Public Service Pensions Bill – Lords' stages

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Section Business and Transport Section

The *Public Service Pensions Bill 2012-13* would establish a framework enabling the Government to introduce new public service pension schemes. In line with the recommendations of the Independent Public Service Pensions Commission, the new schemes would provide pension benefits based on career average rather than final salary and individuals would have a normal pension age linked to their State Pension age (except for the schemes for the firefighters, police and armed forces, which would have a normal pension age of 60). Except where transitional protection has been agreed for those closest to retirement, the existing schemes would close for future accrual by April 2015 (2014 for the local government schemes in England, Wales and Northern Ireland).

All the amendments made to the Bill in the House of Lords were in the name of the Government Minister, except for two related to the pension age for the members of the Defence Fire and Rescue Service and Ministry of Defence (MoD)Police, which were opposed by the Government. The House of Commons voted to reject these amendments on 22 April 2013. However, the Government subsequently accepted an opposition amendment to require a review of the effect of the Bill on the MoD fire and police services, with particular regard to the impacts on the health and well-being of the individuals affected.

The Bill received Royal Assent on 25 April 2013 and is now the *Public Service Pensions Act 2013.*

This note aims to provide an overview of the main issues of debate, concentrating in particular on issues where a substantive amendment was made, on which there was a vote, or to which a member of the House of Lords indicated an intention to return. The Government's Explanatory Notes to the Lords' amendments are on the Parliament website. Earlier stages of the Bill are in Library Research Paper RP 12/57 Public Service Pensions Bill, RP 12/72 Public Service Pensions Bill – Committee Stage Report and Lords Library Note 12/45, *Public Service Pensions Bill.*

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1 Background

The *Public Service Pensions Bill* would establish a framework enabling the Government to introduce new public service pension schemes. In line with the recommendations of the Independent Public Service Pensions Commission, the new schemes would provide pension benefits based on career average rather than final salary and individuals would have a normal pension age linked to their State Pension age (except for the schemes for the

firefighters, police and armed forces, which would have a normal pension age of 60). Except where transitional protection has been agreed for those closest to retirement, the existing schemes would close for future accrual by April 2015 (2014 for the local government schemes in England, Wales and Northern Ireland). The background to the Bill is discussed in more detail in Library Research Paper RP 12/57 Public Service Pensions Bill.

The Bill had its first reading in the House of Commons on 13 September 2012. It had its Second Reading on 29 October 2012. It was then debated in Committee in nine sittings on five days between 6 and 22 November 2012. During committee stage, the Government made a number of amendments to the Bill. Most were either "minor and technical" or clarified how provisions were intended to work. No Opposition amendments were accepted. The provisions that were subject to the most debate in Committee included: increases in the normal pension age; whether there was sufficient protection for members against changes to their benefits in future; protection for accrued rights; governance arrangements and the application of various provisions to the Local Government Pension Scheme. For more detail, see Library Research Paper RP 12/72 Public Service Pensions Bill – Committee Stage Report. Report Stage and Third Reading were on 4 December 2012. They are covered in House of Lords Library Note 12/45, Public Service Pensions Bill.

The Bill had its first reading in the House of Lords on 5 December 2012.[1] References in this paper are to that version of the Bill - HL Bill 67. The Bill as amended in Committee was HL Bill 77.

The Bill had its Second Reading in the Lords on 19 December 2012.[2] It was debated in Committee on three days: 9 January 2013; 15 January and 21 January. Report stage was on 12 February and Third Reading on 26 February. The Bill as amended on report was HL Bill 86. The House of Commons will consider the Lords' amendments to the Bill on 23 April 2013.[3]

Explanatory Notes produced by the Government in connection with a list of Lords' Amendments to the Bill explain that "all the Lords amendments were in the name of the Minister except for Lords Amendments 78 and 79, which were opposed by the Government." Amendments 78 and 79 related to the pension age for members of the Defence Fire and Rescue Service and Ministry of Defence Police (see section 2.1 below). Most Opposition amendments were moved by Opposition Treasury spokesperson, Lord Eatwell. Liberal Democrat Peer and Treasury spokesperson, Lord Newby, responded for the Government.

Further information about the Bill can be found on the Public Service Pensions Bill section of the Parliament website.

2 Issues and amendments

2.1 Schemes for persons in public service

Clause 1 contains the main enabling power for schemes for the payment of pension benefits for "persons in the public service".

[1] HL Bill 67
[2] See Lords Library Note 2012/045 Public Service Pensions Bill (HL Bill 67 of 2012-13)
[3] See Parliament website – Public Service Pensions Bill 2012-13

Defence Fire and Rescue Service and MoD Police

Lord Eatwell moved amendments to add members of the Defence Fire and Rescue Service and Ministry of Defence Police to the categories of person defined under the Bill as "fire and rescue workers" and "members of police forces" respectively. This would enable them to have a normal pension age of 60, rather than one linked to their State Pension age.[4] Lord Newby promised to give a more considered response on or before Report Stage.[5]

At Report Stage, Lord Hutton of Furness said his report had argued that the unique nature of the service provided by "the uniformed services in general" should be reflected in their pension arrangements. Had the unique circumstances of MoD firefighters been raised with him, he would have "urged the Government to show some flexibility, support and sympathy for the special role that they play within our Armed Forces."[6] Lord Newby responded that there were a number of problems with the amendments proposed by Lord Eatwell. For example:

> Although there are some similarities with their counterparts in the Home Office police and the local authority fire and rescue services, their terms and conditions of employment are set by the Ministry of Defence and are therefore materially different in many respects. As civil servants they benefit from provisions which are not available to their non-MoD counterparts, such as the Civil Service compensation scheme, injury benefit provisions, relocation and leave allowances. The amendments being suggested would fundamentally alter the status of these individuals and that should not be carried out lightly.[7]

The Ministry of Defence had "pledged to look at appropriate ways in which the issue could be managed so that retirement at 65 could be maintained in the new pension schemes established by the Bill."[8] Lord Eatwell responded that the Minister had "completely failed to address two fundamental points":

> He failed to answer the question: in what way do the working conditions of Ministry of Defence firefighters differ from those of local authority firefighters? He failed to take into consideration that the majority of MoD firefighters are forced to retire before the age of 60 because of physical and other health reasons. He also failed to take into account the point made by my noble friend Lord Hutton that this is a fundamental issue of fairness.[9]

His amendments were agreed to on division by 216 votes to 193.[10] These were only amendments made to the Bill in the House of Lords that was opposed by the Government.[11]

The Government's Explanatory Notes to the Lords' amendments explained the effect of the amendments as follow:

> *Lords Amendments 78 and 79

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[4] HL Deb, 9 January 2013, c180
[5] Ibid, c184-5
[6] HL Deb, 12 February 2013, c568-70
[7] Ibid, c571
[8] Ibid, c571
[9] Ibid, c571
[10] Ibid, c572-5
[11] Explanatory Notes on Lords Amendments, para 4 and 36

> 36. These amendments would add the Defence Fire and Rescue Service andmembers of the Ministry of Defence Police nominated under section 1 of the Ministry of Defence Police Act 1987 to the categories of person defined under the Bill as "fire and rescue workers" and "members of police forces" respectively. They would enable them to benefit from the pension age provisions in clause 9(2).[12]

When these amendments were debated in the House of Commons on 22 April 2013, Economic Secretary to the Treasury, Sajid Javid explained that the Government proposed that the Lords' amendments should be rejected. The MOD was willing to consider how a current pension age of 65 might be maintained for this group when the new scheme was introduced in 2015:

> The issue at hand is the appropriate treatment of those work forces' pensions. The amendments would actively reduce the normal pension age for individuals joining them. It would not be a minor reduction, but a reduction of five years from the pension age put in place for those work forces by the Labour Government in 2007. It would also be a reduction of seven years from the pension age that they would otherwise see when the new scheme comes into force in 2015. That approach would run counter to the need to control the risks associated with increased longevity, which all parties agree must be addressed. I believe that all parties in this House support the aim of controlling those risks. The amendments would make those work forces unique in the public sector, with their pension age falling at a time when everyone else's is rising.
>
> In response to the issue being highlighted, the Government have taken measured and appropriate action. Rather than making a knee-jerk response to fit with the legislative time scale of the Public Service Pensions Bill, the Ministry of Defence has written to the forces. Its letter states that the MOD is willing to consider how the current pension age of 65 might be maintained for those individuals when the new pension schemes are introduced in 2015. I believe that is a reasonable offer by the Government, and we will of course stand by it. It is our duty as parliamentarians to look at the whole picture. Pensions are only one part of the remuneration and employment package of those work forces.[13]

Shadow Financial Secretary, Chris Leslie, explained that the Labour Party agreed that it was "in general reasonable to ask people to work for longer before retirement". However, there were certain categories of works for whom longer careers were not realistic, including MoD firefighters and police."[14] Regarding the fact that the Labour Government had increased the normal pension age in the Principal

new entrants to the MoD firefighters and police since July 2007 had a normal pension age of 65, he said:

> It is true that the last Government raised the normal pension age for the civil service to 65 for post-2007 entrants, and that included Ministry of Defence staff. However, I am now convinced that had we known then about the small group of firefighters and police officers who are technically on the civil service payroll rather than employed by police or fire authorities, we would have taken account of these groups, and an exception could have been carved out.[15]

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[12] Public Service Pensions Bill – Lords Amendments EN 142
[13] HC Deb, 22 April 2013, c648
[14] Ibid, c654
[15] Ibid, c658

The House voted to reject Lords' amendment 78 by 278 votes to 217 and Lords amendment 79 by 282 votes to 218.[16]

On 23 April, Lord Newby explained that the Government would accept the substance of an Opposition amendment to review the effect of the Bill on the MoD fire and police services. He explained that the amendment would, in particular:

> [...] require the Government to have regard to impacts on the health and wellbeing of the individuals affected; the ability of the MDP and DFRS to meet the Ministry of Defence's statements of requirement; and early retirement statistics in these forces.[17]

He explained that if the Government decided that "it would be appropriate for some or all of these workforces to be able to access an unreduced pension before normal pension age", there were ways that this change could be delivered using only secondary legislation.[18] This amendment was made to the Bill following redrafting by the Government to address some "inadvertent consequences".[19]

Judiciary

The Government had initially said its preferred option was for members of the judicial pension schemes to become members of the reformed civil service scheme.[20] However, on 5 February 2013, Lord Chancellor and Justice Secretary, Chris Grayling, announced that the Government would proceed on the basis of a "new, stand-alone judicial pension scheme for which the Lord Chancellor would be the responsible authority."[21]

