



Superannuation Bill: Committee Stage Report

Bill No 58 of 2010/11

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Clause 1 of this Bill would cap compensation payable under the Civil Service Compensation Scheme at a maximum of 12 months' pay for compulsory redundancy and 15 months' pay for voluntary exits. Clause 2 provides for clause 1 to expire after 12 months unless repealed, extended or revived using order-making powers. The Conservative-Liberal Democrat Coalition Government invited the civil service unions to negotiate a "sustainable and practical and practical long-term successor scheme". On 7 October, the Government announced that it had concluded its negotiations with five of the six unions on a new scheme.

The Bill passed its Second Reading in the Commons on 7 September. It was considered in Public Bill Committee in four sittings, on 14 and 16 September. It was not amended. Report Stage and Third Reading are scheduled for 13 October.

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Summary

The Civil Service Compensation Scheme (CSCS) sets out the payments which can be made when the employment of a civil servant is terminated early – for example, on compulsory or voluntary redundancy. The current terms available on compulsory exits, which are the most generous, generally provide an age and service-related severance payment (subject to a maximum of three years' pay) for people under 50, and enhanced early retirement packages for people aged between 50 and 60.

The Labour Government attempted to reform the CSCS. However, its amendments to the scheme, agreed in February 2010 with five of the six civil service unions, were quashed as a result of an application for judicial review by the sixth and largest union, the PCS.

The Conservative-Liberal Democrat Coalition Government published its *Superannuation Bill 2010-11* on 15 July. This would cap payments under the CSCS at 12 months' pay for compulsory exits and 15 months' pay for voluntary exits, from the date of Royal Assent. Clause 2 would provide for clause 1 to expire after 12 months, unless repealed earlier, or extended or revived, using order-making powers. The Government said it hoped to negotiate a permanent and sustainable agreement with the civil service unions.

The unions argued that the February 2010 proposals should form the starting point for negotiations. They said the caps in the Bill would result in civil servants having redundancy terms which were "considerably worse than any other public servant."

The Bill passed its Second Reading in the House of Commons on 7 September 2010. The Labour Party voted against the Bill, as did four Liberal Democrat MPs and the Democratic Unionist Party, the Scottish National Party, Plaid Cymru, the Social Democratic and Labour Party and the Green Party.

The Public Bill Committee Stage consisted of four sittings on 14 and 16 September. The Bill was not amended. Labour Members said they might return to certain issues at Report, by which time some further progress might have been made in the negotiations between the Government and unions. Report Stage and Third Reading are scheduled for 13 October.

On 7 October, the Cabinet Office announced that it had concluded its negotiations with five of the six civil service unions. It intended that the new terms would supersede the current terms following the passing of the *Superannuation Bill*. It would work with the unions to implement the new terms as soon as possible. In terms of next steps, it said the union's executives were likely to seek the views of their members on the proposed new terms. The Government would table an amendment to the Bill to "remove the ability of a union to veto any changes to the compensation scheme." The PCS said it would demand further negotiations with the Minister, "setting out why the latest offer put forward is unacceptable."

1 Introduction

The Civil Service Compensation Scheme (CSCS) is a scheme made under the *Superannuation Act 1972*. It sets out the payments that may apply when the employment of a civil servant is terminated prematurely. The current CSCS terms are summarised as follows in the Explanatory Notes to the Bill as follows:

The former CSCS terms, as now revived, generally provide a service and age-related payment for people aged under 50 and enhanced early retirement terms for people aged between 50 and 60. The amount of the payment varies depending on the tariff, with the tariff applying on compulsory redundancy providing payments of up to 3 years' pay and enhanced early retirement packages which can cost employers 6 years' pay. Redundancy terms for certain employees who joined before 1987 can lead to higher costs for employers.¹

The Labour Government attempted to reform the scheme. In February 2010, it announced a set of reforms that had been agreed with five of the six civil service unions. Features of this new scheme included a limit in the maximum payment on compulsory redundancy of three years' pay, up to maximum of £60,000. Those earning between £20,000 and £30,000 would be eligible for severance payments of up to between two and three years' pay. For higher earners, payments would be capped at two years' pay. Those closest to retirement would retain entitlement to an immediate unreduced pension.²

The sixth and largest union, the PCS, did not accept the February 2010 proposals and applied for judicial review.³ In May, the High Court ruled in its favour and the amendments to the scheme were quashed (with the exception of limited changes to elements of the CSCS deemed age-discriminatory).⁴

The *Superannuation Bill 2010-11* was introduced into the Commons on 15 July 2010.⁵ Clause 1 would cap compensation payable under the CSCS at a maximum of 12 months' pay for compulsory redundancy and 15 months' for voluntary exits. Clause 2 provides for clause 1 to expire after 12 months, unless repealed, extended or revived using order-making powers. The Coalition Government said it wanted to negotiate a "sustainable and practical long-term successor scheme" with the civil service unions. Its view was that this scheme should include additional protection for the lower paid staff and a cap on the amount payable to higher earners. It did not expect there to be scope to vary the 12 month cap for compulsory payments, but signalled a willingness to negotiate on "the most suitable terms for voluntary departures."⁶

The Bill was given its Second Reading on 7 September 2010. The Public Bill Committee sat on 14 and 16 September, using all four sittings allotted to it. The Bill was not amended. The Labour Party indicated that it might return to certain issues at Report Stage, by which time further progress might have been made in the negotiations between the Government and unions. On 7 October, the Cabinet Office announced that it had concluded its negotiations with five of the six civil service unions (see section 4 below).

