



HOUSE OF LORDS

Library Note

Public Service Pensions Bill (HL Bill 67 of 2012–13)

The Public Service Pensions Bill sets out new arrangements for the creation of schemes for the payment of pensions and other benefits. This Library Note provides background information for the second reading of the Bill in the House of Lords on 19 December 2012. In particular, the Note summarises the report stage and third reading in the House of Commons. The Note is intended to be read in conjunction with two House of Commons Library Research Papers, [Public Service Pensions Bill](#) (16 October 2012, RP 12/57) and [Public Service Pensions Bill: Committee Stage Report](#) (29 November 2012, RP 12/72), which provide background information on the Bill and summarise the second reading and committee stage in the House of Commons.

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1. Introduction

The Public Service Pensions Bill sets out new arrangements for the creation of schemes for the payment of pensions and other benefits. This House of Lords Library Note provides a précis of the report stage and third reading of the Public Service Pensions Bill in the House of Commons, as well as some background information on the Bill. The Note should be read in conjunction with two House of Commons Library Research Papers: [Public Service Pensions Bill](#) (16 October 2012, RP 12/57), which contains more detailed information on the background to the Bill; and [Public Service Pensions Bill: Committee Stage Report](#) (29 November 2012, RP 12/72), which summarises the second reading and committee stage in the House of Commons.

2. Background

This section briefly looks at the background to the Public Service Pensions Bill. The section focuses on the reports of the Independent Public Service Pensions Commission chaired by Lord Hutton of Furness, the Government's response to the reports and the Bill itself. Further information is available in the House of Commons Library Research Paper [Public Service Pensions Bill](#) (16 October 2012, RP 12/57), and in the Standard Notes [Public Service Pension Reform—1997 to 2010](#) (23 November 2010, SN/BT/5298) and [Public Service Pension Reform—2010 Onwards](#) (26 October 2012, SN/05768).

2.1 Occupational Pension Schemes

Most public service pension schemes are defined benefit schemes: the pension paid by defined benefit schemes is based upon length of service and salary (see further: House of Commons Library, [Public Service Pensions—Background](#), 21 August 2012, SN/06183). By contrast, the pension paid by defined contribution schemes is based on the value of a member's fund on retirement. The [Occupational Pension Schemes Survey 2011](#), published by the Office for National Statistics in September 2012, highlights the following key points about occupational pension schemes:

- total membership of occupational pension schemes with two or more members in 2011 was estimated to be 27.2 million, the same as in 2010
- the numbers contributing or having contributions paid into a scheme (active members) continues to fall. In 2011 there were 8.2 million active (employee) members of occupational pension schemes compared with 12.2 million at the peak in 1967
- of the active members total, 5.3 million were in public sector schemes and 2.9 million were in private sector schemes
- for private sector defined benefit schemes, the average contribution rate in 2011 was 4.9 percent for members (employees) and 14.2 percent for employers
- for private sector defined contribution schemes, the average contribution rate in 2011 was 2.8 percent for members (employees) and 6.6 percent for employers

(Office for National Statistics, [Occupational Pension Schemes Survey 2011](#), 19 September 2012, p 1)

In the June 2010 Budget, the Government stated that the Consumer Prices Index would be used for the price indexation of benefits and tax credits from April 2011, and that this change would also apply to public service pensions (HM Treasury, [Budget 2010](#), HC 61 of session 2010–12, para 1.106).

2.2 Independent Public Service Pensions Commission

At the June 2010 Budget, the Government invited Lord Hutton of Furness to chair the Independent Public Service Pensions Commission (HM Treasury, [Budget 2010](#), HC 61 of session 2010–12, para 2.20). The purpose of the Commission was to carry out a “fundamental structural review” of public service pension provision, and to make recommendations on pension arrangements that “are sustainable and affordable in the long-term, fair to both the public service workforce and the taxpayer, and consistent with the fiscal challenges ahead, while protecting accrued rights” (HM Treasury website, [‘Independent Public Service Pensions Commission: Terms of Reference’](#), accessed 10 December 2012).

The Commission published its [interim report](#) in October 2010. In his foreword, Lord Hutton commented: “the figures in this report make it plain that the status quo is not tenable” ([Independent Public Service Pensions Commission: Interim Report](#), October 2010, p 3). In the short term, he thought that there was “a strong case for looking at some increase in pension contributions for public service employees, to better meet the real costs of providing these pensions” (p 4). In the long term, structural reform to public service pension schemes was needed, “as the issues with the current system cannot be dealt with through traditional final salary defined benefit schemes” (Independent Public Service Pensions Commission press release, [‘John Hutton Publishes Interim Public Services Pension Report’](#), 7 October 2010). Nor could the issues be dealt with through “a funded individual account defined contribution model, given that this would place a major financing burden on taxpayers, ignore the ability of Government as a large employer to manage risk and increase uncertainty of post-retirement income for the scheme”. Instead, what was needed was “an alternative scheme model that provides a fair sharing of risk between the employer and employee and adequate pensions to members”.

