protection arrangements were put in place at privatisation (sometimes referred to as the ‘protected persons’ regulations). These required the new private sector employer to continue to provide pension benefits for those employed at the time of privatisation which are “at least as good as those they were receiving in the public sector” and preventing them from making changes which reduced future accruals or increased employee contributions (although in some cases, limited changes could be made with the consent of the majority of members).

For the [MEG ESPS](#) regulations made under the [Electricity Act 1989](#) provided that:

- no amendments of relevant scheme rules are allowed where such amendments would result in accrued or future pension rights of protected persons being reduced or protected employees’ contributions being increased, except in certain specified circumstances;
- a new employer should provide future pension benefits in an alternative scheme which are no worse than transfer date rights;
- a protected employee has a right to accrue pension rights on a change of employer (where that employer does not currently have any protected employees in the relevant scheme) that are no worse than transfer date rights;
- future pension rights to be provided (on total or partial wind up of the Electricity Supply Pension Scheme) should be no worse than future pension benefits for those employees immediately prior to the date on which they ceased to participate in the Scheme and moved to the alternative scheme.⁴

For the Combined Nuclear Pension Plan, the [Energy Act 2004](#) provided that:

[...] in the event of employees being transferred for NDA purposes to the private sector, or within the private sector, and, as a consequence, having to leave their current pension scheme, they have the option of joining a new scheme which (taken as a whole) confers benefits which are no less favourable than those offered by their original pension scheme.⁵

² [Electricity Supply pension scheme, Magnox Electric Group Report & Financial Statements for the year ended 31 March 2015](#)

³ Members’ booklet 03/16 the [Combined Nuclear Pension](#)

⁴ DWP, [Abolition of contracting out – consultation on a statutory override for Protected Persons Regulations](#), January 2013; [Electricity Act 1989](#), Sch 14; [The Electricity \(Protected Persons\) \(England and Wales\) Pension Regulations 1990 \(SI 1990/346\)](#); the [Electricity \(Protected Persons\) \(Scotland\) Pension Regulations 1990 \(SI 1990/550, S68\)](#).

⁵ Section 46 and Schedule 8; [Explanatory Notes](#), para 172-4

Previous reform attempts

As stated above, both schemes have been reformed to the extent that they have been closed to new entrants. However, there have so far been no changes for existing members covered by the protection arrangements.

In 2014, the Government consulted on whether there should be a 'statutory override' to the protected persons regulations, to allow employers to make changes to scheme rules to recoup the cost of the increased National Insurance liabilities resulting from the introduction of the new State Pension.⁶ However, in the end it decided that the promises made at privatisation should be honoured:

We had to consider the best and fairest course of action in an area where the arguments are both finely balanced and highly polarised. The Government has decided that it should honour the promises that were made at the time of privatisation and which, in many cases, have been affirmed by Government Ministers subsequently. The Government thinks it is reasonable that issues arising from the end of contracting out for this small number of workers should be resolved through negotiation. Therefore the Government proposes that employers should not be allowed to use the statutory override to alter their pension schemes in relation to members with protected person status.⁷

The regulations were also the subject of a High Court judgement in 2012, which decided that the protection arrangements provided by the *Energy Act 2004* were of an enduring nature and could not be amended by the new employers.⁸

1.3 Current reform proposals

The NDA and employers across the NDA estate have been consulting on potential reforms to the two pension schemes – to include:

- a Career Averaged Revalued Earnings (CARE) arrangement
- a Pensionable Pay Cap.⁹

Once it has considered the consultation responses, it will make proposals for the Government to consider.¹⁰ An equality analysis will be undertaken in order to comply in full with all of the requirements by the Public Sector Equality Duty. The Government will take this into account in finalising decisions.¹¹

There is also an [Early Day Motion 915](#) – which so far has 127 signatures - calling on the Government to “honour commitments” made to civil nuclear workers on the NDA estates:

That this House is greatly concerned about the proposed pension reforms to civil nuclear workers on Nuclear Decommissioning Authority (NDA) estates; notes that during the course of the Enterprise Act 2016, these workers were also marked for a cap to be imposed on their exit payments, and were assured at the time that their pensions would not be affected; further notes that the terms and conditions that NDA workers were employed on played a crucial role in retaining their vital skills as part of the workforce, and to renege on these promises would not be repaying their commitment with the gratitude it deserves; is alarmed that these pension reforms