Accordingly at Report Stage, Lord Newby moved an amendment to separate the pensions of the judiciary from the civil service scheme:

> The regulations governing pensions for the judiciary will be made by the Lord Chancellor, in consultation with the Secretary of State for Scotland where this is appropriate. Scheme regulations will also require the consent of the Treasury. In addition, in order to recognise the move from a basis in primary legislation to one in secondary legislation for some elements of scheme design, scheme regulations will attract the affirmative procedure. The exception to this will be cases where the pension board for the scheme deems the regulations to have either a minor or a wholly beneficial effect. The judiciary will be represented on this board. As a final change, we have amended the Bill so that the Lord Chancellor's role in making pension schemes for the judiciary becomes a protected function. This means that any future machinery of government changes will not change the fact that the responsibility for these pensions will remain with the Lord Chancellor.[22]

A further amendment was made to ensure that some individuals who had worked for the residential property tribunal would be included within the scope of the Bill.[23]

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[16] Ibid, c677-684
[17] HL Deb, 23 April 2013, c1357
[18] Ibid
[19] HL Deb, 24 April 2013, c1475-6
[20] Bill 70-EN, para 8
[21] HC Deb, 5 February 2012, c10-12WS
[22] HL Deb, 13 February 2013, c576; Explanatory Notes to Lords Amendments, para 26
[23] Ibid

2.2 Scheme regulations

Clause 3 of the Bill contains additional provisions about how the power to make scheme regulations under the Bill may be used.[24]

Devolved administrations

The Public Service Pensions Bill as initially presented to Parliament contained provisions that triggered the Sewel Convention in Scotland. These related to the pensions of certain stipendiary magistrates and other individual tribunal members and a power to require the reform of pension schemes in public bodies for which the Scottish Parliament has legislative competence. However, on 28 November 2012, Scottish Ministers had announced that they did not intent to bring forward the requested Legislative Consent Motion for this.[25]

The Bill also contained provisions to make schemes for pensions and other benefits that were within the competence of the Northern Ireland Assembly (relating to the civil service of Northern Ireland, some members of the judiciary in Northern Ireland, and local government workers, teachers, health service workers, fire and rescue workers, and members of a police force in Northern Ireland). However, the Northern Ireland Executive had decided "to bring forward its own legislation to reform such pensions based on Lord Hutton's recommendations."[26] Accordingly, the Government amended the Bill to ensure it was "disapplied from those pension schemes for which the Northern Ireland Executive and the Scottish Government have legislative competence."[27] It amended the Bill to enable pension schemes for Scottish police cadets and special constables to be brought within the scope of the Bill.[28]

Concerns were expressed about the timescale for reform of the Local Government Pension Scheme (LGPS) in Scotland. However, the Minister considered the time to be "ample". There would be financial implications of introducing a delay, which would have to be met from the Scottish budget.[29]

These issues are discussed in more detail in Library Standard Note, SN 6545 Public Service Pensions Bill 2012/13 – devolved administrations.

Powers to amend Acts

The House of Lords Delegated Powers and Regulatory Reform Committee raised two concerns about clause 3 – the power to amend Acts and retrospection.

It recommended that the power in clause 3 (3) (b) to "make provision by amending any legislation (whenever passed or made)" should be limited:

- so far as it confers power to amend primary legislation, to amendments of Acts passed before the end of this session (not including the Bill itself); and
- to making only consequential provision or provision that is necessary to ensure consistency.

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[24] HL Bill 67-EN, para 20
[25] HL Bill 67-EN, para 13
[26] Ibid, para 14
[27] HL Deb, 9 January 2013, c173 [Lord Newby]; HL Deb, 21 January 2013, c946; Explanatory Notes on Lords Amendments, paras10-14
[28] HL Deb, 9 January 2013, c173; Explanatory Notes to Lords Amendments, para 37-8
[29] HL Deb, 12 February 2013, c630; See also HL Deb, 15 January 2013, c658; Explanatory Notes on Lords Amendments, paras10-14

> 33. For any amendment to primary legislation, the affirmative procedure should apply and the Bill already provides for this (clause 21(1)(a)). [30]

At Committee Stage, Lord Eatwell argued that the Committee's recommendation should be followed. Lord Newby said the Government was considering the issue carefully.[31]

At Report Stage, the Government amended the Bill to restrict the scope of the power to amend primary legislation, in line with the Committee's recommendations:

> The amendments therefore reduce the scope in line with the Delegated Powers Committee's recommendations. The powers can be used only for consequential changes to current Acts, including changes that are needed to achieve consistency.
>
> I should make clear that the amendments do not remove the power to amend primary legislation completely, since such a power is essential to bridge any gaps between pre-existing primary legislation and the scheme regulations, but they significantly reduce the scope of the powers to be used in ways that the committee felt could not be justified. I hope that this strikes a balance that the House can support.[32]

Retrospective provisions

The Delegated Powers and Regulatory Reform Committee had also expressed concern at the unrestricted nature of the power being sought in clause 3 (3) (c) to make retrospective provision:

> **37. We draw to the attention of the House that the unrestricted nature of the power now being sought to make retrospective provision is not well supported by precedent, and the case made for it to us was less than wholly convincing.** If the House is persuaded of the need for so wide a power to make retrospective provision, then it is certainly appropriate that (as the Bill provides) the exercise of the power must be subject to affirmative procedure where there are significant adverse effects.[33]