¹ *Superannuation Bill – Explanatory Notes*, para 4

² HC Deb, 3 February 2010, c11-13WS; Cabinet Office, *Civil Service Compensation Scheme Reform: Response to "Fairness for All" consultation*, As updated on 2 February 2010, Annex A

³ PCS Press Release, '*National strike ballot gets underway*', 2 February 2010

⁴ *The Queen (on the application of the Public and Commercial Services Union) and Minister for the Civil Service* [2010] EWHC 1027, 10 May 2010

⁵ Bill 58

⁶ Letter from Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, to CCSU chairman, Paul Noon, 6 July 2010

A House of Commons Library Research Paper – *Superannuation Bill* (RP 10/56) provides briefing on the main provisions of the Bill and gives background information to the changes proposed therein. The progress of the Bill can be tracked on the *Superannuation Bill 2010-2011* section of the Parliament website.⁷

2 Second Reading

Opening the Second Reading debate on 7 September, Minister for the Cabinet Office, Francis Maude, explained that reform was needed because the existing CSCS was “unaffordable and unsustainable”:

It is now more than 20 years since the last serious reform of the compensation scheme and more than two years since the current reform process began, with an unchanged set of arrangements still in place. Frankly, that position cannot be allowed to continue. The current scheme is unaffordable and unsustainable. It allows for payments of up to three times annual salary or, for older workers, enhancements to pension and lump sum payments costing more than five times salary. For some, those enhancements can total as much as six and two thirds times annual salary. That compares with a maximum of 30 weeks' pay under the statutory redundancy scheme, with a weekly cap on the salary allowable of £380, giving a total of about £11,000.⁸

He said that under the existing scheme it was “prohibitively expensive to make redundant civil servants who are highly paid and long-serving”, with the result that when savings had to be made, the burden fell “disproportionately on the lower-paid, more of whom lose their jobs than is necessary or desirable.”⁹

He did not think the February 2010 scheme proposed by the Labour Government had gone “far enough.” However:

Had it come into effect...when the coalition Government took office in May this year, a pressing case would have been made to let it remain in force. Sadly, that option simply did not exist. PCS unilaterally, and without the support of the other five trade unions, sought and obtained judicial review and obtained an order that quashed the February scheme. The option of allowing the scheme agreed and negotiated by the last Government was removed from the table by PCS's unilateral action.¹⁰

The Coalition Government has said its aim is to negotiate a new scheme with the civil service unions, which would include “proper additional protection for the lower paid” and a “cap on payments for the highest paid.”¹¹ The Minister said it was a myth that all civil servants were highly paid:

It is one of the great myths - I have sometimes heard this expounded even in this august House - that all civil servants are highly paid. That is simply not the case. [...] the average pay of the civil servant is, I believe, around £23,000, and half of civil servants are paid £21,000 or less. In the pecking order, as it were, of the different sectors, average pay is highest in the wider public sector, private sector pay is next, and civil service pay is the lowest. So my concern for lower-paid civil servants is real and genuine, and it is based on a proper understanding of the concerns that exist.¹²

⁷ <http://services.parliament.uk/bills/2010-11/superannuation.html>

⁸ *HC Deb, 7 September 2010*, c211

⁹ *Ibid*, c212

¹⁰ *Ibid*, c210

¹¹ *Ibid*, c216

¹² *Ibid*, c213

The Bill did not include additional protection for the lower paid because “such matters should be negotiated.”¹³

If agreement was not reached with the trade unions, the provisions in the Bill would come into effect. However, Mr Maude did not wish to see the legislation continue longer than was necessary:

The second clause provides for the Bill's effects to be time-limited. I stress again that we have no desire to see this legislation continue any longer than is absolutely necessary. The inclusion of a sunset provision prevents the legislation from continuing ever onwards. Instead, if we wish to renew it, the Government will be obliged to return to the House to seek approval by an affirmative resolution.

Alongside the provision for prolonging the effects of clause 1, there is also the option to bring forward the termination date. As I have already said, my intention is absolutely to resolve the issue by discussion and negotiation rather than by legislation, and I look forward to making the order that will repeal section 1 of the Act.¹⁴

He acknowledged that the Bill was “a bit of a blunt instrument”:

Just to be clear, we are seeking to negotiate a new scheme, which would effectively make the terms in the Bill redundant. I make no bones about this: the Bill is a bit of a blunt instrument. It does not seek to create an entire, comprehensive new scheme. It simply imposes a cap on the amounts payable under the current scheme, so that it will be possible for the scheme to operate in a way that is fair to the taxpayer and to workers in other sectors outside the civil service.¹⁵

However, he said, it was necessary because “one union cannot be allowed to prevent necessary reform of a scheme that is unsustainable and unaffordable.”¹⁶

In response to concerns that the Bill would reduce accrued rights, he said the relevant rights were those in force at the time of redundancy:

Dr John Pugh (Southport) (LD): The Minister has mentioned that the scheme was last revised in 1972, but did not that revision leave all previously accrued rights in place? Is he not doing something different now?

Mr Maude: The extent to which rights are accrued is an issue to consider. We are talking not strictly about redundancy but about compensation for loss of office under a statutory scheme, and the relevant rights are those in force at the time when redundancy or loss of office happens. If the statutory redundancy scheme changes, the terms that govern the entitlement are those in place at the time when the redundancy happens. I understand my hon. Friend's point, but I do not believe it applies in this case.¹⁷

Shadow Minister for the Cabinet Office, Tessa Jowell, moved an amendment to the effect that the Bill should not be given a Second Reading:

[...] this House, whilst affirming its belief that civil service compensation should be reformed, declines to give a Second Reading to the Superannuation Bill because it

¹³ Ibid, c212

¹⁴ Ibid,c218

¹⁵ Ibid, c217

¹⁶ Ibid, c215

¹⁷ Ibid, c211

provides inadequate protection for some of the lowest paid and longest serving public sector workers; believes that the reform proposals of February 2010 were fair, reasonable and non-age discriminatory, offering protection for the lowest paid workers whilst making substantial savings; and is strongly of the opinion that the publication of such a Bill should have been preceded by a full process of pre-legislative scrutiny of a draft Bill and in full consultation with Civil Service employees.¹⁸