In response to the interim report, the Government said that employee contributions to public service schemes, with the exception of the armed forces, would increase to the equivalent of 3.2 percent on average by 2014/15, and that the increases would be phased in, with protection for the lower paid (see further: House of Commons Library, [Public Service Pension Contributions](#), 30 April 2012, SN/06137).

The final report, published in March 2011, recommended replacing current final salary public service pension schemes with new schemes, which would continue to be defined benefit schemes with pension entitlement linked to salary, but rather than being linked to an employee’s final salary, pension benefits under the new schemes would be linked to career average earnings ([Independent Public Service Pensions Commission: Final Report](#), March 2011, para Ex 16). Other recommendations included:

- linking normal pension age in most public service pension schemes to the state pension age
- introducing a normal pension age of 60 for those members of the uniformed services (armed forces, police and fire fighters), who currently have a normal pension age of less than 60
- setting a clear cost ceiling for public service pension schemes—the proportion of pensionable pay that taxpayers will contribute to employees’

pensions—with automatic stabilisers to keep future costs under more effective control

- honouring, in full, the pension promises that have been earned by scheme members (their “accrued rights”) and maintaining the final salary link for past service for current members
- introducing more independent oversight and much stronger governance of all public service pension schemes
- encouraging greater member involvement in consultations about the setting up of new schemes, and in the running of schemes
- overhauling the current legal framework for public service pensions to make it simpler

(Independent Public Service Pensions Commission press release, [‘Lord Hutton Publishes His Final Report on the Future of Public Service Pensions’](#), 10 March 2011)

The Government accepted Lord Hutton’s recommendations as a basis for consultation with public sector workers, trades unions and others (HM Treasury, [Budget 2011](#), March 2011, HC 836 of session 2010–12, para 1.132). Following discussions, the Government set out their preferred design for the new NHS, civil service, teachers’ and local government pension schemes in [Public Service Pensions: Good Pensions That Last](#) (Cm 8214) published in November 2011:

- a career average revalued earnings (CARE) pension scheme
- public service workers benefits to be earned at a rate of 1/60 of pensionable earnings each year
- public service workers will have their benefits increased each year they are working in the public services in line with earnings revaluation
- a normal pension age linked to state pension age (or 65, whichever is higher)
- pensions in payment to increase in line with the consumer prices index (CPI)
- benefits earned by leavers to increase by CPI from the date of leaving until retirement
- average member contributions for the unfunded public service pension schemes set at the level of the existing schemes after the increase of 3.2 percentage points currently planned
- in the funded Local Government Pension Scheme, both member contributions and other adjustments to benefits will be reflected in cost ceilings following the outcome of the Department for Communities and Local Government’s consultation on alternatives to contribution increases...
- members given the option at retirement to convert £1 of annual pension into a £12 one-off lump sum payment in accordance with HMRC limits and regulations
- ill-health, death and survivors benefits (ancillary benefits) to match those currently provided by schemes that are open to new members
- members who leave the scheme and rejoin within 5 years to be able to link their new service with previous service, as if they had always been an active member
- members transferring between public service schemes to be treated as having continuous active service (which would include those transferring between schemes who had rejoined public service after a gap of less than 5 years)

- an employer contribution cap to provide backstop protection to the taxpayer against unforeseen costs and risks

(HM Treasury, [Public Service Pensions: Good Pensions That Last](#), November 2011, Cm 8214, p 16)

In December 2011, the Government announced that it had reached heads of agreement (tentative non-binding documents) outlining the main elements of the new designs for the civil service, local government, teachers' and NHS pension schemes (HC *Hansard*, 20 December 2011, cols [1201–1217](#), [150–2WS](#), [152–3WS](#), [157–8WS](#) and [159–61WS](#)). The proposed final agreements were published between March and October 2012 for the civil service, NHS, teachers', firefighters', police and armed forces pension schemes (see further: HM Treasury website, '[Public Service Pensions](#)', accessed 10 December 2012).

2.3 Public Service Pensions Bill

In the Queen's Speech on 9 May 2012, the Government announced that it would introduce legislation "to reform public service pensions in line with the recommendations of the Independent Commission on Public Service Pensions" (HL *Hansard*, [col 1](#)). The Bill, introduced in the House of Commons on 13 September 2012, included provisions that would: make arrangements for the creation of schemes for the payment of pensions and other benefits; provide powers to Ministers to create such schemes according to a common framework of requirement; provide powers to the Treasury to set specific technical details of certain requirements; and provide powers to the Pensions Regulator to operate a system of independent oversight of the operation of the schemes (see further: [Explanatory Notes](#) for HL Bill 67 of session 2012–13). Furthermore, the Bill would supersede powers to create schemes for the payment of pensions and other benefits, including those contained in the Superannuation Act 1972, the Fire and Rescue Services Act 2004, the Armed Forces (Pensions and Compensation) Act 2004, the Police Pensions Act 1976 and the Judicial Pensions and Retirement Act 1993. Finally, the Bill would protect the benefits already earned by members of existing public service pension schemes and would allow continued membership of those schemes for certain categories of person who are closest to retirement.