At Committee Stage, Lord Eatwell argued that the scope of clause 3(3)(c) was "unreasonable, unethical and directly undermines the trust that is essential to the implementation of the Bill."[34] Lord Newby said that some powers of retrospection were needed because of the way pensions legislation was "typically split between primary and secondary provisions":

> This Bill exemplifies that combination. It sets the core framework in primary legislation while the scheme design details, such as the accrual rate, will be set out in secondary legislation. When future changes are made to the secondary legislation, which typically happens in most years to ensure that they run smoothly, it can be necessary to bridge any gaps to the underlying primary legislation, as well as adjusting existing secondary legislation to ensure that it remains consistent. By allowing scheme regulations, which are themselves secondary legislation, to make necessary changes to primary legislation via the affirmative procedure, we believe that we are striking a sensible

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[30] House of Lords Delegated Powers and Regulatory Reform Committee, 10th Report of Session 2012-13, 14 December 2012, para 32

[31] HL Deb, 9 January 2013, c193

[32] HL Deb, 12 February 2013, c577

[33] House of Lords Delegated Powers and Regulatory Reform Committee, 10th Report of Session 2012-13, 14 December 2012, para 32

[34] HL Deb, 9 January 2013, c189

> balance between member protections and parliamentary scrutiny. This approach is commonplace in existing pensions legislation.[35]

However, the Government was considering the Committee's recommendations.

At Report Stage, the Government amended the Bill to provide for a "consent lock" for any retrospective changes that had "significant adverse affects" on members. Lord Newby explained:

> Indeed, our amendments mean that material or significant retrospective changes would require the consent of the members who are affected, or their representatives. Amendment 36 therefore provides an extremely strong form of protection against the unfair use of retrospective powers. It will give members who are significantly adversely affected, or their representatives, a veto on any such changes. The requirements to follow the affirmative procedure and to lay a report to Parliament will also continue to apply to safeguard wider interests, including those of the House.
>
> The consent requirement will apply to changes that have a significant adverse effect on the pensions of all scheme members, whether active, deferred or pensioners. That means that they go further than the protections against retrospective changes in many existing schemes, including the NHS, local government and teachers' schemes. They provide unambiguous protections for all members, not just deferred and pensioner members.
>
> However, the consent lock will not apply to retrospective changes that have a significant adverse effect on non-pension benefits, such as injury and compensation schemes. Such benefits will continue to be protected instead by the enhanced consultation procedure of Clause 22. That clause requires consultation with a view to reaching agreement, a report to the appropriate legislature, and the affirmative procedure.[36]

Lord Eatwell argued that this did not go far enough, in that it left "the authority with responsibility for deciding that its own measures have had an adverse effect on members".[37] Lord Newby responded that "if there is a sense that the authority is behaving improperly, it has an oversight body: the courts". In response to Lord Eatwell's concerns about the possible retrospective effect of the employer cost cap, he said:

> As I have stated, the new clause on retrospective protections will require that retrospective changes to pension benefits with significant adverse effects be subject to the consent of members or their representatives. This would include changes made as a result of the operation of the cost cap. I have already made clear that adjustments to benefits or contributions under the cost cap would not be retrospective. The new clause, set out in Amendment 36, also provides protections to this effect. First, there would be the procedure set out in Clause 12(6) for reaching agreement on changes that are contingent on the operation of that mechanism. Then, when scheme regulations were made to give effect to those agreed changes, those regulations would require consent for any provisions that were retrospective and had significant adverse effects on pensions.[38]

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[35] Ibid, c193
[36] HL Deb, 12 February 2013, c578
[37] Ibid, c580
[38] Ibid, c583-4

The Government's amendments were agreed to.[39]

2.3 Governance

Clause 4 (1) provides that scheme regulations must provide for a person to be responsible for managing or administering a public service pension scheme set up under Bill powers and any other statutory pension scheme connected with it.[40]

Lord Whitty argued that clause 4 should be amended to separate more clearly the role of scheme manager and scheme board for the LGPS. Lord Newby responded that there would be a pension board for each scheme manager. For locally administered schemes, the scheme manager would be the local authority, or the committee of the authority.[41] Regarding the power under clause 23 to make payments to an alternative scheme, Lord Newby explained that the clause would not allow eligibility for the main scheme benefits to be overridden.[42] Provision would be made for the uprating of pensions in the year of retirement.[43]

Pension Board

The Government amended the Bill at Committee Stage to require the establishment of scheme advisory boards, as recommended by Lord Hutton. Their central purpose would be to "consider and advise on the desirability of future changes to the schemes." For locally administered schemes, the board might also advise on effective and efficient administration.[44]

At Committee Stage, Liberal Democrat Peer, Lord Sharkey proposed a requirement that at least one third of board members should be members of the pension scheme. Lord Newby responded that this could "lead to them being the largest interest group on pension boards" and that flexibility was needed. Neither did he think it necessary to mandate that boards should include an independent member.[45] At Report Stage, the Government amended the Bill to "require equal numbers of employer and member representatives to be appointed to each pension board in the public service schemes." A further amendment was intended to make it clear that where there will be multiple scheme managers in the locally administered fire, police and local government pension schemes, each of them would have a scheme board. In this case, they would have a role in advising the scheme manager on the effective and efficient administration of the scheme.[46]