She described the provisions in the Bill as “harsh, and harshest of all for some of the longest-serving, often low-paid civil servants.”¹⁹ She agreed that reform of the CSCS was needed:

We fully recognise that, in the present climate, it provides over-generous and disproportionate benefits for some very highly paid people. I believe we are all agreed on the need for reform, which is why in February we set out changes to end what would be regarded by the wider public, and in any measure, as over-generous settlements.²⁰

However, “it must be the right reform, delivered in the right way”:

It must be fair and workable, and in particular – here I echo the Minister’s words – it must provide protection for the lowest paid. It must be underpinned by honest and open dialogue with the civil service unions representing those likely to be affected.²¹

Ms Jowell had concerns about the Equality Impact Assessment that had been provided:

However, because compared with the existing situation these proposals in effect levy the greatest penalty on the longest-serving, and almost inevitably the oldest, civil servants, there is at least a prima facie case for considering whether they are age discriminatory. I draw no conclusions, but I say to the House that I consider that the equality impact assessment has not taken full account of the impact of the proposed measures across the work force. The Opposition consider the terms put forward to be both unfair and punitive.²²

She argued that it “should be seen as a very unusual use of parliamentary procedure to ask Parliament to pass legislation that – as the Minister has made clear – it is hoped will not be implemented.”²³

Responding to issues raised in the debate, Parliamentary Under-Secretary of State, Nick Hurd, explained that powers to extend or revive clause 1 had been included in the Bill in order to maximise the Government’s negotiating flexibility:

I think it is impossible for us to be sure of every circumstance that could lead to a need to revive the Bill. The Government are therefore keen to maximise their negotiating flexibility. If we are unable to agree on a new scheme with the unions, the Minister for the Cabinet Office will have to renew the caps every six months by affirmative resolution.²⁴

In response to a question from the Public Administration Select Committee chairman, Bernard Jenkin, about the risk of a legal challenge to the Government’s approach, he said:

¹⁸ Ibid, c219

¹⁹ Ibid, c219

²⁰ Ibid, c220

²¹ Ibid, c220

²² Ibid, c222

²³ Ibid, c223

²⁴ Ibid, c279 [Nick Hurd]

He will be aware that trade union members and some hon. Members have placed on record the risk of a legal challenge, so he will not expect me to go into the details of the legal advice. I can confirm, however, that it is robust.²⁵

The question of whether this was a Money Bill was a “matter for the Speaker to decide.”²⁶

The House voted to give the Bill its Second Reading by 326 votes to 244.²⁷ The Labour Party voted against, as did the Democratic Unionist Party, the Scottish National Party, Plaid Cymru, the Social Democratic and Labour Party and the Green Party. Four Liberal Democrat MPs voted against the Bill.²⁸ Two others, who had expressed particular concerns in the course of the debate, did not participate in the division.²⁹

The Labour Party’s proposed amendment was defeated by 329 votes to 240.³⁰

The Programme Motion for the Bill was agreed to by 307 votes to 244.³¹

3 Public Bill Committee Stage

The Public Bill Committee used all four sittings allocated to it.³² The Bill was not amended. Two Labour amendments were debated and then withdrawn. Another was negated on division. The Committee divided on whether both clauses should form part of the Bill. Both votes were won by the Government.

The Committee had 18 members: 8 Conservative (including Parliamentary Under-Secretary of State, Nick Hurd), 7 Labour, 2 Liberal Democrat and 1 Democratic Unionist Party:

Chairmen: Mr Joe Benton, Mr Roger Gale

Members

Baldwin, Harriett (*West Worcestershire*) (Con)
Bray, Angie (*Ealing Central and Acton*) (Con)
Crabb, Stephen (*Preseli Pembrokeshire*) (Con)
Dodds, Mr Nigel (*Belfast North*) (DUP)
Dromey, Jack (*Birmingham, Erdington*) (Lab)
Gilbert, Stephen (*St Austell and Newquay*) (LD)
Goggins, Paul (*Wythenshawe and Sale East*) (Lab)
Graham, Richard (*Gloucester*) (Con)
Hemming, John (*Birmingham, Yardley*) (LD)
Hurd, Mr Nick (*Parliamentary Secretary, Cabinet Office*)
Jowell, Tessa (*Dulwich and West Norwood*) (Lab)
McClymont, Gregg (*Cumbernauld, Kilsyth and Kirkintilloch East*) (Lab)
McDonnell, John (*Hayes and Harlington*) (Lab)
Perry, Claire (*Devizes*) (Con)
Roy, Lindsay (*Glenrothes*) (Lab)
Spellar, Mr John (*Warley*) (Lab)

²⁵ Ibid, c278; c 242-4 [Bernard Jenkin]

²⁶ Ibid, c280 [Nick Hurd]

²⁷ Ibid, c285-289

²⁸ Mike Hancock, Martin Horwood, Bob Russell, David Ward

²⁹ John Thurso [c250] and Dr John Pugh [c234]

³⁰ HC Deb, 7 September 2010, c281-5

³¹ Ibid, c289-293

³² PBC Deb, 14 September 2010, c1

Uppal, Paul (*Wolverhampton South West*) (Con)
Williamson, Gavin (*South Staffordshire*) (Con)

The Committee took oral evidence in two sittings on 14 September. Amendments were debated in two sittings on 16 September. The Committee received around 80 submissions of written evidence, many from individual civil servants who feared redundancy and were concerned at the reduced compensation that would be payable if the caps in the Bill applied. Information on the [Public Bill Committee Stage on the Superannuation Bill](#) is on the Parliament website.³³

3.1 Oral evidence

Witnesses attending the first sitting were:

Dusty Amroliwala, Director, Civil Service Workforce, Cabinet Office
Peter Boreham, Director of Executive Reward, Hay Group
Keith Bradford, HR Director, Amec and member, CBI Employment Policy Committee
Charles Cotton, Member, Vice President's Reward Panel, Chartered Institute of Personnel and Development
David Wreford, Principal of HR consultants, Mercer

Witnesses attending the second sitting were:

Ian Barton, Member, Public and Commercial Services Union
Karen Bell, Member, Prospect
Charles Cochrane, Secretary, Council of Civil Service Unions
Fiona Draper, Independent Pensions Consultant
Stephen Ennis, Members, Public and Commercial Services Union
Dai Hudd, Deputy General Secretary, Prospect
Geoff Lewtas, Director of Bargaining and Equality, Public and Commercial Services Union
Dave Penman, Head of Operations, First Division Association
Neil Walsh, Pensions Officer, Prospect

The two oral evidence sessions covered a range of issues, including the prospects for reaching a negotiated settlement, the impact on civil servants if no agreement was reached and differences between provision in the civil service, public and private sectors.

CSCS terms compared to private and public sectors

The Cabinet Office has estimated that enhanced early retirement packages under the current redundancy terms “can cost employers 6 years’ pay.”³⁴ Parliamentary Written Answers have said that “information on the number of civil servants who would currently get a package worth six years’ salary if made redundant can only be provided at disproportionate cost.”³⁵ Dusty Amroliwala of the Cabinet Office was asked if he could provide the Public Bill Committee with this information. He said there were two groups to consider – those who might be entitled and those who had actually received such an amount:

There are two very clear classes or groups that we are considering here. There is the population—those staff who may be entitled, by virtue of their age and of their length of service, as matters of fact. That is not impossible to deduce, because we have that level of data. What is far more difficult, and frankly close to impossible to provide for

³³ <http://services.parliament.uk/bills/2010-11/superannuation/committees/houseofcommonspublicbillcommitteeonthesuperannuationbill201011.html>

³⁴ *Superannuation Bill* – Explanatory Notes, para 4

³⁵ [HC Deb, 21 July 2010, c375W](#)

anybody with a degree of accuracy, are those who actually have applied over the course of a period of time and who might have been entitled to that level of compensation had their application been accepted and progressed.³⁶

Committee Members probed witnesses on how civil service terms compared with those in the private and wider public sectors. Keith Bradford of Amec and the CBI Employment Policy Committee said:

My understanding is that the NHS, which I did look at, is about a month's pay per year of service with a two-year cap, which would equate to bestish practice in the private sector—not way out of whack, but a top company. The current civil service scheme is way beyond that.³⁷

Peter Boreham of Hay Group explained that private sector employers had tended to make their redundancy packages less generous in recent years:

It would be pretty typical in the private sector to have a cap. Historically, it might have been as high as two years. Increasingly, it is coming down. For example, one of my clients—quite a large high-profile employer—last year brought down its terms to a cap of one year because the redundancy costs were just too high.³⁸

He said the caps in the Bill would be at the “aggressive end” of public sector practice:

Heroically simplified—a very rich position—one month per year of service is as good as, or better than, what you would see in other parts of the public service, for the most part. The one-year cap would be at the aggressive end of current practice, but as the rest of the public service cuts costs, it is inevitable that it will have to go through a similar process.³⁹

In terms of comparing overall reward packages, Dai Hudd of Prospect said it was important to compare like with like:

Part of the problem when making those comparisons relates to the proportion of the skilled work force that resides in the public sector, as opposed to the general economy, because the general economy, by and large, does not have the same level of people doing complex and highly skilled work as the public sector. An awful lot of that is a product of previous outsourcing and privatisation when, by and large, the low-hanging fruit—the service work—was outsourced, so you cannot make that comparison in a similar way.⁴⁰

In any case, he argued that it was a “more complex issue than simply a broad, crude comparison.” Civil service redundancy packages had evolved over decades and there were complex legal issues involved in disentangling them.⁴¹ Prospect's analysis showed pay growth in the civil service over the last ten years to have lagged behind that in the private and public sectors.⁴² The effect of the Bill would be to set civil service redundancy terms “far below the rest of the public sector as well”:

³⁶ PBC Deb, 14 September 2010, Q17

³⁷ Ibid, Q79

³⁸ Ibid Q54

³⁹ Ibid, Q51

⁴⁰ Ibid, Q95

⁴¹ Ibid, Q95

⁴² Ibid Q94-95 [Dai Hudd]

Not only would median pay still be £21,000 per annum, which is below public sector—that is why it is important to distinguish them—but they would also have a redundancy package that was worse as well.⁴³

Impact of the Bill

Charles Cochrane of the CCSU said the Bill would reduce the compensation payable to “anyone with more than 14 years’ service.”⁴⁴ Neil Walsh of Prospect argued that the Equality Impact Assessment had failed to draw out a number of important issues. One of these was age discrimination:

You could say that there is age discrimination in the terms of the Bill itself, and you could also say that it fails to deal with the age discriminatory aspects of the existing terms, which the February agreement did deal with. So, for example, if a civil servant is made redundant at age 35 with five years’ service, they will get compensation of five months’ pay. If they had the same service, job, grade and experience but were 40 instead, their compensation would be double that.