The Public Service Pensions Bill ([HC Bill 70](#) of session 2012–13) received a second reading in the House of Commons on 29 October 2012 (HC *Hansard*, cols [53–130](#)), and was then considered in [nine sittings](#) of Public Bill Committee between 6 November and 22 November. In its first two sittings, the Committee took evidence from a number of individuals and organisations. The majority of amendments made during the committee stage by the Government were "minor and technical", or clarified the operation of the provisions; no amendments proposed by the Opposition were accepted (see further: House of Commons Library, [Public Service Pensions Bill: Committee Stage Report](#), 29 November 2012, RP 12/72). Key issues raised during the committee stage included increases to the pension age; protection against future changes; accrued rights; governance; and the Local Government Pension Scheme. The Commons report stage of the Bill ([HC Bill 95](#) of session 2012–13) took place on 4 December 2012, followed immediately by third reading (HC *Hansard*, cols [735–830](#)). A number of issues were raised, including member communications, the new fair deal, the protection of accrued rights in new schemes, the process for undertaking scheme valuations, the application of reforms in Scotland and pension age. These issues will be looked at further in the next section of this Note. The first reading of the Bill ([HL Bill 67](#) of session 2012–13) in the House of Lords took place on 5 December, and the second reading is due to take place on 19 December 2012.

3. Commons Report Stage

The report stage of the Public Service Pensions Bill took place on 4 December 2012 (HC *Hansard*, cols [735–831](#)). This section of the Note looks at three of the main areas discussed: member communications, the new fair deal, and the protection of accrued rights in new schemes. A number of other issues were debated, including: the process for undertaking scheme valuations; the application of reforms in Scotland, an amendment tabled by Dr Eilidh Whiteford, Scottish National Party MP for Banff and Buchan, on which the House divided (with 14 votes in favour and 299 votes against); and pension age, an amendment tabled by the Shadow Financial Secretary, Chris Leslie, on which the House also divided (with 232 votes in favour and 294 against amendment 16).

3.1 Member Communications

The Shadow Financial Secretary, Chris Leslie, proposed new clause 2, which was designed to implement recommendation 18 of the [final report](#) of the Independent Public Service Pensions Commission that “public service pension schemes should issue regular benefit statements to active scheme members, at least annually and without being requested” (p 132). Chris Leslie explained that currently, under the Occupational Pension Schemes (Disclosure of Information) Regulations 1996, SI 1996/1655, defined benefit public service schemes were obliged to provide such information only if they were requested to (HC *Hansard*, 4 December 2012, col [736](#)). The new clause “would simply implement Lord Hutton’s recommendation and ensure that public service workers have a better understanding of the benefits that they have accumulated to date and what they stand to receive if they continue working until their normal retirement age”. He said a similar amendment had been debated during the committee stage, and “a number of Members agreed that it would be very healthy if we improved the information and transparency for employees to enable them to make more informed decisions in planning for their savings and their financial future” (col [737](#)). The new clause would allow members of schemes to be better able to judge whether they were saving enough for their retirement, and would therefore be “compatible with the aim of reducing people’s need for state benefits in retirement—something that many Members across the House want to achieve”. He hoped Members would again support the issue, “because surely the goal of improving people’s understanding of their pension and helping them to plan more effectively for their retirement should find favour on both sides of the House”.

Mike Freer, Conservative MP for Finchley and Golders Green, asked whether it was “rather perverse that when taking out a pension, particularly a private pension, a customer has to read reams of documentation about the risks, the forecasts, the potential growth rates and what might or might not happen, but when one has a public service pension, that level of detail is not provided and, most importantly, the annual statement provides scant information, even if it is requested?”. Chris Leslie responded that “just because somebody is in a public service scheme or a defined benefit scheme does not mean that they should not think through carefully what the financial consequences will be for them on retirement”.

Chris Leslie commented that during the committee stage, the Government had said the new clause could not be accepted, as there were different ways of providing the information; they did not want to be too prescriptive and so legislation was not necessary. New clause 2, however, did not “prescribe the manner in which the information is provided; it would merely ensure that annual statements were provided in some form” (col [738](#)). The Government had also raised the objection during the committee stage that “defined benefit schemes in the private sector are not obliged to provide annual statements, so it would not be right for public sector schemes to do so”. Chris Leslie quoted Mike Freer’s argument in committee that “we have a pensions

problem in this country, and saying that private sector schemes are not required to provide statements—though many do... is not a good enough reason for not requiring public sector schemes to provide them” (Public Bill Committee: Public Service Pensions Bill, 22 November 2012, col [455](#)). The Government had said at the time that they would consider the matter further, and Chris Leslie had hoped they would table an amendment at the report stage to the same effect (HC *Hansard*, 4 December 2012, col [738](#)). He noted that the 1996 Regulations required “occupational pension schemes to provide much more detailed statements than those proposed in the new clause”, and there was therefore no reason to think “there would be any problem in implementing the arrangements”.