Labour Peer, Baroness Donaghy, raised the question of whether the governance and structure of the LGPS were compliant with the requirements of the EU Directive 41/2003 on the Institutions for Occupational Retirement Provision (IORP). She said this required, for example, arrangements to be in place to ensure that assets were invested in the best interests of members and beneficiaries. She was concerned there there was nothing to stop an LGPS administering authority from, instead, "taking decisions on investments which prefer its interests and the interests of other employers".[47] Lord Newby responded that the Government believed the LGPS to be fully compliant with the IORP Directive. This

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[39] Ibid, c566; See also Explanatory Notes to Lords' Amendments, para 8
[40] HL Bill 67 – EN, para 31
[41] HL Bill 9 January 2013, c216
[42] Ibid, c217
[43] Ibid, c218
[44] HL Deb, 15 January 2013, c596-7; Explanatory Notes on Lords Amendments, paras15-16
[45] HL Deb, 9 January 2013, c220
[46] HL Deb, 12 February 2013, c597-8; Explanatory Notes to Lords' Amendments, para 18; See also debate at Committee stage, HL Deb, 15 January 2013, c603-9; Explanatory Notes on Lords Amendments, paras10-14
[47] HL Deb, 9 January 2013, c221-2

compliance was “achieved by the high standard of legal security that applies to LGPS funds and benefits".[48]

2.4 Types of scheme

Clause 7 of the Bill provides for a “broad power to create pension and benefit schemes of different designs”, including DB schemes, DC schemes and “schemes of any other description.” Any DB scheme must be a CARE scheme, or another type of DB scheme specified in regulations made by the Treasury. However, Treasury regulations may not specify a final salary scheme.[49]

At Report Stage, Lord Eatwell proposed that a defined benefit scheme should be replaced by a defined benefit scheme. Lord Newby responded that the Government had “no desire or intention of replacing the defined benefit schemes that have been negotiated.” The extent to which a scheme was a CARE scheme was a “protected element” and if a responsible authority wanted to change this, it would have to consult with all those affected “with a view to reaching agreement.” Lord Eatwell indicated that he might return to the issue.[50] However, the issue was not debated again at Third Reading.

2.5 Revaluation

Clause 8 would provide for the way in which earnings accrued in a career average revalued earnings (CARE) pension are revalued. Clause 8 (2) provides for the Treasury to make orders which specify the percentage increase or decrease in prices or earnings for the purpose of the revaluation. [51] Some trade unions, such as UNISON, expressed concern that this would allow a negative index to be used in the event that earnings or prices were negative in a particular period.[52]

Lord Whitty proposed that in the event of a negative movement in the revaluation index there should be a nil adjustment. Lord Newby said the Government would consider whether the affirmative procedure should be required in the event of the revaluation order setting out a negative figure.[53] At Third Reading the Government amended the Bill. Lord Newby said:

> As I have made clear on several occasions before, it would be wrong to rule out revaluations that set out negative figures on the very rare occasions where either the CPI or earnings were in negative territory. This would be unfair to the taxpayer and represent an asymmetric sharing of risk, which was specifically referenced by the noble Lord, Lord Hutton, in his report.
>
> The amendments that I have brought forward do not affect the ability to track growth directly. I do not wish to rehearse at length the strong arguments I have deployed in the past. However, these amendments increase the level of parliamentary scrutiny in the highly unlikely event that we see negative growth. Where the Treasury order sets a negative figure, which I remind the House it can determine only on reasonable and justifiable terms by reference to the general level of prices or earnings, the order will be subject to the affirmative procedure. This will ensure that Parliament has an opportunity to debate the measure. Given the uniqueness of a situation in which the

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[48] HC Deb, 9 January 2013, c226
[49] Bill 67-EN, para 46-51
[50] HL Deb, 12 February 2012, c600-01
[51] Bill 67-EN, para 54-6
[52] UNISON. Briefing on Public Service Pensions Bill, September 2013
[53] HL Deb, 12 February 2012, c603-05

> revaluation of benefits could lead to a decrease in entitlement, the Government believe that this is an appropriate and sensible additional safeguard of members' interests.[54]

2.6 Pension age

Occupational pension scheme rules generally include a "normal pension age". This is the earliest age at which a scheme member can generally draw an unreduced pension. If drawn earlier than this the pension will generally be "actuarially reduced" to reflect the fact that it is likely to be in payment for longer (although earlier payment of an unreduced pension is often allowed on ill-health grounds). If a person has left their job before becoming entitled to their pension, they can claim it from the "deferred pension age", under scheme rules.

Clause 9 of the Bill provides for the normal pension age and deferred pension age of members of most public service pension schemes to be the same as their state pension age, or 65, whichever is greater. This is except for firefighters, police and armed forces, which are to have a normal pension age of 60.[55]

Firefighters, police and armed forces – deferred pension age

At Committee Stage, Lord Newby explained why the Government believed that, although the normal pension age for the firefighters, police and armed forces should be 60, the deferred pension age should be linked to their State Pension age:

> There are two reasons why the Government have not extended the exemption from the state pension age link for these workforces to apply to the deferred as well as their normal pension ages. First, it would not be fair to other former public servants whose deferred benefits would not be payable until state pension age. We have been clear that exceptions to normal pension age have been made for police officers, firefighters, and members of the Armed Forces because of the unique nature of the work they do, which we value very much. Once police, firefighters and Armed Forces personnel leave their jobs and no longer carry out those unique duties, there is, in our view, no justification for them to be able to take their deferred benefits earlier than anyone else. Secondly, there would be cost implications.[56]