The other was the impact on part-time workers:

The existing terms as they stand allow for recognition of the impact on people who have recently gone part-time. For example, if a female civil servant has recently gone part-time in order to look after children, which is not uncommon, and is made redundant, the admittedly complicated formula of the current terms would allow for some of their full-time pay to be taken into account on the basis of recognising that they would eventually probably go back to full-time earning. They are not losing a part-time job; they are losing a part-time job that may revert to full-time hours once the child is of school age. This blunt Bill does not do anything about that.⁴⁵

Three individual civil servants faced with possible redundancy gave evidence of the implications for them if the proposed caps were in force. Karen Bell, a member of Prospect working in the Central Office of Information, said that under the current scheme she would get £51,000 if made redundant. However:

If the cap comes into play and I am compulsorily made redundant in November, which is the timetable at the moment, I will be worse off to the tune of just over £17,000. For me, that is the difference between giving me another six to eight months breathing space to find another job, which when I am in my 40s is perhaps not the easiest thing to do. If I am voluntarily made redundant, I will be worse off the tune of an £8,500 difference.⁴⁶

Ian Barton, a PCS member working in the Government Office Network, said the 12-month cap would significantly reduce the amount of compensation he would get:

Three times salary for me, currently under the existing terms, would amount to £138,000. Sure, some people will have a view on a civil servant attracting that sort of sum, but the new terms will mean that will go down by £92,000 to £46,000 before taxation. Irrespective of the sums involved, I am sure you would agree £92,000 is a huge amount to think about suddenly, in terms of planning for your future.

After 27 years as a public servant, I would really like to stay in public service. It is what I enjoy doing. I have had options in the past to leave the civil service and move into the

⁴³ Ibid, Q108 [Neil Walsh]

⁴⁴ Ibid, Q94

⁴⁵ Ibid, Q118

⁴⁶ Ibid, Q106 and [Q111]

banking or insurance fields, but I took a calculated decision at that time. Although I did not earn as much money as some of my friends at that particular point in my career, on balance, the overall employment package – taking into account pensions and the security of my job – is why I wanted to stay in the civil service.[...]

I find myself now having to think about future plans with potential redundancy. We all know about the reduction in public sector job opportunities. With the hit that the public sector is going to take, it is going to be difficult to be redeployed. If the safety net of the compensation scheme is reduced in that way, the decisions that we all face in life – putting children through university, looking after elderly parents and all those things that I am sure are pertinent to you as well – will become real issues for me now.⁴⁷

Stephen Ennis, also a PCS member working in the Government Office Network, said:

I will be brief. I have been a civil servant for 18 years. I took a decision three or four years ago to purchase a rent-to-buy house. The simple equation is that if the redundancy package is changed, I will lose the house. That is the short and quick of it. My circumstances might be a little unique; I am not sure. My partner is registered disabled. I need the kind of employment that the civil service offers someone like me, and those terms and conditions. It is very unlikely that I would be able to secure a similar job. The Government office is disappearing, and there will not be anything else, particularly where I live, to employ me. I will lose the house and a job, basically. I cannot be any more open and honest than that.⁴⁸

Negotiations for a successor scheme

Dusty Amroliwala of the Cabinet Office explained that the Government's aim was to reach an agreement on a successor scheme with the trade unions:

It is conceivable that we will reach an agreement with all the trade unions in the current negotiations. At every step in the process, the Government have made it clear that they intend, if possible, to reach a negotiated outcome on the long-term sustainable scheme that we need in future. If such an agreement were to be reached, it would be open to Ministers to exercise the sunset provision in clause 2 and lay the new scheme before Parliament in the normal way, and it would have immediate effect.⁴⁹

He said the Bill was “designed to cover circumstances where a deal has not been reached.”⁵⁰

Nick Hurd had said that Second Reading that the Bill was necessary to “break the deadlock” on negotiations. This existed, he said, because the current position enabled the unions “to veto any meaningful reform.”⁵¹

Witnesses to the Public Bill Committee whether they thought the legislation had helped or hindered negotiations. Keith Bradford of Amec and a Member of the CBI Employment Committee, thought negotiations might be difficult in this context:

In the private sector, an employer would take some time to negotiate the position that they wanted, perhaps with some compromises, of course, and might allow some phasing, although not over too long a period.

⁴⁷ Ibid, Q139

⁴⁸ Ibid, Q139

⁴⁹ Ibid Q2

⁵⁰ Ibid, Q3

⁵¹ HC Deb, 7 September 2010, c278-9

The Government's dilemma is that the previous Government, the previous employer, negotiated a deal that was blocked by law. I think that a tactic potentially is to unlock that to reopen negotiations, but you have to allow time for that to take place. I do not know how the tactics will play out were the legislation to go through but it would be pretty difficult to say to your staff, who might be on, say, a three-year cap, that the minute the legislation is enacted on 1 October or whenever – I am not sure of the date - negotiations will start from a position of reducing the cap to one year. That would be difficult, because it is a big cliff and probably does not allow sufficient room for negotiation.⁵²

The civil service unions thought the Bill had “hindered” negotiations.⁵³ Witnesses with many years experience could not think of a precedent for legislation being used as a “tool” in negotiations in this way.⁵⁴ Dave Penman of the FDA said it had been open to the Government to “put on the table a set of terms that would have been more acceptable” to the unions.⁵⁵ He thought the provisions in the Bill could make it more difficult for the civil service to manage change:

The organisation has reduced its work force by more than 80,000, relocated more than 20,000 jobs out of London in the past five years and done so without having to resort to more than about 80 compulsory redundancies through sophisticated management techniques, including the use of a range of voluntary redundancy arrangements. The civil service does not have one voluntary redundancy arrangement; it has a series of arrangements that can get used at different times and are more or less expensive depending on the circumstances. The civil service has been excellent in meeting that significant challenge and doing it in collaboration with the trade unions. It is a wonderful success story. As has been indicated, if we end up with a blunt instrument of the Bill that is going through, management will not have that sophisticated mechanism for managing that change.⁵⁶

Dusty Amroliwala confirmed that the vast majority of civil servants whose roles had been lost due to reorganisation in the pipeline were nonetheless “gainfully employed” elsewhere in the civil service.⁵⁷

