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Research Briefing

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Public Service Pensions and Judicial Offices Bill: Progress of the Bill

Summary

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Summary

The Bill

The Public Service Pensions and Judicial Offices [HL] Bill has been through its House of Lords stages and had its second reading in the House of Commons on 5 January 2022.

The Bill was considered by a Public Bill Committee over two sittings on 27 January 2022.

Report stage of the Bill will take place on 22 February 2022.

The aims of the Bill include "[consolidating and strengthening] a common UK legal framework for pensions across all the main public services" and "[addressing] resourcing challenges facing the judiciary." It has four parts:

- **Part One** would remove unlawful discrimination that arose when existing ('legacy') public service pension schemes were closed to certain members in 2014 to 2016 and provide for all scheme members to build up benefits in the new schemes from April 2022.
- **Part Two** would enable the Treasury to establish new public service pension schemes for the members for two existing pension schemes which provide benefits to former staff members of Bradford and Bingley and Northern Rock, two companies taken into public ownership as a result of the 2007-2008 financial crisis.
- **Part Three** would increase the mandatory retirement age for judges from 70 to 75 and make changes to their allowances.
- **Part Four** would provide for regulation-making powers, for the Bill to extend to England and Wales, Scotland and Northern Ireland, and for the dates from which parts of the Bill come into force.

This paper aims to act as a guide to debates in the House of Commons. Information about the Bill's different stages and the amendments that have been tabled are on the web pages for the Bill on the Parliament website. Full policy background to the Bill as it was introduced and debate in the Lords is set out in the Commons Library briefing paper Public Service Pensions and Judicial Offices Bill.

Debates in the Lords

The Bill was introduced in the House of Lords on 19 July 2021. It had its Second Reading in the House of Lords on 7 September 2021. It went through its Committee Stage in one day, on 11 October, Report Stage was on 29 November and Third Reading on 6 December.

No opposition amendments to the clauses in Part One of the Bill were pushed to a vote in the Lords. However, the Government made a "large number of amendments" at Report Stage on 29 November 2021, to deal with issues that had arisen from discussions with stakeholders since the Bill had been introduced to Parliament.

In debate on Part Three, there was some Opposition and Crossbench resistance to raising the mandatory retirement age (MRA) for judges up to 75. Amendments were debated at both Committee and Report Stage in the Lords to constrain the MRA to 72, along the lines called for by senior judiciary. One such Report Stage amendment was defeated on a division.

Commons second reading debate

The Bill was introduced into the House of Commons (Bill 211, 2021-22) on 7 December. It was given its Second Reading without a vote on 5 January 2022.

Opposition parties said they would not oppose the Bill because they understood that the Government had a duty to respond to the McCloud judgement. However, concerns were raised about details, including: the operation of the cost control mechanism; the information that would be provided to support scheme members in making decisions; the extent of detail left to regulations; and the impact of the closure of legacy schemes on some members of the schemes for police and firefighters.

Regarding the changes affecting the judiciary, the main issues debated were the need to address recruitment difficulties and the potential impact of the increase in the retirement age on diversity.

Commons Public Bill Committee

The Public Bill Committee sat on 27 January 2022. The Government brought forward 48 amendments and 13 new clauses. An opposition Labour new clause relating to the pension trap was pressed to a vote but did not succeed. All Government amendments were agreed by the Committee, the majority without debate. The Government succeeded in introducing a new clause on the operation of the cost control mechanism after a vote along party lines.

1 Introduction

The Public Service Pensions and Judicial Offices [HL] Bill has been through its House of Lords stages and had its second reading in the House of Commons on 5 January 2022.[1] The Bill was considered by a Public Bill Committee over 2 sittings on 27 January 2022.[2]

This paper aims to act as a guide to debates in the House of Commons. Information about the Bill's different stages and the amendments that have been tabled are on the web pages for the Bill on the Parliament website. Full policy background to the Bill as it was introduced and debate in the Lords is set out in the Commons Library briefing paper Public Service Pensions and Judicial Offices Bill.