⁶ DWP, [Consultation on a statutory override for Protected Persons Regulations](#), January 2013

⁷ [HC Deb 12 February 2014 c61-2WS](#); For more on the background, see Library Briefing Paper SN-06725 [Pensions: the statutory override and 'protected persons'](#) (April 2014)

⁸ ['Nuclear workers celebrate pensions victory'](#), [Prospect press release, 12 June 2012](#); *Urenco UK Ltd v Mossop*, [2012] EWHC 1495

⁹ [NDA brief, January 2017](#)

¹⁰ [PQ 65061 27 February 2017](#)

¹¹ [PQ 63053 14 February 2017](#)

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could see some employees lose up to 75 per cent of their pension; recognises the dedication and professionalism of employees working to make NDA estates around the UK safe; and call on the Government to honour the commitments previously made to these employees and urge the NDA to reconsider the proposed pension changes.

A petition on the Parliament website (currently with 16,799 signatures) calls on the Government to honour pension protections for nuclear workers:

When companies in the nuclear sector were privatised, employees were granted statutory pension protections. Now, after many years, the Government is using spurious excuses to justify proposals to override the protections and impose detrimental changes. These proposals must be completely withdrawn.

Pension protections were negotiated for workers in the nuclear sector to ensure privatisation succeeded. Employees kept to their commitment, Government should not renege on its part.

In arguing that pensions for nuclear workers should follow the same reforms as public sector workers, Government is guilty of cherry picking the detrimental changes it wants to apply while ignoring the improvements that those reforms would entail.

Government has already achieved enough savings from these schemes.¹²

In its response, the Government argued that because the NDA is classified as public sector, the schemes to be reformed along the same lines as public sector pensions under the *Public Service Pensions Act 2013*. It acknowledges that the proposed changes would require amendments to statutory protections put in place at privatisation:

Government recognises sensitivities around these statutory pension protections. The NDA Estate Employers are consulting workforces on pension reform, after which Ministers will consider the results.

The Government understands the concerns of the workforce across the Nuclear Decommissioning Authority estate about public sector pension reform, bearing in mind the existence of statutory pension protections. The Government is supportive of the decommissioning programme and has allocated £11 billion of taxpayer funding over the 2015 Spending Review period, which recognises the vital work the workforce delivers on decommissioning, while maintaining the priority of safe and secure operations. The NDA has also been set a challenging programme of over £1 billion of efficiencies and savings for this period, part of which must come from the reform of two final salary defined benefit pension schemes within the NDA estate.

Government policy on public sector pensions follows from recommendations made the Independent Public Service Pensions Commission's report in 2011. The main recommendation is to reform final salary, defined benefit schemes in favour of Career Averaged Revalued Earnings schemes (CARE). The aim is to make the current and future costs of public sector pensions fairer between scheme members and other taxpayers and put them on an affordable and sustainable footing. Recommendations were enacted through the provisions of the *Public Services Pension Act 2013*.

The majority of public sector schemes have been reformed already. The Government have set a deadline of April 2018 to reform remaining public sector schemes, including those within the NDA estate and to be guided by the previous reforms. The NDA estate, which receives the majority of its funding from the public purse is classified as public sector by the Office of National Statistics and therefore within scope for pension reform. The ONS determines whether a body falls within the public sector by reference to objective criteria – based upon whether the governance, funding, ownership and function of these bodies demonstrate that they are controlled by government.

The two defined benefit pension schemes in scope for reform across the NDA estate cover approximately 10,800 employees and are closed to new members. Since 2006

¹² [UK parliament petition. Honour pension protection for nuclear workers](#)

new starters have been offered membership to a defined contribution pension scheme, which is out of scope for reform.

Government acknowledges that CARE reform would require amendments to statutory pension protections, put in place at the time of privatisation of the electricity sector in the 1980s and the *Energy Act 2004*, when the NDA was formed. These protections sought to provide pension benefits for existing scheme members that were at least as good as those they were receiving in the public sector.