The February 2010 proposals

The unions agreed that the February 2010 reforms would be a good basis for re-opening negotiations.⁵⁸ As they had been quashed as a result of a legal challenge by the PCS, its representative, Geoff Lewtas, was asked whether his members would now accept such a deal. While he said he could not accurately predict what his members would do in a given scenario, he thought the February 2010 scheme would have formed a “reasonable starting point” for the current negotiations.⁵⁹ However, it had not been considered to provide sufficient protection for the accrued rights for 50% of PCS members:

When we looked at the terms of that deal, earlier this year, we found that it did give a degree of protection to some of the lower-paid—those who were on a £20,000 salary or less. From the civil service statistics, we know that that represented something like 40% of civil servants in total—the £20,000 threshold and that degree of protection. But

⁵² PBC Deb, 14 September 2010, Q76

⁵³ Ibid, Q118 [Dai Hudd]; See also Q137, [Geoff Lewtas]

⁵⁴ Ibid, Q Q91 [Charles Cochrane] and [Dave Penman] ; Q17 [Dusty Amroliwala]

⁵⁵ Ibid Q101

⁵⁶ Ibid, Q112

⁵⁷ Ibid, Q5

⁵⁸ Ibid, Q96 [Charles Cochrane]; Q97 [Dai Hudd] and [Dave Penman]

⁵⁹ Ibid, Q124

that left some of what we would regard as still being lower-paid people—certainly people on less than the average salary of civil servants; I am not saying that is my definition of low pay—plus a lot of other people who were on salaries in the £25,000 bracket. When we looked at those statistics, what that told us was that the deal on offer had probably given some reasonable protection for the lower-paid, in the £20,000 and below bracket, but that there was another 50% of our membership for whom the deal on offer did not represent an adequate or satisfactory degree of protection of accrued rights, in our judgment.⁶⁰

Dai Hudd said any future proposals would need to reflect the balance arrived at in the February 2010 scheme:

Without wishing to over-repeat the point, my union felt that the balance we struck with the last Labour Government did that. It put the balance in terms of accrued rights and a good scheme going forward, and it gave the Government significant savings. Frankly, no other scheme that does not reflect that balance stands a cat in hell's chance of getting off the ground. Otherwise, what we will face from all six unions is a legal battle that I can tell you now will be fierce, strongly fought on every corner and that will last a significant number of years. And if it does not come back to haunt this Government, it will come back to haunt a future Government.⁶¹

He thought his union could otherwise face legal action from its members:

Our members will say that a judicial review has made a decision on accrued rights and accrued rights are not reflected in the agreement that I am putting to them. They will say, "Not only am I going to sue the Government, but I am going to sue my union, because you have not recognised that"⁶²

Charles Cochrane explained that the CCSU had taken legal advice, on which it was seeking further clarification:

But we certainly have a view that there is an argument to be made about accrued rights, which picks up the point that I think was developed in your session this morning about the *Human Rights Act 1998*, and the right to hold property, wages being deemed to be property, and about case law, which demonstrates that pensions are property. In the particular context of the civil service compensation scheme and its statutory basis, an argument flows through from that that provides protection. It is certainly an argument that is coherent. It is equally an argument that has never been fully tested in either the UK courts, other than during the judicial review process, and certainly has not been to Europe.⁶³

3.2 Debate on clauses

Clause 1

Clause 1 caps the compensation payable under the CSCS at a maximum of 12 months' pensionable earnings for compulsory exits and 15 months' pensionable earnings for voluntary exits. The Government is consulting on long-term amendments to the scheme with the civil service unions and proposes that these will be made to dovetail with the expiry of clause 1.

⁶⁰ Ibid, Q127-2

⁶¹ Ibid, Q119

⁶² Ibid, Q119; see also, Q139 [Geoff Lewtas]

⁶³ Ibid, Q93

The Shadow Minister for the Cabinet Office, Tessa Jowell, tabled an amendment to clause 1 to cap CSCS payments at a higher level: i.e. to the greater of £60,000 (or, if less, three years' pay) and two years' pay. A further amendment would provide for a person aged at least 50 with a minimum of 5 years' service at the time the Bill came into force to be entitled to retire early on a full pension.⁶⁴ The existing caps in the Bill, she said, were "unfair and discriminate against those civil servants who have worked in the public service for many years." She described enhanced redundancy protection as "part of a compact that has built the commitment of such people to work in the civil service."⁶⁵

She argued that reform should be along the lines proposed by the Labour Government in February 2010:

Our argument, therefore, is that the February 2010 scheme should form the basis of the reform that we all agree is needed. It meets the tests against which reform should be judged, such as making a substantial contribution to tackling the deficit - £500 million was the accumulated saving under the 2010 package – while also ensuring that the reasonable expectations of civil service staff, and the lowest paid, in particular, are met. It was also important to address, as we sought to do, the age-discriminatory aspects of the earlier arrangements.⁶⁶

While the ongoing negotiations might provide a fair settlement for the low-paid, that was not guaranteed:

Tens of thousands of people may be made redundant over the next year and that may well be done under the terms of the Bill.⁶⁷

Her amendment, she said, would "end the undesirable differential between compulsory and voluntary redundancies." Having more generous terms for voluntary exits, she argued, risked producing a perverse effect, whereby the civil service would "end up losing some of the more talented staff, who will be able to find positions elsewhere."⁶⁸

In response, Parliamentary Under-Secretary of State, Nick Hurd, stressed that the context for the Bill was the "urgent need to reduce public expenditure":

...we are on the brink of an inevitable significant reduction in head count within the civil service. That is an extremely difficult and delicate process, which needs to be managed properly, fairly and, we submit, within a framework of certainty to both those given the difficult job of managing that process and those who have to live with some of the consequences of those decisions.⁶⁹

He was struck by the cross-party consensus on the need for reform. The Bill was designed to "change the pace and dynamic of the negotiations which have dragged on."⁷⁰ He would not support the proposed amendments, which encouraged a return to the February 2010 proposals, for a number of reasons. The most important one was that "no deal was done on that basis, and no evidence suggests that a deal can be done on that basis." Furthermore, they did not meet the objective of bringing the CSCS more into line with private sector