Earlier briefing for the Lords stages of the Bill is available in the Lords Library briefing paper Public Service Pensions and Judicial Offices Bill [HL].

1 Bill 211 2021-22 (as brought from the House of Lords) and HC Deb 5 January 2022

2 PBC Deb 27 January 2022, c63

2 Second reading debate

Introducing the Second reading debate on the Bill on 5 January 2022, Chief Secretary to the Treasury, Simon Clarke, said the aims of the Bill included making sure that "public servants of all ages receive guaranteed rights in their retirement that are among the best available, on a fair and equal basis," addressing the "resourcing challenges that face our judiciary" and laying the foundations for new public service pension schemes for beneficiaries of the existing Bradford and Bingley and NRAM – formerly Northern Rock – pension schemes."[3]

For background information, see the Commons Library Briefing Paper prepared for the Second Reading debate.

2.1 Public service pensions: debate on Part 1 of the Bill

The Chief Secretary to the Treasury, Simon Clarke, outlined the reforms to public service pensions by the Coalition Government, including increases in member contribution rates and changes to scheme design and the pension age in the 2013 Act. He described the changes as "fairer for low earners" and "estimated to save taxpayers £400 billion over the next 60 years. Transitional arrangements meant that active scheme members on 1 April 2015 had been moved to the new schemes, except those 'closest to retirement.'[4] However, in 2018 the courts had found that this transitional protection discriminated unlawfully against younger public service scheme members. The Government had accepted the need to remedy the position across all public service schemes and a thorough programme of work therefore followed to identify and implement "a robust solution."[5] The Bill created a framework to bring the remedy into effect. The aim was to "ensure that where pension members are offered a different benefit to remedy the discrimination they have faced, they will be returned to the same financial position that they would have been in had they always been entitled to the benefits that they end up choosing." For the majority of individuals affected there would be no change to the tax position. The Government would "ensure that all the appropriate guidance is provided in good time so that people can make an informed choice and not worry about incurring any losses."[6] The Government would "table

3 HC Deb 5 January 2022 c84
4 HC Deb 5 January 2022 c84
5 HC Deb 5 January 2022 c84
6 HC Deb 5 January 2022 c85

amendments ahead of Committee stage to ensure that members of the local government pension scheme are also provided with a robust remedy."[7]

Mr Clarke explained that the Bill would also close all legacy schemes to future accrual from 1 April 2022:

> All eligible members will be placed in the 2015 reformed schemes or, in the case of the judiciary, moved to a new scheme. This guarantees that members within each scheme will be put on an equal footing. It also underlines the Government's commitment to the 2015 reforms and the principles that underpin them. Those principles are greater fairness between lower and higher earners, fairness for the taxpayer, future sustainability and the affordability of public service pensions as a whole.[8]

It would also ensure that no members' benefits were cut due to the operation of the cost control mechanism in completing the 2016 scheme valuations, following the Government's decision that the cost of the remedy should count as a 'member cost' for these purposes. Mr Clarke said:

> On how the remedy in the Bill will interact with the cost control mechanism, it will give members a choice between two sets of benefits and allow them to choose which will be better for them. The result is an increase in the value of schemes to members, and, as is usual, this is managed through the cost control mechanism. Crucially, however, to ensure that no members' benefits are cut as a result, the Bill includes a measure to waive any result from the 2016 valuations that would otherwise have led to benefit reductions.[9]

He referred to this when asked by Richard Graham to respond to concerns raised by constituents that they would "lose up to £500 a year when pensioned as a result of these changes."[10]

The Government would table amendments in advance of Committee stage to make changes to the cost control mechanism for future valuations. This followed a review by the Government Actuary, at the Government's request, to see whether the mechanism was working as intended. Following that review, and a public consultation in summer 2021, the Government had confirmed that three changes would be made to the mechanism, all of which had been recommended by the Government Actuary:

> The first change is to implement a reformed scheme only design. This means that the cost of legacy schemes will no longer be included in the mechanism. The second is to widen the margin of the cost corridor, which triggers a correction, from 2% to 3% of pensionable pay. The third change is to introduce what is called a symmetrical economic check. This economic check will ensure that any breach of the mechanism is implemented only if it would still have occurred had the impact of changes to long-term economic assumptions been considered.[11]

7 HC Deb 5 January 2022 c85
8 HC Deb 5 January 2022 c85
9 HC Deb 5 January 2022 c86
10 HC Deb 5 January 2022 c84-85
11 HC Deb 5 January 2022 c86

The Minister said that these reforms would "make the mechanism more stable and ensure that it operates more in line with its objectives of protecting the taxpayer and providing stability and certainty on member benefits and contribution rates." The amendments to the Bill would "set the framework for implementing a reformed scheme only design and the economic check." The wider 3% corridor would be implemented through secondary legislation in due course.[12]

Shadow Chief Secretary to the Treasury, Pat McFadden, said the Opposition would not oppose the Bill because it understood that the Government had a duty to respond to the McCloud judgement and to make sure that pension schemes did not operate in a manner found to be discriminatory by the courts. However, the Government needed to be clear about how the costs would be met:

> The first question for the Minister must be: where will this £17 billion come from and who will pay the bill? Will it come from the taxpayer as a whole or from pension scheme members? We should remember that a very significant proportion of pensioners in this country are members of one of these schemes. It is very important that Ministers give the House clarity on this matter.[13]

A further question was whether members making their choice of scheme benefits would incur any extra costs, such as, backdated pension contributions. He asked about the information and support they would have to make their decision. This was important because "the recent history of information on pensions [had] given rise to some real injustices," with advisers "trying to exploit pension freedoms and get people to transfer out of perfectly good pension schemes in a way that was clearly not in those people's interests."[14]

For the SNP, Peter Grant also recognised that the Government needed to respond to the Court of Appeal judgement and, on that basis, would not oppose the Bill at Second Reading. Issues the SNP might want to pursue at Committee stage included the fact that most public service pension schemes operate on a pay-as-you-go basis. He raised the importance of the design of public service pension schemes being fair. He agreed that "a career-average model will tend to be fairer to a lot of workers than the current final-salary scheme" but that should not be an excuse to "cut pensions, to force workers to contribute more of their wages to the pension scheme, or indeed to increase the pension age."[15] Rights to pension benefits already built up should be honoured: "retrospectively moving the goal posts is not acceptable." He argued that the cost of the remedy should fall on the Government, which had "passed the legislation that embodied unlawful discrimination."[16]

12 HC Deb 5 January 2022 c86
13 HC Deb 5 January 2022 c89
14 HC Deb 5 January 2022 c89
15 HC Deb 5 January 2022 c96
16 HC Deb 5 January 2022 c97

Mr Grant also highlighted some specific issues regarding the design of the remedy and also the way in which it would interact with the tax system:

> One further query concerns the admittedly hugely complex interplay that has been mentioned among the amount of money that someone contributes to a pension, the amount of money they get as a pension, and their tax liabilities when they are paying into a pension and when they are collecting it after they retire […] It concerns me that in passing the Bill, we will be relying on clause 11 of the Finance (No. 2) Bill, which is still in Committee and has not received Royal Assent, to sort out the problem that the Bill creates in relation to the potential impact on someone's pension annual allowance.[17]

He noted that the Government had made a significant number of amendments to the Bill at Report Stage in the Lords and was preparing to table further amendments in the Commons, raising concerns. He feared many further amendments may be required before it was "cost to being fit for its stated purpose."[18]

For the Liberal Democrats, Christine Jardine, said the party would not oppose the Bill because all would support the aims of removing the unlawful discrimination identified in the McCloud judgement and increasing the mandatory retirement age for judges. However, it had a number of concerns "in relation to the amount of detail that is left to regulation and direction and what support will be available to members in making important decisions about their future pension planning." There were also concerns regarding the gender pensions gap and the impact of the measures in the Bill on some women who had taken time out of work for childcare.[19]