The Government has worked with the NDA in considering how best to implement pension reform and the NDA has held discussions with the trade unions on the potential for non-legislative options as an alternative to CARE to realise the required savings. This would be a bespoke solution to the NDA estate and in effect would leave the statutory protections in place. Consideration has focussed on a cap on pensionable pay, which would apply a reduction in pension schemes costs, by limiting an individual's final salary used to calculate retirement benefits.

The NDA consultation document launched on 9th January sets out the details of two options (CARE and a pensionable pay cap) and seeks views from its workforce by the close of the consultation on 10th March. The consultation is the opportunity for the workforce and trade unions to make their views known so that they can be fully taken into account before any final decisions are made. The Government would therefore encourage the workforce and trade unions to engage constructively in the consultation process, after which the NDA will share the feedback from it with Government for its consideration.¹³

The [Public Service Pensions Act 2013](#) provided for reform of public service pensions – and provided that the new schemes established under it would provide be CARE schemes and that scheme members would have a pension age linked to their State Pension age (60 for the uniformed services). Section 31 of the Act provided for bodies listed in [Schedule 10](#) to close their pension schemes to future accrual and to move their employees to one of the reformed public service schemes – such as that for civil servants. Section 31(10) allows the Treasury by order to add public bodies and offices to Schedule 10.¹⁴

The trade unions argued that the schemes were not public sector pension schemes and were not covered by the 2013 Act:

The pension schemes concerned are not public sector pension schemes and were not within the scope of public sector pension reform. They were not included in the [terms of reference](#) of the Hutton review of public sector pensions and they were not covered by the *Public Service Pensions Act 2013*.

The scheme members affected by this consultation were previously removed from public sector pension schemes. At that time statutory protections against detrimental pension changes were granted to ensure the privatisation/contractorisation process was a success. These proposed reforms ride roughshod over those protections. Pension costs across the NDA estate are falling and are projected to continue to fall over the long-term both in terms of the schemes subject to this consultation and overall. Pension provision is already on an affordable and sustainable footing".

The trade unions are united in their efforts to oppose these unnecessary and unjustified attacks on our members' pensions. We resolve to oppose the imposition of any detrimental changes.¹⁵

On 2 March 2017, the unions representing workers in the nuclear sector (GMB, Aslef, Unite, and Prospect) said they had reached a Head of Terms Agreement that would be recommended to members as the best that can be achieved by negotiation:

GMB, ASLEF, Unite and Prospect Unions representing workers in the nuclear sector, have reached a Heads of Terms Agreement in relation to the £660m broken promises

¹³ [Honour pension protections for nuclear workers](#) Petition to UK Parliament; [PO 65061, 27 February 2017](#)

¹⁴ [Public Service Pensions Act 2013 – Explanatory Notes](#), para 182-198

¹⁵ ['Nuclear unions' statement on pensions campaign, 9 January 2017, Aslef, Unite the Union, GMB, Prospect](#)

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nuclear pensions dispute following a further meeting with Jesse Norman, the Energy Minister.

The improved pension scheme offer will be recommended to members by the Trade Unions as the best that can be achieved by negotiation. [See note 1 for key elements of the revised proposal]

[...]

The key elements of the revised proposal are:

- Improved accrual 1/60th to 1/58th CARE (current 1/80th & 3/80th = 1/64th Final Salary)
- Pension age remains the same (either 60/63/65). The previous proposal was the state pension age
- Contributions to increase by 3% overall (proposed 3.2%) with this tiered to take advantage of the higher tax relief the highest paid with 3 year phasing (not in original proposal)

16,000 workers will be affected working for Sellafield (Cumbria), Magnox (Anglesey, Ayrshire, Dorset, Dumfriesshire, Essex, Gloucestershire, Gwynedd, Kent, Oxfordshire, Somerset, Suffolk), Direct Rail Services (Cumbria), Dounreay Site Restoration Ltd (Caithness), Low Level Waste Repository (Cumbria) and International Nuclear Services (Cumbria, Warrington). [See note 8 for a list of companies, sites and locations.]¹⁶

1.4 Cap on exit payments

There are also proposals to apply the public sector exit cap across the NDA estate:

The public sector exit payments cap, as introduced by the Enterprise Act 2016, will apply to organisations classified as within the public sector by the Office for National Statistics (ONS), implementing the manifesto commitment made in April 2015. As Magnox is classified by the ONS as a public sector organisation and receives a significant amount of funding from the Exchequer, it is within the scope of the reforms.

