



## Pensions: the statutory override and 'protected persons'

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Author: Djuna Thurley  
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When some nationalised industries were privatised in the 1980s and 1990s, arrangements were put in place requiring the new private sector employer to continue to provide pension benefits for existing scheme members that were at least as good as those they were receiving in the public sector. The employer was prevented from making changes which reduced future pension accruals or increased employee contributions. These 'protected persons regulations' are specific to a number of industries namely electricity, rail (including London Transport) and coal.

The current state pension is made up of two tiers – a basic State Pension and an additional State Pension (which is partly earnings-related). Since introduction, it has been possible to contract out of the additional State Pension into a pension scheme that meets certain requirements. In return for the fact that the employee is not accruing rights to the additional State Pension for that period, they and their employee pay a reduced rate of National Insurance contributions (NICs), via a contracted-out rebate. The *Pensions Bill 2013/14* would introduce a single-tier State Pension, replacing the current two-tier state pension, for future pensioners from April 2016. Because there will no longer be an additional State Pension, there will also no longer be an option to contract-out. Employers sponsoring contracted-out pension schemes (and their employees) will therefore start to pay NI at the standard rate. Clause 24 of the Bill would provide sponsoring employers with a limited override of scheme rules, to enable them to make changes to adjust for the additional NI cost.

In March 2013, the Government launched a consultation on whether the override should include members covered by the [protected persons regulations](#). Employer representatives argued that, in the interests of fairness and affordability, the rule changes should be allowed for all employees, including those who are 'protected persons'. On the other hand, trade unions and pension scheme trustees argued that the protection arrangements put in place at privatisation should not be undermined. In its [response to the consultation published](#) in February 2014, the Government said it had decided the promises made at privatisation should be honoured. Accordingly, it amended the Pensions Bill to prevent the statutory override being applied in respect of scheme members with protected person status.

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### 1 Arrangements at privatisation

When some nationalised industries were privatised in the 1980s and 1990s, arrangements were put in place requiring the new private sector employer to continue to provide pension benefits for employees who were employed at the time of privatisation where were at least as good as those they were receiving in the public sector and prevented the employer or the scheme from making changes which reduce future pension accruals or increase employee contributions. The legislation is specific to a number of industries namely electricity, rail (including London Transport) and coal.<sup>1</sup>

For example, employees and members of the British Rail Pension Scheme at midnight on 4 November 1993 were “protected persons”. They had a legal right to pension provision for their future employment which would be “no less favourable than the relevant pension rights which he had under [the BRPS].” This protection is retained unless and until they voluntarily leave their employer, withdraw from the RPS or agree to waive their protected status.<sup>2</sup>

The Government has summarised the legislation restricting the ability of trustees and employers to amend scheme rules which are applicable to ‘protected persons’ as follows:

***The Electricity (Protected Persons) (England and Wales) Pension Regulations 1990 (SI 1990/346)***

These Regulations are made under Schedule 14 of the Electricity Act 1989.

The relevant provisions are:

- no amendments of relevant scheme rules are allowed where such amendments would result in accrued or future pension rights of protected persons being reduced or protected employees’ contributions being increased, except in certain specified circumstances;

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<sup>1</sup> DWP, [Abolition of contracting out – consultation on a statutory override for Protected Persons Regulations](#), January 2013

<sup>2</sup> This is discussed in more detail in Library Note SN 3109 [Railways Pension Scheme](#) (June 2009)

- a new employer should provide future pension benefits in an alternative scheme which are no worse than transfer date rights;
- a protected employee has a right to accrue pension rights on a change of employer (where that employer does not currently have any protected employees in the relevant scheme) that are no worse than transfer date rights;
- future pension rights to be provided (on total or partial wind up of the Electricity Supply Pension Scheme) should be no worse than future pension benefits for those employees immediately prior to the date on which they ceased to participate in the Scheme and moved to the alternative scheme.

***The Coal Industry (Protected Persons) Pensions Regulations 1994 (SI 1994/3070)***

These Regulations are made under Schedule 5 of the *Coal Industry Act 1994*.