Former Shadow Chancellor, John McDonnell raised the Government's decision to include the cost of the remedy as a 'member cost' in completing the 2016 valuation. He said the logical argument made by the unions was that it was actions by the Government that had led to the discrimination and that the remedy should therefore be an employer cost. Including them as a member cost meant that members would not receive improvements in benefits, or reductions in contributions, they had expected on the basis of initial results of the 2016 valuations, which showed scheme costs to have fallen. He was concerned that this policy had been put into effect by Treasury Directions made under the 2013 Act, which meant that financial obligations would be placed on scheme members "without effective parliamentary decision making or scrutiny." [20]

Mr McDonnell referred also to concerns from the Police Superintendents' Association and others regarding the "pensions trap", in which "the value of the contributions and the pension declines with additional years of service."

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17 HC Deb 5 January 2022 c98
18 HC Deb 5 January 2022 c98
19 HC Deb 5 January 2022 c102
20 HC Deb 5 January 2022 c102

He said this was an issue that needed to be resolved by the Government, hopefully at the Bill's Committee stage.[21]

Former Secretary of State for Housing, Communities and Local Government, Robert Jenrick, suggested an amendment to the Bill on Boycott, Divestment and Sanctions (BDS), which the Government did not support.[22] James Cartlidge responded that the Government remained "committed to our manifesto pledge to ban public bodies from imposing their own boycotts, disinvestment or sanction campaigns, and we will legislate as soon as parliamentary time allows."[23] The Library Briefing Paper on Local Government Pension Scheme investments has more on this (see section 3.3).

2.2 Pensions and Banking (Special Provisions) Act 2008 Bodies: debate on Part 2 of the Bill

Mr Clarke explained that Part 2 of the Bill would establish new public service pension schemes for the beneficiaries of the existing Bradford and Bingley and NRAM schemes, which currently resided under the company holding the Government's remaining interest in Bradford and Bingley and Northern Rock, UK Asset Resolution. He explained that this was "an important step in the Government's careful long-term management of the financial sector assets acquired as a result of the financial crisis." Scheme members would be protected. Their benefits would be "at least as good as they are now under the new schemes and these measures will provide a secure, long-term home for members' pensions."[24]

Mr McFadden welcomed the provisions, saying they provided assurance "that the pension liabilities for these former employees will be met and underpinned by the Treasury" but asked for clarification on the cost.[25] Parliamentary Under Secretary of State for Justice, James Cartlidge, responded that:

> UK asset resolution schemes currently pay out benefits of about £530 million per annum; this is a cost the Government already bear. The policy creates a more efficient situation for paying these pensions and ensuring the current schemes will have a stable benefit.[26]

21 HC Deb 5 January 2022 c103
22 HC Deb 5 January 2022 c99-100
23 HC Deb 5 January 2022 c113
24 HC Deb 5 January 2022 c88
25 HC Deb 5 January 2022 c90
26 HC Deb 5 January 2022 c112

2.3 Judicial offices: debate on Part 3 of the Bill

Mr Clarke explained that measures in Part 3 of the Bill, in combination with reforms to judicial pensions in part 1, formed a package of reforms to help address the resourcing challenges facing the judiciary. Part 3 would increase the mandatory retirement age (MRA) of judicial office holders to 75 and extend the potential for sitting in retirement to the fee paid as well as the salaried judiciary. It put judicial allowances on a firmer legal footing, including those for reserved and excepted posts in Scotland and Northern Ireland (on which the UK Government would engage with the respective devolved Administrations). Mr Clarke said that:

> Taken together, these measures will ensure that a judicial career is more attractive, that more of our experienced judicial office holders are retained for longer, and that additional flexibilities are offered. It is vital that we enable our world-class judiciary to meet the demands of today and tomorrow.[27]

There was support for the increase in the mandatory retirement age for judges. Mr McFadden said the Opposition supported measures to tackle the backlog in the judicial system. He asked the Minister to respond to concerns that this could be an "enemy of diversity in the system."[28]