The Government is aware of the particular context that Site Licence Companies operate in, and the Nuclear Decommissioning Authority utilises redeployment and retraining opportunities in redundancy situations across its estate where it is appropriate to do so.

The regulations that will implement the cap are currently being drafted, and the Government will publically release both guidance and regulations for comment before the regulations are laid in Parliament.¹⁷

Part 9 of the *Enterprise Act 2016* would enable regulations to restrict exit payments to employees of prescribed public sector authorities, or holders of prescribed offices, to a value of £95,000; an amount which may be varied by regulations or waived in special cases.¹⁸ As noted above, the regulations and supporting guidance have not yet been published.

During the passage of the Enterprise Bill, a number of Members questioned the application of the cap to workers on the NDA estates. For example, during the Bill's Second Reading debate Albert Owen MP said:

The Treasury has the power to restrict the public sector workers covered by this measure. I would add to the list of exclusions, which already includes employees of the Royal Bank of Scotland, the Magnox employees in my constituency, who do difficult, dangerous nuclear decommissioning work. They have been caught up in this

¹⁶ [New proposal agreed in Nuclear Pensions Dispute. GMB press release, 2 March 2017](#)

¹⁷ [PQ 53817 23 November 2016; PQ 53818 28 November 2016](#)

¹⁸ For further information on the background to this, see the Library's [briefing](#) on the Bill that became the Act.

because the ONS deems them to be in the public sector. The Secretary of State said, "We don't listen to the ONS." I would ask the Government to look at exemptions for Magnox workers. There are 23 constituencies that have Magnox estate, with Magnox workers, in them—14 are Conservative, five are Labour, three are Scottish National party and one is Plaid Cymru, so this is not a partisan trade union issue. This is indeed important.

These workers feel let down. One of the 120 constituents who have written to me said:

"To retain highly skilled workers in the nuclear sector, employees were promised that their contractual employment and pension arrangements would be safeguarded".

If the Bill passes in its present form and does not exempt Magnox workers, they will be unfairly penalised. I think that that is an unintended consequence of the Bill, which is, as I said, intended to get the so-called fat cats. However, I am talking about decent, hard-working men and women on the Magnox estate who have been in the sector for a long time. When they negotiated their wages and their terms and conditions, they would often forgo wage increases to better their pension pots. They feel let down that the Government are looking to take away their conditions of service.

Kevin Brennan: Is it not also important to note not just that these workers should be classified by the ONS as being in the private sector, but that they are in fact private sector workers, yet they are being caught up in this Bill very unfairly?

Albert Owen: Yes, the Government recently put the estate out to tender, and it was won by a private company. Although, technically, these are Magnox workers, they work for various private companies in the decommissioning sector. I do think that this is an unintended consequence.

I ask the Minister to talk with her Treasury colleagues about this issue to get an exemption. Leaving this to mandarins in the Treasury is not good enough. Magnox workers feel let down by the Government, and the Government can and should act to exempt them from the Bill.¹⁹

In response, the Minister, Anna Soubry said:

On Magnox workers, I am more than happy to meet any Members to discuss this important issue in relation to them.²⁰

The issue was raised again during the Bill's Committee stage in the Commons. Kevin Brennan MP moved an amendment that would have excluded Magnox workers from the cap. The amendment was pushed to a vote, with all Labour and SNP Members voting in support, however it was defeated by the Government.²¹ The Minister clarified that the Government expect that Magnox workers will be covered by the cap:

I know that Opposition Members want to concentrate on the issue of the Magnox workers because, understandably, they have written in large numbers to hon. Members. As I have explained, we have been clear about what to do, but in any event we will list in regulation those employees who are not exempt. I also stress the point that the cap of £95,000 is on exit payments. We are not getting rid of all exit payments for Magnox workers, but those who would receive above £95,000 will be capped.²²

¹⁹ [HC Deb 2 February 2016 cc845-846](#)

²⁰ [Ibid., c886](#)

²¹ [HC Deb 25 February 2016 cc247-259](#)

²² [HC Deb 25 February 2016 c255](#)

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