A number of Members spoke in support of new clause 2. John Healey, Labour MP for Wentworth and Dearne, said that there had been “a strong measure of agreement across the House” on the “importance of having good, regular and accurate pensions information for scheme members” (col [758](#)). He thought everybody could agree that “higher standards of governance, openness and administration” should underpin pension schemes, and there was “bound to be greater confidence and trust in the schemes, along with better understanding of them, if members are given more information”. He quoted the final report of the Independent Public Service Pensions Commission: “not all public service pension schemes communicate with members on a regular basis. Currently it is a requirement of defined contribution schemes in the private sector that they provide members with an annual benefit statement: this is not the case for defined benefit schemes” ([Independent Public Service Pensions Commission: Final Report](#), March 2011, p 16). This is what the majority of public service schemes were, and it “must surely be a matter of common sense and consensus that members being kept informed about their schemes so that they can plan for their retirement must be a good thing; and that good thing can be guaranteed in the Bill” (HC *Hansard*, 4 December 2012, col [758](#)). Mike Freer urged the Government “to go further, because best practice in the public sector in respect of providing information is not enough” (col [761](#)). Further requirements in terms of transparency and quantity of information were needed, “because people need to make rational decisions. If we want to defuse the pension time bomb, people have to make a rational decision based on information, not supposition”. Sheila Gilmore, Labour MP for Edinburgh East, thought it would be “deeply ironic if better and more thorough information is given to people with private sector pensions than to those with public sector pensions” (col [762](#)). However, she said that “we all want to avoid too much information being given, of course, with people receiving many pages of information, much of it hard to understand”. There was a debate going on “in the world of private sector pensions on giving good, accurate but still efficient information, so that people can look at a single page of information—that is preferable—and understand what their likely pensions are going to be”. She hoped the Government would make some changes, as she could not see “why new clause 2 should not be in the Bill, as it deals with such a major issue” (col [763](#)).

The Economic Secretary to the Treasury, Sajid Javid, was “glad that we are starting with new clause 2 and that we have started our debate discussing annual benefit statements” (col [766](#)). He thought it was right that scheme members “should be kept informed of their pension rights and provided with an annual update”, and understood the case “for doing more in that area”. He found himself “in agreement with the arguments that Members on both sides of the House raised today and in Committee”. Although he agreed that information in one format or another should be provided to some scheme members without request, he could not support “the precise wording of the new clause”. This was because, for example, the new clause did not “distinguish between active, pensioner and deferred members, but we would need to take that distinction into account” (cols [766–7](#)). He also wanted to ensure any changes were future-proof, “for example, we should not inadvertently mandate paper statements when it might be easier and cheaper for

schemes to implement online and perhaps mobile technologies in the future” (col [767](#)). Sajid Javid was persuaded that there was a case “for going the extra mile to ensure regular updates are provided for scheme members”, and the Government would consider the matter further and propose an amendment in the House of Lords.

Welcoming the commitment, John Healey commented that Sajid Javid had said that “the information should be provided ‘to some scheme members’”, and urged him “to take a maximalist approach and make sure that the maximum reasonable number of members get the most regular and at least annual information that will allow them to understand the scheme better and to plan for retirement and manage it better as well”. Sajid Javid responded that he agreed “all scheme members, one way or the other, should receive annual information” but that there were “different types of members of schemes, such as deferred members and active members”, and “that needs to be taken into account when they receive that information”.

Chris Leslie also welcomed “the fact that the Minister has been persuaded of the spirit of the amendment”, and went on to say that it was “a mark of distinction for him that we have managed to have him think afresh about the argument, reflect on it, and bring matters forward in the House of Lords” (col [773](#)). He withdrew new clause 2.

3.2 New Fair Deal

New clause 3 was also proposed by the Shadow Financial Secretary, Chris Leslie. He explained that the Government had promised to implement the “new fair deal”, which was one of the most important aspects of the agreement reached in the negotiations between the employee side and Government (HC *Hansard*, 4 December 2012, col [739](#)). The new fair deal would “ensure that all public service workers who were compulsorily transferred to an independent contractor, be it a private company, a charity or another third sector body, would be entitled to remain an active member of their public service pension scheme”. He said that the Chief Secretary to the Treasury had confirmed the Government’s commitment to the new fair deal in a written statement in July 2012: “the Government have reviewed the fair deal policy and agreed to maintain the overall approach, but deliver this by offering access to public service pension schemes for transferring staff. When implemented, this means that all staff whose employment is compulsorily transferred from the public service under TUPE, including subsequent TUPE transfers, to independent providers of public services will retain membership of their current employer’s pension arrangements” (see further: HC *Hansard*, 4 July 2012, cols [53–4WS](#)). This, according to Chris Leslie, was “an improvement on the current fair deal arrangements, which ensure that outsourced staff receive broadly comparable arrangements to those under the public service schemes”, and that the Government’s promise to implement the new fair deal was “central to the rationale and at the heart of why many public service workers agreed to support the new proposed pensions reform, even though aspects of it were detrimental to them” (HC *Hansard*, 4 December 2012, col [739](#)). There were many public service workers who had been transferred to independent providers and wanted “to ensure that their deferred wages—that is what pensions are—will be protected in a particular way”. This was “a positive development in the negotiations”, but the Opposition were concerned over the extent to which “such protection” had “found its way into the Bill”, and had therefore tabled new clause 3.