Firefighters – review of the normal pension age

The final agreement for the reform of firefighters' pensions included a requirement for the NPA to be subject to regular review.[57] The report of the first such review, by Dr Tony Williams, was published on 12 January 2013.[58]

At Committee stage, Labour Peer, Lord Kennedy of Southwark, asked how the Government would use the findings of the review it had commissioned from Dr Williams on the normal pension age for firefighters.[59] Lord Newby responded that:

> The starting point, as we know, is that firefighters continue to have their normal pension age at 60, as set out in the new Firefighters' Pension Scheme in 2006. The Williams review of the normal pension age recognised that, as long as firefighters maintain their physical activity levels and adopt a healthy lifestyle, there is no reason

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[54] HL Deb, 26 February 2012, c964; Explanatory Notes on Lords Amendments, paras 21

[55] Williams et al, Normal Pension Age for Firefighters – A review for the Firefighters' Pension Committee, 12 January 2013

[56] HL Deb, 15 January 2013, c618

[57] Firefighters' Pension Scheme – proposed final agreement, May 2012

[58] Dr Anthony Williams et al, Normal Pension Age for Firefighters – A review for the Firefighters' Pension Committee, 12 January 2013

[59] HL Deb, 15 January 2013, c616

> why they cannot maintain operational fitness levels until the age of 60. The report does not call for a change in the normal pension age. However, as the report recommends, firefighters who wish to retire early will continue to be able to do so from 55, with an actuarial adjustment to their pensions. There were other detailed recommendations within the Williams review and the Government are still considering them.[60]

Lord Kennedy returned to the issue at Report Stage, tabling an amendment which would require the normal pension age for the police, firefighters and armed forces to be set in regulations, but to be no greater than 60. He argued that the report of the Williams review had provided "medical evidence that working beyond 55 is not attainable by most current firefighters."[61] Lord Newby responded that the Government did not believe it was necessary to enable a lower pension age than 60:

> [...] Lord Hutton was clear that the normal pension age for these schemes should be equal to 60, subject to regular review. As we know, this fixed age is already significantly different from the position for all other public service workers. A pension age of 60 for police and firefighters is in line with the reforms implemented by the previous Administration. We are not, and nor should we be, in the business of reducing pension ages given the longevity challenges we face. To do so would go against all that the Bill is designed to achieve.[...]
>
> The report [of the Williams review] projects that in circumstances where people maintain their physical activity levels and BMI, individuals could maintain operational fitness in many cases until their mid-60s. We simply do not believe that it is necessary to make an amendment which enables a lower pension age than 60 for members of the firefighters' scheme, or for the police and Armed Forces schemes.[62]

Lord Kennedy withdrew his amendment.[63]

Review of the State Pension age link

The Commission recommended that that the link between the normal pension age and the State Pension age should be regularly reviewed:

> The Government should increase the members' Normal Pension Age (NPA) in most schemes so that it is in line with their State Pension age (SPA). However, the link between the SPA and the NPA should be regularly reviewed to make sure it is still appropriate, with a preference for keeping the two pension ages linked.[64]

There was some debate about whether a commitment to review the link should be on the face of the Bill. However, Lord Newby explained that, while the Government had "made a clear commitment" to undertake these reviews "as and when changes to the State Pension age are announced", it did not want to "lock down the details of these reviews" in the Bill. However:

> Changes to the State Pension age will require primary legislation, so that any consequent changes to this Bill could be made [...] at the same time.[65]

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[60] Ibid, c619
[61] HL Deb, 12 February 2013, c606
[62] Ibid, c610
[63] Ibid c613
[64] *Independent Public Service Pensions Commission: Final Report,* 10 March 2011, p94
[65] HL Deb, 15 January 2013, c622

In addition, he made it clear that the Government did not accept that there were additional groups (ambulance workers, for example, that) that should be exempt from the SPA link. It had decided that police, firefighters and armed forces should have a normal pension age of 60, on the grounds that they were in a "distinctly different category from any others."[66]

2.7 Fair Deal policy

The 'Fair Deal' policy is a non-statutory policy applying to pension provision for public sector staff. It requires, for example, that where staff are compulsorily transferred out of the public sector to an external provider, the new employer must provide a broadly comparable pension scheme for transferred staff.[67]

HM Treasury launched a consultation on the *Fair Deal Policy: treatment of pensions on compulsory transfer of staff from the public sector* in 3 March 2011. In July 2012, the Government confirmed that the overall approach to the Fair Deal would be retained, but that this would be delivered by offering access to the public service schemes for all transferring staff.[68] A more detailed response to the consultation was published in November 2012 - HM Treasury, *Consultation on the Fair Deal policy: response to the consultation.*

At Report Stage, Labour Peer, Lord Davidson of Glencova proposed an amendment that would require the Secretary of State to bring forward proposals on Fair Deal within 12 months. Lord Whitty proposed an amendment intended to ensure that all members of the LGPS (rather than just employees of "best value authorities") who are compulsorily transferred would retain their membership of the scheme.[69]