Robert Buckland welcomed the measures, which he had worked on as Lord Chancellor. He argued that they could be a spur to the Government and the Judicial Appointments Commission to "attract women, people from an ethnic minority, and people who join the profession late to a judicial career." The reduction in the MRA from 75 to 70 in the mid-1990s, in combination with an increase from 15 to 20 in the number of years' service needed for a full judicial pension, had meant people considering becoming a judge had to "make up their mind in their 40s." This would change with a retirement age of 75:

> People can come to the bench in their mid-50s and serve the full 20 years. That is a huge opportunity, not just for women but for people who come to the legal profession slightly later in their career, mainly because the financial burdens are so onerous in their younger years that they do not feel able to join it in the first place.[29]

The decision to increase the MRA to 75 had been supported by 67% of respondents to the consultation, including the bulk of circuit judges, sheriffs in Scotland and other judges. The measures in the Bill were urgently needed to support recruitment to the judiciary and magistracy.[30]

Chair of the Justice Committee, Sir Robert Neill, referred to the impact of the lifetime allowance (which places a cap on the amount an individual can save tax-free in a pension over a lifetime), which could act as a disincentive to

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27 HC Deb 5 January 2022 c87

28 HC Deb 5 January 2022 c90

29 HC Deb 5 January 2022 c92

30 HC Deb 5 January 2022 c93-94

joining the bench.[31] Mr Clarke responded that the new judicial pension scheme would be tax-unregistered and that benefits would arise from that.[32] Mr McFadden said this was an issue for other groups, such as senior NHS clinicians.[33]

31 HC Deb 5 January 2022 c87; See Finance Act 2004, Part 4; Gov.UK, Tax on your private pension contributions/lifetime allowance

32 HC Deb 5 January 2022 c87

33 HC Deb 5 January 2022 c90; See Pension tax rules – impact on NHS consultants and GPs Commons Library Briefing Paper CBP 8626

3 Public Bill Committee

The Bill was considered by a Public Bill Committee over two sittings on 27 January 2022.

The Government brought forward 48 amendments and 13 new clauses. An opposition Labour new clause relating to the pension trap was pressed to a vote but did not succeed. All Government amendments were agreed by the Committee, the majority without debate.

The clause numbers referred to in this section are as they stood when the Bill was brought from the House of Lords.[34]

3.1 The cost control mechanism

Debate centred on Government **new clause 1 and 2**, which replaced **clause 86**. Government **new clause 1** added provision for the changes to the operation of the cost control mechanism that would be introduced for the 2020 and subsequent valuations - in particular the economic check and the reformed scheme only design. **New clause 2** reproduces, with technical changes, the effect of subsections **(4), (8)** and **(9)** of **clause 86.**[35]

Tulip Siddiq (Lab), the Shadow Economic Secretary to the Treasury, said that the economic check appeared to "breach the 25-year guarantee given to employees by the Treasury in November 2011, as well as explicit promises made to the trade unions in 2012 that public sector employers would meet any costs arising from changes to long-term economic assumptions."[36] She also raised concerns that "too much room for ministerial interpretation" could risk politicising the economic check.[37] For the SNP, Peter Grant also expressed concerns about the economic check.[38] Simon Clarke, Chief Secretary to the Treasury, said that the Government do not believe that the reforms breach the 25-year guarantee.[39] There was a division on the Government new Clause 1 which was won by the Government with the vote along party lines.[40]

34 Bill 211 2021-22 (as brought from the House of Lords)
35 Public Bill Committee Amendments as at 27 January 2022
36 PBC Deb 27 January 2022, c34
37 PBC Deb 27 January 2022, c34
38 PBC Deb 27 January 2022, c34
39 PBC Deb 27 January 2022, c36
40 PBC Deb 27 January 2022, c55

The Commons Library briefing paper Public service pensions: the cost control mechanism, provides detailed explanation of the cost control mechanism.