Nick Gibb, Conservative MP for Bognor Regis and Littlehampton, noted that the fair deal arrangements had been introduced in 1999 by the Labour Government, and were not statutory. He asked why in opposition Chris Leslie sought to make the fair deal statutory (col [740](#)). Chris Leslie responded that the situation was now different, “because of the level of trust on which public service employees feel tested when looking at significant changes by the Government”: employee contributions had been “unilaterally increased

by 3 percent without consultation or discussion”, and the “evaluation arrangement was unilaterally changed from the retail prices index to the consumer prices index”. He thought that “a typical public service employee must have said, ‘Hold on a minute. Are we supposed to just take this on faith? We are glad that the Government are in negotiations, but as we know, Ministers are here today and gone tomorrow’”. Therefore, it was not possible to “simply rely on statements from particular Ministers at a particular point in time”.

Chris Leslie went on to say that “even more worryingly, the Economic Secretary made some peculiar statements in Committee about something that we thought was a done deal. He said: ‘it is important that we consider in full the views of all stakeholders, including of course those who will be affected, through further consultation before making a final decision on the issue. It would therefore be inappropriate to include the fair deal policy in the Bill’” (see further: Public Bill Committee: Public Service Pensions Bill, 22 November 2012, col [459](#)). It was “as though negotiations had not been completed or decisions reached”, and “it sounded very much as if the Government were renegeing on their commitment” (HC *Hansard*, 4 December 2012, col [740](#)). The Government therefore needed “to lay to rest any suggestion that they are going back on their promise, and the only way to do that is to accept new clause 3”.

John Healey, Labour MP for Wentworth and Dearne, also thought it was important for the Minister to explain “the discrepancy between what he said in Committee and what the Chief Secretary to the Treasury said to this House in December last year... He said: ‘Because we have agreed to establish new schemes on a career average basis, I can tell the House that we have agreed to retain the fair deal provision and extend access for transferring staff’” (col [741](#), and see further: HC *Hansard*, 20 December 2011, col [1203](#)). A commitment in the Bill would, according to John Healey, “serve as a confirmation and a reassurance for public service workers that the Government do indeed mean what they say in this regard” (HC *Hansard*, 4 December 2012, col [759](#)). However, Nick Gibb “did not find any difference” between the statements made by the Government, as one was addressing whether particular matters should be in primary legislation, and the other was setting out the case for the policy, and thought that Chris Leslie should be “assured by the commitments given” (cols [746–7](#)).

Sheila Gilmore, Labour MP for Edinburgh East, said that “some Government Members have suggested that accepting what the clearly stated view of Ministers has been at various points should be good enough, because it is on the record and we should be confident that that is sufficient. However, as far as I am aware, it is not possible to litigate on the basis of what people simply said, rather than what is in legislation” (col [763](#)). She was not suggesting, “in any way, that those who have spoken during our consideration of the Bill do not intend what they have said, but many public sector workers are genuinely concerned”. The issue would become “a great deal more important if the Government continue, as they presumably will, over the next two years to do what they say they want to do: outsource more of what we would regard, or have traditionally regarded, as public sector activities”; and if the Government “are genuinely serious about wanting current public sector employees not just to have to do this, but to be enthusiastic about doing it, these safeguards have to be in place”.

The Economic Secretary to the Treasury, Sajid Javid, responded to the debate on new clause 3 by stating that the Government had set out their commitment to retaining the fair deal, but added that the Government would reform it (col [768](#)). Staff transferred from the public sector to an independent provider would be “be provided with continued access to the public sector pension scheme”, a commitment that had been “made on numerous occasions by my right hon Friend the Chief Secretary”. The Government had also “reaffirmed this in our response to the fair deal consultation which was published on

19 November this year” (see further: HM Treasury, [Consultation on the Fair Deal Policy: Response to the Consultation](#), November 2012). He went on to say that it was not “entirely correct” that the Government had not made a commitment to the new fair deal in the Bill: “both clauses 22 and 26 allow for the new fair deal policy to be implemented”; and the Bill had been “deliberately crafted so that the new fair deal can be delivered under these provisions” (HC *Hansard*, 4 December 2012, col [768](#)). The current fair deal had never been statutory, and the new fair deal did not “need to be statutory to bind non-public sector providers to the policy”, as the contracts entered into by independent contractors when tendering would ensure the fair deal was applied.