Lord Newby responded that the Government was currently considering how best to implement the new Fair Deal policy for the LGPS. If it proved necessary to amend the *Local Government Act 2003* in order to implement the new policy, this would be done at the earliest opportunity. More broadly, the Government was in the final stages of planning for the implementation of Fair Deal. There were provisions in the Bill to facilitate it, but the Government did not think it necessary to refer to the policy in the Bill. Furthermore, Lord Newby did not think it would be appropriate for Fair Deal to apply in all cases (citing, as an example, highly paid specialist financial staff who had been brought into government for a time-limited period and then transferred to independent employers").[70]

A Government amendment was made in respect of people admitted to a public service pension scheme who were not part of the main public service workforce listed in clause 1 of the Bill. This was to clarify that scheme regulations could make "special provisions in respect of people who are allowed to participate in public service schemes". The special provisions currently applying in the health and local government schemes included "requirements for indemnities, guarantees, additional record-keeping et cetera". It also allowed for modifications to be made by administrative direction where bodies were admitted to schemes.[71]

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[66] Ibid, c620

[67] HC Deb 14 June 1999, c 29-30W [Alan Milburn]; HM Treasury, Consultation on the Fair Deal policy: response to the consultation, November 2012, para 1.1

[68] HM Treasury, Consultation on the Fair Deal policy: response to the consultation, November 2012; HC Deb, 4 July 2012, c53-4WS

[69] HL Deb, 12 February 2013, c614-5

[70] Ibid, c615

[71] Ibid, c616-7; Explanatory Notes to Lords Amendments, para 30-1

2.8 Valuations

Clause 10 provides that schemes must be actuarially valued in accordance with Treasury directions. Baroness Donaghy was concerned that it would be "unworkable for the Treasury simply to impose central assumptions on individual funds."[72] Lord Newby responded that:

> First, the Government have no intention of making directions relating to the valuations of individual LGPS funds.[...] In relation to the Local Government Pension Scheme, Clause 10 will be used only - I repeat, only – to set directions of how the model fund, an aggregation of the scheme costs at the national level, will be valued. We need to do that for the operation of the cost-control mechanism at a scheme level in LGPS but it will not directly affect the contributions paid into individual funds.[73]

This had been confirmed in HM Treasury policy paper Actuarial valuations of public service pension schemes, November 2012.

2.9 Employer cost cap

Clause 11 requires scheme regulations 'to set an employer cost cap, and sets out how this cap should be set, measured an operated.'

At Committee Stage, issues debated included the discretion available to HM Treasury when drawing up directions on the employer cost cap[74] and the implications for accrued rights.[75] At Report Stage, Labour Peer, Lord Whitty, asked whether the clause was intended to applied to funded as well as unfunded public service schemes. He was concerned that the provisions would not allow for the agreement that had been reached between local government employers and trade unions on how costs should be managed in future in the LGPS. Lord Newby responded that the clause would give scheme stakeholders flexibility in their management of costs, while allowing the Government to retain final control over the costs and design of the scheme.[76]

HM Treasury issued a policy paper in November 2012: *Establishing an employer cost cap in public service schemes.*

2.10 Final salary link

Clause 18 and Schedule 7 contain provision for the 'final salary link' in relation to rights accrued in the existing public service schemes up until the time they close (in general, expected to be April 2015). Benefits accrued up to that date are "to be calculated in relation to the member's final salary at the point they retire or otherwise leave pensionable service, not the point at which their final salary scheme was closed."[77]

The Government made minor amendments to Schedule 7, in order that schemes could use the same or a different definition of earnings for the purpose of the final salary link as used for the purposes of the new scheme. However, the amendment contained a backstop protection for scheme members. This was that:

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[72] HL Deb, 15 January 2013, c627-8
[73] Ibid, c630; HM Treasury, Actuarial valuations of public service pension schemes, November 2012
[74] HL Deb, 15 January 2013, c635
[75] HL Deb, 15 January 2013, c643
[76] HL Deb, 12 February 2013, c619; HM Treasury *Establishing an employer cost cap in public service schemes*, November 2012
[77] HL Bill 67 – EN, para 244-250

> [...] the definition of pensionable earnings for the purposes of the final salary link may not result in the amount of earnings being materially less than they would have been had the definition provided for in the old scheme been applied when the new scheme service ended.[78]

Schedule 7 (paragraph 3) sets out the periods of time that should be disregarded in determining whether someone has continuity of employment for the purposes of the final salary link. A government amendment provided that "any length of time should be disregarded if the person was in a different public service or public body pension scheme".[79]

Lord Whitty was concerned at the cost implications of Schedule 7 for the LGPS:

> That relates not so much to movement between the LGPS employer and different public sector employers but to the situation with people who have been employed by one LGPS employer, who then leave and come back.[80]

Lord Newby did not think this would generate "unreasonable costs":

> The likelihood is that most people who leave local government service for prolonged periods of time to work in different public service employment would not expect to return. It is therefore most likely that they will transfer their final salary benefits to their new employer's final salary scheme. However, if liabilities for certain local government funds are increased by the risk of a final salary link attaching to future employment with different local government employers, it would be a matter for individual funds to make appropriate financial arrangements, with the help of scheme regulations if required. Undoubtedly, further discussion will be required on exactly how this should be carried forward. However, we do not believe that it is an insuperable problem for a very good feature of the scheme.[81]