3.2 The pension trap

Opposition **new clause 14** would have required the Government to review how losses arising from the "pension trap" could be compensated and required it to report on the review within two months of the Bill receiving Royal Assent. The Police Superintendents' Association submitted written evidence to the Public Bill Committee raising the issue of the "pension trap". The Chief Secretary to the Treasury said that new clause 14 went "considerably beyond the specific issues raised regarding the police."[41] New clause 14 went to a vote and was rejected along party lines.[42]

The Commons Library briefing paper Public Service Pensions and Judicial Offices [HL] Bill 2021-22 (pages 26-27) provides detailed information on the pension trap.

3.3 Further Government amendments

Government **amendments 2-5, 34, 36** and **38** would make excess teacher service remediable and aim to ensure that the remedy applies correctly to former local government staff who were transferred to a private sector employer under local government contracting out arrangements.[43]

Government **amendments 6, 10** and **11** would allow pension benefits to be protected where the member has died and a child pension is already in payment.[44]

Government **amendments 23** and **24** were to leave out **clauses 77** and **78** respectively. These were replaced by Government **new clauses 3-12**.[45] **New clause 3** broadened the scope of eligibility for remedy in local government and align it with other public service schemes, to include members who were in pensionable service on, before or after 31 March 2012 if they leave local government and return within five years, as well as meeting qualifying criteria. The Chief Secretary to the Treasury explained that:

> New Clause 4, which is a replacement for the existing Clause 78, permits scheme regulations to require that separate periods of pensionable service are aggregated or joined up for underpin protection to apply. That is an important principle in the local government pension scheme, which is locally

41 PBC Deb 27 January 2022, c63
42 PBC Deb 27 January 2022, c66
43 Public Bill Committee Amendments as at 27 January 2022
44 Public Bill Committee Amendments as at 27 January 2022
45 Public Bill Committee Amendments as at 27 January 2022

> administered. In England and Wales alone, there are 86 administering authorities. To avoid administrative complexity, established policy is that where scheme members have multiple periods of pensionable service, those are each treated separately unless they are aggregated together. Allowing scheme regulations to require aggregation will ensure that underpin protection can be provided in line with that policy, and that substantial administrative complications in the coming decades are avoided.[46]

3.4 Further information

A record of what happened to each clause, schedule, amendment, and new clause considered at committee stage is set out in Public Service Pensions and Judicial Offices Bill [Lords] (Committee Stage Decisions) published on the Bill pages of the Parliament website.[47] Transcripts of the committee stage debates are also available.[48]

3.5 Membership of the Committee

Sir Graham Brady (Con) and Virendra Sharma (Lab) each chaired one sitting of the Public Bill Committee. Its members were:

- Abrahams, Debbie (Oldham East and Saddleworth) (Lab)
- Clarke, Mr Simon (Chief Secretary to the Treasury)
- Coutinho, Claire (East Surrey) (Con)
- Daly, James (Bury North) (Con)
- Evans, Dr Luke (Bosworth) (Con)
- French, Mr Louie (Old Bexley and Sidcup) (Con)
- Grant, Peter (Glenrothes) (SNP)
- Lewis, Clive (Norwich South) (Lab)
- Mak, Alan (Lord Commissioner of Her Majesty's Treasury)
- Moore, Robbie (Keighley) (Con)
- Mortimer, Jill (Hartlepool) (Con)
- Mullan, Dr Kieran (Crewe and Nantwich) (Con)
- Rodda, Matt (Reading East) (Lab)
- Siddiq, Tulip (Hampstead and Kilburn) (Lab)
- Simmonds, David (Ruislip, Northwood and Pinner) (Con)
- Stephens, Chris (Glasgow South West) (SNP)
- Twist, Liz (Blaydon) (Lab)

46 PBC Deb 27 January 2022, c28-29
47 Public Service Pensions and Judicial Offices Bill [Lords] (Committee Stage Decisions), 27 January 2022
48 Public Service Pensions and Judicial Offices Bill [HL], Publications