In relation to the comments he had made during the committee stage, Sajid Javid said the Government were “consulting on how the fair deal should apply to those employees who have already been transferred out under the existing fair deal, but we are not consulting on the commitment that we have already made, which is that public sector workers who are transferred out under the new fair deal will retain a right to public sector pensions. We are also consulting on what to do when an existing contract that has already been tendered out is retendered under the new fair deal”. There was also “work to be done to determine how and when the new policy will be implemented”, and the Government wanted “to be sure that the contracts put in place will safeguard the legal rights of employees and employers”, as the “Government, rather than the independent providers of the services, will be retaining the risk of providing these pensions”.

New clause 3 would also bind the Local Government Pension Scheme, but “the fair deal does not apply to staff transferred out of local government”, and the implications of the amendment for local government and the scheme “need to be fully explored”: “this is work that the Under-Secretary of State for Communities and Local Government, my hon Friend the Member for Great Yarmouth (Brandon Lewis), is already doing”. For all of these reasons, the Government believed the amendment was not necessary, and would “pre-empt the ongoing work on the local government scheme”.

Chris Leslie responded that although the Minister had “said that more work needs to be done, that they need to explore further the issues and that they do not want to pre-empt ongoing work”, it did not “sound like the decision that we and many on the employee side thought had been made for a clear and unequivocal commitment to the new fair deal” (col [774](#)). As the new fair deal was “integral to the deals that were agreed in the process leading up to this Bill”, he could not “see what harm can be done by including the new fair deal in statute”. It was a question of trust, and he pressed the House to a division on new clause 3. The House divided, with 229 votes in favour and 288 votes against (cols [774–8](#)).

3.3 Accrued Pension Benefits

Clause 3 of the Public Service Pensions Bill ([HC Bill 95](#) of session 2012–13) contains additional provisions on how the powers to make regulations under the Bill may be used. The Shadow Financial Secretary, Chris Leslie, thought that this was an important part of the Bill, as it made “a series of arrangements for scheme regulations” (HC *Hansard*, 4 December 2012, col [779](#)). In particular, clause 3(3)(c) of the Bill stated that scheme regulations may make retrospective provision, and this “retrospectivity” gave the Opposition “great concern”. According to Chris Leslie, “the Bill allows the reduction of accrued pension benefits”, and “the measure is not qualified in any way: it allows all retrospective provisions, including, essentially, the reduction of the savings that people have put aside”. The provision would allow “the Government to dip their hand into what are normally regarded as safe amounts of money—the accrued benefits for which people have paid in over their years of service”. The Opposition believed that this was a breach of a “central tenet of pension provision”. Benefits that had been accrued “are deferred

earnings and should not be reduced”. Allowing the retrospective reduction of accrued rights was “essentially akin to taking back a portion of an employees’ wage that has already been paid; there is very little difference”. Public sector workers and their representatives were “extremely concerned about the retrospective powers that the Bill gives to this and any future Government”, and believed that “as long as the Bill contains those powers, the pensions of ordinary working people—public sector employees—are not safe”.

The Government had been asked about the retrospective provisions, and they had replied “that there was no need to be concerned about the reduction of accrued benefits, because the Bill mirrored the Superannuation Act 1972 in that respect”. Chris Leslie said the exact wording of the response was important: “the provisions in the clause... mirror directly those in the Superannuation Act 1972, which this Bill in many cases replaces... and it has been used by a number of Governments to make adjustments to public service pensions” (cols [779–80](#), and see further: *HC Hansard*, 29 October 2012, col [60](#)). Furthermore, the Chief Secretary, Danny Alexander, had said, in a speech to the Institute for Public Policy Research in June 2011, that “we will honour, in full, the benefits earned through years of service. No ifs, no buts” (see further: HM Treasury, ‘[Speech by the Chief Secretary to the Treasury, Rt Hon Danny Alexander MP to the IPPR](#)’, 17 June 2011; and *HC Hansard*, 4 December 2012, col [780](#)). However, the Bill did not mirror the Superannuation Act 1972 in relation to accrued benefits, as in the 1972 Act, “accrued benefits can be reduced only with the consent of scheme members—in other words, only if members of those schemes, employees, agree to such retrospective arrangements—whereas the Bill allows for retrospective reductions without the consent of scheme members”. In the light of what the Chief Secretary had said, “we can only assume that it must have been a drafting error”. An identical amendment had been tabled at committee stage “to ensure that the protections for accrued benefits in the 1972 Act were retained, but, surprisingly, our amendment was rejected”. The Government had argued that “there was no need to mirror the protections in the 1972 Act”. Chris Leslie questioned why the Chief Secretary to the Treasury had said “the Bill contained certain protections when it obviously does not”.