The relevant provisions are:

- no amendment can be made to a relevant scheme which results in the reduction of accrued or future pension benefits for protected persons under the scheme or an increase in protected employees' contributions, except in certain specified circumstances;
- protected employees are entitled to accrue future pension rights in the IWCSSS or IWMPSS in accordance with the rules of that scheme, or in an alternative scheme, on the same basis as other protected employees in that scheme. If the pension rights of protected persons already in a scheme are worse than the 'participation date' rights of those persons (because the scheme has been amended), new members (that is, protected persons whose change of employer does not affect continuity of employment) have a right to accrue rights on the basis of the 'participation date rights' of the current members;
- future pension rights in an alternative scheme shall be no worse than future pension rights provided by him under his former scheme on the date immediately before the date the employee ceased to participate in the former scheme as a result of total or partial wind up of the former scheme.

***Railway Pensions (Protection and Designation of Schemes) Order 1994 (SI 1994/1432)***

These Regulations are made under Schedule 11 of the Railways Act 1993.

The relevant provisions are:

- a requirement that the employer provides an occupational pension scheme which provides future pension rights which are no less favourable than the relevant pension rights which the protected employee had under the 'designated scheme' (that is, the existing industry scheme which the protected person was a member of immediately before the coming into force of the Order, that is, immediately before privatisation);
- that any amendment of a pension scheme which would otherwise have the effect of making the relevant pension rights of a protected person less favourable than the relevant pension rights in his designated scheme shall have no effect in relation to those rights.

## ***London Transport Pensions Arrangements Order 2000 (SI 2000/3386)***

This Order is made under Schedule 32 of the *Greater London Authority Act 1999*.

- Article 5 of the Order provides that where continuity of employment is not broken, an employer must provide an occupational pension scheme which provides pension benefits that are materially at least as good as the pension benefits as the LRT Pension Fund provided before he joined the private sector company. In addition, where the pension scheme had been amended and has the effect of making future pension rights overall materially worse than the pension rights of the LRT Pension Fund, the amendment shall have no effect in relation to the rights of a protected person, unless that person has consented in writing to the amendment.<sup>3</sup>

The purpose of the arrangements was to provide security to pensioners and employees. In connection with the railways, for example, the Government said its objective was to:

[...] preserve the security of rights enjoyed by pensioners and members while adopting arrangements to suit the new structure of the privatised industry.<sup>4</sup>

It is also argued that they helped privatisation to succeed by encouraging skilled workers to stay in the industry. The trade union Prospect says:

The protections applying in the electricity industry predate the existence of the Protected Persons Regulations by many years. The Protected Persons Regulations simply replaced protections that already existed before privatisation. These protections have effectively applied from the inception of the predecessor nationalised pension schemes in 1947.

The regulations played a crucial role in the success of the privatisation of the electricity industry, a matter of immense national importance. The regulations helped to secure essential skills necessary to the success of privatisation as well as a level of industrial harmony through the process. Both of these are factors that are still crucial in the industry and which the regulations continue to play an important role in.<sup>5</sup>

## **2 The Pensions Bill 2013/14**

### **2.1 The abolition of contracting-out**

Briefly, there are two tiers to the current State Pension – the basic State Pension (which is based in national insurance contributions and credits) and the additional state pension (which is partly earnings-related). Since 1978, it has been possible to contract-out of the additional State Pension into an occupational pension scheme that meets certain requirements. In return, the employee and their employer pay reduced National Insurance contributions (NICs), through what is known as the “contracted-out rebate”. The contracted-out rebate for employees is currently 1.4 per cent of earnings between the Lower Earnings Limit and the Upper Accrual Point (£5,668 and £40,040 in 2013/14). For their employers, the rebate is 3.4% of employee earnings between the Secondary Threshold and Upper Accrual Point (£7,696 and £40,040 in 2013/14).

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<sup>3</sup> DWP, [Abolition of contracting out – consultation on a statutory override for Protected Persons Regulations](#), January 2013, Annex B

<sup>4</sup> [HC Deb, 20 May 1993, c235-6](#)

<sup>5</sup> [Prospect submission on statutory override for protected persons, March 2013](#)

The *Pensions Bill 2013/14*, which is currently before Parliament, would reform the State Pension, introducing a Single-tier State Pension for future pensioners from April 2016. As part of this reform, the additional State Pension would close and, by extension, the option to contract out of it. With the end of the contracted-out rebate, employers sponsoring contracted-out schemes, and their employees, will see their NICs increase to the standard rate. For employees, contributions after implementation will count towards the single tier pension in the same way as those paid by other employees.<sup>6</sup>

## 2.2 The statutory override

For employers, the loss of the contracted-out rebate when contracting-out is abolished will mean an increase in the rate of NICs of 3.4 per cent of relevant earnings.<sup>7</sup>