⁶⁴ PBC Deb, 16 September 2010, c70

⁶⁵ Ibid, c71 and 74

⁶⁶ Ibid, c71

⁶⁷ Ibid, c75

⁶⁸ Ibid, c72

⁶⁹ Ibid, c85

⁷⁰ Ibid, c85

arrangements.⁷¹ He also objected to the way in which it removed the incentives for voluntary departures:

We would like managers to have more options that people can choose from, and we would like managers to have more flexibility and the ability to tailor packages for individuals in such difficult situations.⁷²

He explained that there was a “serious negotiating process under way” to agree a successor scheme:

The Bill sets out a de minimis position and, in parallel, there is a serious negotiating process under way. Those conducting the negotiations on behalf of the union are aware of the Government’s position and where the Government are flexible in relation to the Bill. Those negotiators need no signal from the House in that respect; they are receiving those signals on an almost daily basis in the meetings that are taking place.⁷³

In response to a question from John Hemming regarding the position of an individual who might receive compensation capped by the provisions in the Bill before a long-term settlement was agreed, he said that might be part of the negotiation process.⁷⁴

Tessa Jowell recognised that the situation was “highly dynamic” as the negotiations were ongoing. She withdrew her amendments, with a view to returning to them on Report. The Committee divided on whether clause 1 should stand part of the Bill. It was ordered to do so by 10 votes to 7.⁷⁵

Clause 2

Date the provisions come into force

Under Clause 2(2), the Act “comes into force on the day it is passed.” Shadow Minister for the Cabinet Office, Paul Goggins, moved an amendment proposing a report to Parliament before this could happen. He said:

Amendment 4 proposes that the Minister brings back to the House a report that sets out clearly what negotiations have been carried out and how the terms of those negotiations have progressed. Parliament will then consider and make some judgment about whether those negotiations were conducted seriously. If it decides that the negotiations have not worked, it will consider where the blame lies.[...]Under the terms of our amendment, there then has to be an affirmative resolution, which means that there is another procedure to be gone through, thus giving this Committee or another Committee of the House the opportunity to consider the quality of the negotiations.⁷⁶

He argued that this would ensure greater transparency for the negotiations and greater accountability to Parliament.⁷⁷

In response, Nick Hurd said the Government would oppose the amendment on the grounds that it would delay implementation, undermining the purpose of the Bill which was to “break a deadlock and make it more possible that a deal is done quickly.”⁷⁸

⁷¹ Ibid, c86

⁷² Ibid, c87

⁷³ Ibid, c86

⁷⁴ Ibid, c86

⁷⁵ Ibid c90

⁷⁶ Ibid, c95

⁷⁷ Ibid, c95

⁷⁸ Ibid c101

For the record, he explained that an alteration of the CSCS by primary legislation did not require prior consultation:

The *Superannuation Act 1972* requires that a scheme is made under section 1 of the Act, or that scheme is amended by way of another scheme, there must be consultation with affected employees or their representatives. In case the point is not clear, that requirement does not apply when a scheme is altered by primary legislation, rather than by amending the scheme.⁷⁹

Paul Goggins said his amendment would not result in an indefinite delay, or give unions a veto on reform. It did not require agreement to be reached before a report was made. He objected that Parliament was being asked to sanction terms the Minister himself did not want to impose:

I am sure that the Minister will acknowledge that Parliament is being asked to take an enormous step – to sanction a set of conditions for redundancy, which the Minister himself says he does not wish to impose on the work force. He wants something that will be better, particularly for the lower-paid.⁸⁰

Nick Hurd said the Government was “prepared to consider presenting something to the House once the position is finalised but we are not prepared to hold up implementation of the Bill until the report is approved.”⁸¹ Paul Goggins welcomed this offer.⁸² He withdrew the amendment but said he might look again at “ways in which we can make sure that Parliament retains its interest in this controversial measure.”⁸³

Powers to repeal, extend and revive clause 1

Clause 2 provides for clause 1 to expire after 12 months unless repealed, extended or revived using order-making powers. The Explanatory Notes say:

Clause 2 provides for clause 1 to expire 12 months after it comes into force. It also grants order-making powers to the Minister to repeal clause 2 before it is due to expire, to extend the date on which clause 1 will expire, and to revive clause 1 after it has expired or been repealed. The powers to extend the expiry date and to revive clause 1 are subject to affirmative resolution procedures in the House of Commons. The power to repeal is subject to negative resolution procedures.⁸⁴

Paul Goggins moved an amendment which would delete the powers to extend and revive, powers with which he said the Opposition had “serious difficulties”:

The first is the provision to extend the period beyond the 12-month sunset clause to a further date, during which time the conditions in clause 1 could be applied. That implies that the Minister is half expecting that the negotiations may not be concluded even by the earlier part of 2012, which is at variance with the messages that we hear from Ministers. I am keen to hear why the Minister needs the power to extend further the date of the sunset clause.

More intriguingly, he wants to give himself a power to bring the legislation back if it is needed some time in the future. I am trying to understand how that process would

⁷⁹ Ibid, c100

⁸⁰ Ibid, c102

⁸¹ Ibid, c103

⁸² Ibid, c104

⁸³ Ibid, c105

⁸⁴ Superannuation Bill – Explanatory Notes, para 13

work.[...] the Minister should explain why he needs that power of extension and the power to revive the conditions – the “sunrise power”, as it has been called.⁸⁵

Nick Hurd explained why the Government considered them to be necessary:

The powers under clause 2 are necessary, particularly if we cannot reach a quick agreement. We must avoid finding ourselves back in the current situation. The House and the Committee have reached a common view that the current scheme is unaffordable and inappropriate. If, however, changes were quashed in ways that we cannot predict, and we were forced to revert to the current scheme, the ability to extend the sunset clause, which was the focus of the right hon Gentleman’s enquiry, increases the incentive to reach an early agreement. That is the fundamental point, and that is what we want to deliver.⁸⁶

He said it was not the Government’s intention to use the provisions to worsen terms for civil servants in the future, after an agreement had been reached:

Jack Dromey: [...] are there any circumstances in which, once an agreement is reached, the provisions of the Bill might be used on a second occasion to change for the worse the terms and conditions of employment for civil servants?