Amendment 11 had therefore been tabled “to give the Minister another chance to include the protections that the Government—or at least one Minister—said were already in the Bill”. During discussions at committee stage, the Minister had not disputed that “the Bill allowed the Government unilaterally to reduce members’ accrued benefits, but he said repeatedly that the Government had promised not to reduce those accrued benefits. He said that that promise—a verbal promise—offered adequate protection to public service workers and that legislative protection was therefore unnecessary”. Chris Leslie wondered “how can public service workers have any security in their future retirement if the Government at any point can retrospectively reduce the benefits they have already earned” (col [781](#)). He cited the [Explanatory Notes](#) to clause 3(3)(c), which state that the provision had been included to facilitate the necessary adjustments to “pension schemes to accommodate changes in law or where the Government does not want to delay the benefit of a particular change but needs time to work out the consequences and appropriate method of making the change”. The amendment proposed “would not necessarily hinder those technical operational issues”, given that “it would retain clause 3’s intended purpose, as set out by the Minister”, and as the Government had “promised not to reduce accrued benefits, there can surely be no legitimate grounds for opposing the amendment” (*HC Hansard*, 4 December 2012, col [781](#)).

Responding to amendment 10, the Economic Secretary to the Treasury, Sajid Javid, said that the Government had “made a clear public commitment to protect the rights that people have built up in their current schemes”. The power contained in clause 3 “could be used only for the purpose of setting up new schemes in scheme regulations or for

transitional or consequential purposes” (cols [784–5](#)). There was also “the umbrella protection in UK general legislation that restricts state interference with personal possessions such as pension rights, unless such interference is lawful and proportionate” (col [785](#)). The protection of property rights was also contained in the European Convention on Human Rights, and the Bill was “compatible with that Convention”. In making scheme regulations, Ministers and others were “always bound to act in a way that is compatible with the law”, and this would “prevent scheme regulations from proposing unlawful changes to protected pension rights”. As the courts “could set aside unlawful scheme regulations, responsible authorities have strong reasons to respect pension protection rights”. Furthermore, in order to provide the statutory protections that “underpin our commitment on accrued rights, the Bill establishes a common set of member consent and consultation requirements. In the case of the new schemes set up under the Bill, any change in scheme regulations will require a prior, statutory consultation with all who are likely to be affected, or with their representatives”. Clause 20 of the Bill provided that “if any changes are made that could have ‘significant adverse effects’ on members, consultation must be conducted with a view to the reaching of an agreement, and preceded by a report to Parliament or the relevant legislature” (cols [785–6](#)). Explicit approval of the legislature under the affirmative procedure would be required for any such changes, and could not “simply be nodded through under the nose of Parliament” (col [786](#)). He stated that “taken together, the rule of law and the specific provisions in the Bill should give members the strong reassurance that there is already a very high hurdle against unlawful interference with pension benefits that have been built up”. The Government were “adamant that the application of universal consent locks is not an avenue that we intend to investigate”, and they did not believe that “members, employers or anyone else should be given a ticket unreasonably to hold each other, or the Government, to ransom and to inhibit changes that are for the greater good”. As the Government felt strongly that “it is right to prevent that scenario from occurring in the future”, they could not support the amendment.

Sajid Javid went on to comment that most changes in accrued rights were “either minor and technical, or in the interests of the vast majority of scheme members”. However, it was vital to strike “the appropriate balance between member protections and the efficient operation of public service schemes”. Although he believed the provisions of the Bill achieved that balance, he told the House that “the Government do not have a closed mind on this serious issue, which has been raised thoughtfully by Members on both sides of the House, both today and in Committee”. He was sure the issue would be discussed in the House of Lords, “and we shall listen carefully then as well”.

Chris Leslie felt the Government needed to think about the matter again, “as it is a signal issue that is at the core of the trust we need to have in the scheme. We want the scheme to work and we want members to stick with it and not opt out, but they need to know that their money and their savings are safe” (col [790](#)). He therefore pressed the House to a division on amendment 10. The House divided, with 223 votes in favour and 281 votes against (cols [790–4](#)).

4. Commons Third Reading

The third reading of the Public Service Pensions Bill took place at the conclusion of the report stage (HC *Hansard*, 4 December 2012, cols [818–28](#)). The Economic Secretary to the Treasury, Sajid Javid, began by reiterating his gratitude to Lord Hutton of Furness “for his comprehensive and adept work with the Independent Public Service Pensions Commission. The consensus that his report and recommendations have engendered is

testament to the care and thoroughness with which he and his team carried out that critical work” (HC *Hansard*, 4 December 2012, cols [818–19](#)). He said:

For decades, successive Governments have failed to address the fact that the existing framework for public service pensions is unresponsive to work force and demographic changes. The simple and fundamental truth is that current schemes are not fit for purpose, and they have not responded effectively to the unprecedented improvements in longevity that we have seen over the last 50 years. Largely as a result of people living longer, the cost of providing public service pensions has increased by 40% over that period. At the same time, the number of active, deferred and pensioner members of schemes has risen significantly.