The Government has said that employers in the public sector will not be able to pass on the cost of increased employer NICs to their employees. This reflects a commitment made by the Government during recent negotiations on public service pension reform:

71. The Government has given a commitment to Parliament that the reforms to public service pensions should endure for 25 years, setting a high bar for future scheme changes in the Public Service Pensions Bill. Public service employers will therefore not be able to pass the cost of increased National Insurance contributions onto their employees by reducing the value of pension scheme benefits or by increasing employee contribution rates to their pension schemes.<sup>8</sup>

However, it has recognised that employers in the private sector may wish to pass on the cost to their employees, for example, by increasing their pension contributions or reducing pension benefits. To enable them to do this, it has proposed giving them limited powers to change scheme rules without trustee consent:

55. For employers, the end of contracting out will have cost and administrative implications, the largest of which will be paying higher employer National Insurance contributions. They will have to pay the same rate of National Insurance as all other employers, meaning an increase in respect of each contracted-out employee of 3.4 per cent of earnings between the Lower Earnings Limit (LEL) and Upper Accrual Point (UAP).

56. Some respondents to the Green Paper indicated that they thought it unreasonable that employers had to bear the cost of paying higher National Insurance contributions whilst maintaining the same occupational scheme benefits. They therefore wished to reduce the level to which they must fund their scheme by the same amount as the increase in National Insurance contributions, reflecting the fact that employees would be brought fully back into the state pension system when contracting out ends. This could be done by reducing future pension benefits or by increasing employee contribution rates to their pension schemes.

57. Many employers will be free to do this as the minimum standards for being a contracted-out scheme (the reference scheme test<sup>53</sup>) will no longer apply when contracting out ends. Minimum standards apply under automatic enrolment, which will, however, impact employers wishing to use the same scheme for automatic enrolment purposes.

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<sup>6</sup> DWP, *The single-tier pension: a simple foundation for saving*, Cm 8528, January 2013, Chapter 3, para 72

<sup>7</sup> Ibid, Executive Summary, para 19

<sup>8</sup> Ibid; Public service pension reforms are discussed in more detail in Library Standard Note SN 5678 [Public service pension reform – 2010 onwards](#)

58. However, some private sector employers are limited in their ability to modify the scheme benefit structure by legislation or by the scheme rules themselves. In many cases, scheme rules can only be changed by the trustees or with the trustees' consent. As changes in response to the end of contracting out are likely to be detrimental to members' workplace pension income, it is possible that trustees may not consent to them.

59. The Government recognises that losing the rebate will be a challenge for sponsoring employers of Defined Benefit schemes. The Government believes it is right to enable private sector employers to change their scheme design to adjust for the additional cost since this is a direct result of a government policy change. The Government therefore proposes to give employers powers to change scheme rules for this purpose without trustee consent.<sup>9</sup>

A consultation on whether this statutory override should include members of the pension schemes of ex-nationalised industries covered by the 'protected persons regulations' is discussed in section 3 below.

**Clause 24** of the current Pensions Bill provides for the ending of the option for sponsoring employers of Defined Benefit (salary-related) pensions to contract their employees out of the additional State Pension. **Schedules 13** and **14** are intended to serve two main purposes – to provide for a statutory override for private sector employers and to make sure contracted-out rights accrued before the abolition of contracting-out are fully protected:

99. Firstly, to ensure that all contracted-out rights accrued by employees through salary-related contracted-out schemes before the abolition of contracting-out are fully protected. To protect accrued rights, Schedule 13, paragraph 13 inserts new section 12E into the PSA 1993. Section 12E requires former salary-related contracted-out schemes to meet the requirements in the PSA 1993 in relation to Guaranteed Minimum Pensions. Section 12E deems scheme rules to comply with all the requirements, overriding the rules if necessary. Schedule 13, paragraph 17 amends Section 17 of the PSA 1993 to reflect the end of the current retirement pension scheme so that inherited Guaranteed Minimum Pensions will be payable in the same circumstances as now.