2.11 Information about benefits

The Government introduced a new clause at Committee stage, to require scheme members to be provided with information about pension benefits.[82] Lord Newby explained that, for schemes in the private sector, the "disclosure regulations"[83], specified the information that all schemes must provide on request and how it must be provided. The Government's policy was for "the new benefit statements to be produced to the standards". TPR would oversee this and issue guidance.[84]

2.12 Information about schemes

Clause 13 of the Bill is concerned with the collection and publication of information about schemes. It allows the Treasury to direct schemes to publish information or to provide information to the Treasury, and to specify how and when that should be done.[85] At Committee Stage, Lord Newby explained that there was more work to be done to identify

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[78] HL Deb, 12 February 2013, c622; Explanatory Notes on Lords amendments, para 39
[79] HL Deb, 12 February 2013, c622; Explanatory Notes on Lords amendments, para 40
[80] HL Deb, 12 February 2013, c623; See also HL Deb, 9 January 2013, c217
[81] Ibid, c623-4
[82] HL Deb, 15 January 2013, c645-6; This is now clause 14 of HL Bill 86
[83] *Occupational Pension Schemes (Disclosure of Information) Regulations 1996 (SI 1996 No 1655)*
[84] HL Deb, 15 January 2013, c647; Explanatory Notes to Lords Amendments, para 22-3

[85] Bill 70 - EN, para 93

"what information should be published, what common methodologies and assumptions should underpin it, and how best to collate or co-ordinate its publication."[86]

2.13 Restriction of existing schemes

Clause 16 provides that benefits may not be provided under existing pension schemes in relation to service after the closing date, except where transitional protection arrangements have been agreed.[87] Concerns had been expressed, when the Bill was in the Commons, regarding the possible impact on the LGPS, which operates on a funded basis. Shadow Financial Secretary, Chris Leslie, referred to concerns expressed by witnesses, including Lord Hutton, that:

> [...]closing the existing schemes by a set closing date would trigger what are known as section 75 debts in many local government schemes that are currently in deficit, meaning that each participating employer would immediately become liable for its share of the scheme debts.[88]

Economic Secretary, Sajid Javid, said that such concerns were unfounded: the clause simply prevented "benefits from being provided under the existing arrangements in respect of a person's service after the closing date."[89]

The Government introduced amendments at Committee Stage in the Lords which were designed to "minimise the potential for misinterpretation regarding how the Bill will affect current schemes":

> Perhaps I may reiterate what was made clear in another place. There will be no subsequent crystallisation of liabilities when the Bill closes the current schemes to future accruals. To provide further clarity on this point, these amendments will remove references to schemes that are closed and instead signpost to the clauses that restrict the build-up of future accruals in the schemes.[90]

2.14 Consultation and report

Clause 20 provides for an enhanced consultation and report process before changes can be made to "protected elements" of the new schemes for a period of 25 years.[91] The Government amended to clause to ensure that all schemes made under the Bill benefit from this protection until 31 March 2040. This was in response to concerns that there might be a year's gap in protection for the new LGPS, which is scheduled to start operations a year earlier than the others, in April 2014.[92]

2.15 Parliamentary and other pension schemes: pension age

Clause 31 provides that if the rules of the MPs' or Ministerial Pension Scheme are changed to link the normal pension age to the State Pension age, the scheme can also provide for this to apply to accrued benefits, although only those accrued after the addition of the link to the scheme.[93]

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[86] HL Deb, 15 January 2013, c650
[87] HL Deb 67-EN, para 112
[88] PBC Deb, 20 November 2012, c382-3
[89] Ibid, c384
[90] HL Deb, 15 January 2013, c660-1; Explanatory Notes to Lords Amendments, para 25-8
[91] HL Bill 67-EN, para 133-141
[92] HL Deb, 21 January 2013, c946; Explanatory Notes to Lords Amendments, para 29
[93] Bill 67 EN – para 193

Lord Naseby, a trustee of the Parliamentary Contributory Pension Fund, was concerned that:

> [...] the drafting creates ambiguity in the legislation governing the PCPF such that it potentially undermines existing protections afforded to PCPF members in a way that we doubt Parliament intends.[94]

Lord Newby said the clause as drafted "does not provide for a wide power to amend accrued rights under the relevant schemes":

> The power provided for in the clause is actually very narrow and the disregard for the accrued rights protections in CRAG applies only to this very narrow provision. The power simply allows those responsible for the schemes to amend them to create a link between normal pension age under the scheme and state pension age, which would apply to benefits accrued from the point the amendment takes place. That is to say, once that link is in place any increase in state pension age will increase the normal pension age, but only for those benefits accrued after the creation of the link. That is the key point. The clause does not allow for changes to the indexation arrangements for deferred members, sweeping changes to the death in service benefits or removal of the final salary link. All these areas will continue to have the same level of protection under Schedule 6 as now.
>
> I believe that the phrase,
>
> "(as well as other benefits)",
>
> in the clause is of considerable concern, as the noble Lord, Lord Naseby, said. I should like to put on the record the Government's view that this phrase does not open the door to a wider interpretation of the benefits that could be subject to the state pension age link as a consequence of this clause. It is important to include this phrase, so it is clear that the clause does not reduce the power the scheme already had to change the normal pension age for benefits that accrue after the change. However, it is also clear from the current drafting of the clause that the only accrued benefits that come within the new power are "relevant" accrued benefits, as defined in new paragraph 29A(3)(d).[95]

[94] HL Deb, 21 January 2013, c957

[95] HL Deb, 21 January 2013, c958-9