(col [819](#))

He went on to say that:

Through the Bill, our reforms to public service pensions will make a difference. Through the framework we have set out, we will ensure that public service workers get a good quality pension that is among the very best available. Members will continue to receive guaranteed benefits with no exposure to investment risk or fluctuating annuity rates, unlike in many private sector schemes. We will also ensure that the taxpayer gets a fair deal by rebalancing the costs between the beneficiaries and other taxpayers, and by capping their contribution towards the schemes, so that costs cannot again spiral out of control.

(col [821](#))

He concluded that:

Although we have not managed to reach a shared view on the exact protections that should be extended to members’ rights, all sides have recognised the common objective that rights should not be allowed to be unlawfully eroded. I strongly believe that the Bill we are sending to the other place is in very good shape. I give a commitment that the Government will return to each of the issues on which I have given assurances, and I commend the Bill to the House.

(col [822](#))

The Shadow Financial Secretary, Chris Leslie, thought that:

In an era of increasing life expectancy, it is right and necessary to reform public service pensions in order to ensure that they are affordable and sustainable in the long term. That is why Labour made significant changes to public service provisions when in office, including through increasing the normal pension age from 60 to 65, introducing a cap-and-share mechanism to protect taxpayers from increasing costs and reforming contribution levels. According to the Public Accounts Committee, those reforms, implemented by the previous Government, will save the taxpayer £67 billion over 50 years.

Unfortunately, instead of building on those reforms, the Government ripped up many of them, making sensible reform harder: they have imposed, without negotiation, a steep 3% rise in contributions and a permanent switch in the indexation of future pension income from RPI to CPI. Announcing those changes before the Hutton report on pensions was even published was unfair and

needlessly provocative. Those changes are not in the Bill, however, so we did not have a chance to address them in amendments and in Committee and on Report.

(cols [822–3](#))

He continued:

Conversely, the main aims of the Hutton reforms in the Bill are ones with which we broadly agree, most notably the shift from final salary to career average defined benefit schemes, the increase in pension age to take account of increasing longevity, and a mechanism to ensure that increasing costs are contained within schemes and do not fall squarely on the taxpayer. It is important for the sustainability of public service pension schemes that those changes are implemented properly, which is why we do not wish to oppose the Bill this evening. However, as we said on Second Reading, we have serious concerns about the detail of the Bill. We said that we hoped the Government would work constructively with us in Committee and the other place to improve it. There was some movement from the Government, but in our view it was not sufficient.

(col [823](#))

Chris Leslie concluded that:

We had some significant victories, and I am grateful to the Minister for at least keeping an open mind on some of these points. In particular, I am pleased that we managed to get a guarantee—it is due in the other place—that future members of defined benefit schemes will receive an annual benefits statement setting out full information on changes to their pensions. That is a big step forward, and I am grateful that the Minister moved on that point.

We will want to come back to some of those questions in the other place, particularly those on scheme capability reviews and the working longer review in the NHS, and to ask why the Government are irrationally not letting those arrangements come to fruition in the drafting of legislation. I am still not fully convinced that the issue of the closure of local government pension schemes has been adequately dealt with, but I know that the Minister has said that he is happy to look into it.

Many colleagues will naturally have serious doubts about the Bill. That is entirely understandable, given the differences between it and the Hutton proposals. However, pensions reform is important both for the taxpayer and for scheme members themselves. Our hope is that the other place will see the strength of our arguments and make the changes that this House has been unable to secure. We hope that their lordships will appreciate that only through changes to the Bill will we achieve successful and sustainable pension reform. It is with that hope in mind that we shall not oppose the Bill at this stage, but we hope for further improvements in the other place.

(cols [824–5](#))

Dr Eilidh Whiteford, Scottish National Party MP for Banff and Buchan, said:

Most people in Scotland, whether they work in the public sector or not, recognise that these pension reforms—particularly the increase in contributions and the requirement to work for longer—have little to do with designing better pension

schemes and everything to do with the short-term aim of deficit reduction. I do not think that public sector employees should be picking up that tab.

Ministers have relentlessly pursued affordability while abandoning sustainability and fairness. That is the wrong approach at this time. Most public sector workers have faced a pay freeze for the past three years. Their wages have fallen in real terms while they have experienced substantial increases in their cost of living, through increases in the price of food, petrol and domestic heating bills. They are being asked to pay more, to work longer and to accept significantly lower pensions thereafter. To me, that is just not a reasonable proposition. Public sector employees do demanding jobs, often under pressure and in difficult circumstances...

Many of those public sector workers are already on quite modest wages, and they deserve measured and proportionate schemes that will give them confidence that they are saving adequately for their old age. They want to know that the goalposts will not be shifted yet again as they approach an ever-increasing retirement age. The Bill fails those tests, which is why I will oppose it this evening.

(col [826](#))

The Bill was read for a third time, with 278 votes in favour and 29 votes against.