Mr Hurd: No, that is certainly not the intention. The Bill only allows the Minister to improve the terms; there is no capacity to reduce them.⁸⁷

Paul Goggins remained concerned that the Minister was giving himself unprecedented and far-reaching powers:

Either the Minister really means it when he says that the settlement must be short and quick and negotiated soon, or he needs to be clear that the process could go on for a very long time, in which case he should be honest and tell the Committee that he wants the powers for as long as they are needed. To include a sunset clause that allows him to bring the date forward, or knock it back and bring the powers back, is to give himself unprecedented and far-reaching powers that are unwarranted.

He pushed his amendment to a vote, on which it was defeated by 8 votes to 10. Clause 2 was ordered to stand part of the Bill by 10 votes to 8.⁸⁸

4 Update on negotiations

On 7 October, Minister for the Cabinet Office, Francis Maude, announced that it had concluded its negotiations with five of the six civil service unions (FDA, Prospect, Prison Officers’ Association, GMB, Unite) on a new CSCS. The PCS had not signed up to the provisional agreement:

There is of course one name missing from the list of unions, the PCS. I greatly appreciate the efforts of the five other unions whose constructive proposals have allowed us to reach these new terms. I very much regret that the PCS leadership has not been able to sign up to this provisional agreement at this time.⁸⁹

The Minister described the new scheme as affordable, sustainable and fair:

⁸⁵ Ibid, c105

⁸⁶ Ibid, c106

⁸⁷ Ibid, c107

⁸⁸ Ibid, c109-110

⁸⁹ Cabinet Office Press Release, 7 October 2010, ‘[Government concludes negotiations on Civil Service redundancy scheme](#)’

The new scheme would enable the Government to introduce reforms that are affordable, sustainable and fair for civil servants and taxpayers. The terms also offer significant extra protection for lower paid staff and for those with long service who are close to retirement. As part of the Government's commitment to fairness, they would also limit the maximum payments to the highest earners.

The new terms are:

- A standard tariff of one month's pay per year of service;
- A limit of 12 months pay for staff made compulsorily redundant;
- A limit of 21 months pay for those staff who depart under voluntary terms;
- Where staff are earning less than £23,000 a year (on a full time equivalent basis) and are made redundant their compensation can be based on a salary of £23,000. This figure will be set at 90% of the ONS figure for the Private Sector Median Full time Earnings in the Annual Survey of Hourly Earnings (ASHE) or £23,000 (which ever is higher). The current Private Sector Median is £24,970.
- Staff who have reached their minimum pension age may be able to have access to an unreduced pension if they depart on voluntary terms.
- Staff earning more than six times the Private Sector Median Earnings (currently £149,820) will have the calculation of their compensation based on that figure rather than their actual salary.
- A reform of the process for making staff redundant which will lead to a significant shortening of the time taken. In addition, all staff departing will now receive three months notice. Currently staff dismissed are entitled to at least six months notice.⁹⁰

The Government intends that the new terms will supersede the current terms following the passing of the *Superannuation Bill*:

The Government intends that these new terms will now supersede the current terms following the passing of the interim legislation (*Superannuation Bill*). The Bill is currently going through Parliament and we will work with the unions to implement the new terms as soon as possible. In terms of next steps, the union's executives are likely to seek the views of their members on the proposed new terms. For the Government, the next stage is the Report Stage and Third Reading of the Superannuation Bill in the House of Commons on 13 October.

It would table an amendment to the *Superannuation Bill*:

This will remove the ability of a union to veto any changes to the compensation scheme. For the future, the Government will still need to consult on any changes, but they will not require the consent of the unions. For the purpose of the proposed new scheme, the negotiations leading to the agreement with the unions will constitute the required consultation. The amendment will also enhance the protection of accrued

⁹⁰ Cabinet Office Press Release, 7 October 2010, '[Government concludes negotiations on Civil Service redundancy scheme](#)'

pension rights by vesting the power to agree to any decrease to such rights in the hands of each individual member of staff.⁹¹

A Government amendment, [new clause 1](#), was tabled on 7 October 2010.⁹² This would amend section 2 of the *Superannuation Act 1972*. The scope and import of this section was central to the High Court judgment earlier this year (which found in favour of the PCS on its application for judicial review of the Labour Government's February 2010 scheme).⁹³ This is discussed in more detail in Library Research Paper 10/56 [Superannuation Bill](#) (section 4.4)

The PCS said it would demand further negotiations with the Minister to “setting out why the latest offer put forward is unacceptable”:

If the Cabinet Office refuses to meet or talks are unsuccessful, members will be balloted with a recommendation to reject the proposals, on the basis of the union's policy not to sign away members' accrued rights, the strength of the judicial review ruling and the possibility of further legal action. The NEC also agreed that the union will proceed with a challenge under the Human Rights Act to the current legislative attempts to cut redundancy pay.⁹⁴

⁹¹ Ibid

⁹² <http://www.publications.parliament.uk/pa/cm201011/cmbills/058/amend/pbc0581007a.203-204.html>

⁹³ [The Queen \(on the application of the Public and Commercial Services Union\) and Minister for the Civil Service](#) [2010] EWHC 1027 ,10 May 2010

⁹⁴ [PCS Press Release, 7 October 2010, 'Government seeks to slash redundancy to make massive job cuts'](#)