100. Secondly, to enable sponsoring employers of contracted-out schemes to change the rules of their pension schemes (where they are prevented from doing so) to adjust members' future pension accruals or pension contributions to take into account the loss of the employer's rebated National Insurance contributions. Clause 24(2) and Schedule 14 provide a power for sponsoring employers to amend their scheme rules to decrease scheme costs in order to offset the increase in National Insurance contributions - for example, by reducing scheme benefits for future accruals. Following the end of contracting-out, employers and members of contracted-out salary-related schemes will have an increase in National Insurance contributions. They will pay the same rate of National Insurance as other employers and employees. This power will be available for five years (Clause 24 (6)). The power cannot be used to change the rules of public service pension schemes or other types of scheme (which may be prescribed in regulations under Clause 24 (3) (b)).<sup>10</sup>

The trade union, Unite, has argued that the provision for a statutory override should be removed from the Bill:

Unite considers the proposed override power as an interference in established private contractual and trust arrangements, which is not justified or fair. In effect, the employer

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<sup>9</sup> DWP, [The single-tier pension: a simple foundation for saving](#), Cm 8528, January 2013, chapter 3

<sup>10</sup> [Bill 6-EN](#), para 99-100

can impose an additional charge to the member in a pension scheme or change collective bargaining procedures, whereby contributions increase without collective agreement [...].<sup>11</sup>

### ***Debate in Parliament***

At Public Bill Committee stage, Shadow Pensions Minister, Gregg McClymont, proposed that any a change to scheme rules should require the consent of employee trustees.<sup>12</sup> Pensions Minister Steve Webb explained why the Government believed the statutory over-ride was needed:

Among other things, the Bill allows the employers to change their schemes so that they recoup exactly that money. For example, if they have a scheme that accrues benefits at a 60th of a final salary for each year and they lose the rebates, they might change that 60th to a 70th, or whatever the actuary says is the right number. The provision is not intended to allow firms to go further. To reassure the hon. Member for Edinburgh East, I draw attention to the fact that schedule 14 specifically precludes the use of the power to go beyond recouping the lost rebate. The power can be used only for the lost rebate.

We have built in flexibility so that the power can be used more than once. A firm could, for example, not go the whole hog in the first instance if it did not consider that it needed to, but with the confidence that, if it did need to, it could come back for the balance. We considered making firms take such action all in one go, but the worry was about firms that would take the whole lot out of the scheme, although some might not choose to do so.<sup>13</sup>

He did not think it would be fair on those employees who were not pension scheme members if employers instead recouped the extra NI payments through “lower pay rises and pay cuts”.<sup>14</sup>

At Report stage, John McDonnell MP tabled amendment 35, the aim of which was to provide that employer would only be able to exercise the override with the consent of the trustees. This amendment was not called and so there was no vote.<sup>15</sup>

In the House of Lords, Baroness Drake raised concerns about the sufficiency of protections regarding the operation of the over-ride, arguing that there should be an explicit requirement to consult the trustees. Furthermore, she said there were still questions about how the amount employers would be able to recoup would be valued:

We have no clear indication from the Government about how they will value what it is that can be recouped. As I asked when speaking the other day, is it the net or the gross loss? Will it be crystallised in terms of the 2016 value of the rebate? These are quite significant issues. On one level, setting out some actuarial assumptions in the regulations may be a good thing, although we would perhaps want to see the actuarial assumptions first. But we have no way of seeing them and when we do, the regulation will be subject to the negative procedure.<sup>16</sup>

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<sup>11</sup> [Unite the Union Energy and Utilities Sector, Pensions Bill Bulletin](#)

<sup>12</sup> [PBC Deb, 4 July 2013, c237](#)

<sup>13</sup> [Ibid c244](#)

<sup>14</sup> [Ibid c245](#)

<sup>15</sup> [Pensions Bill 2013/14 – Report Stage proceedings 29 October 2013](#)

<sup>16</sup> [HL Deb 13 January 2014 c5-6GC](#)

Lord Freud responded that “the intention is that the current rebate rate of 3.4% will be used for these calculations”.<sup>17</sup> Baroness Drake was concerned that:

Employers will be allowed to recoup the value that is crystallised in 2016, but everyone knows that if there had not been changes the post-2016 value would have gone down. In addition, the employer’s NI charges are an expenditure that can be taken into account and set against tax. If those two elements are not built in, is that not a little unfair in term of the rules for recoupment—a little imbalanced?<sup>18</sup>

### **3 Consultation on an override affecting protected persons**

In March 2013, the Government launched a specific consultation on whether the statutory over-ride should include members covered by the ‘protected persons regulations’. The consultation document explained:

7. Some former nationalised industries, now in the private sector, are limited in their ability to change scheme rules by legislation made at the time of privatisation. The legislation is specific to a number of industries and is collectively referred to in this document as the “Protected Persons Regulations” (PPRs). In broad terms the PPRs require the new private sector employer to continue to provide pension benefits for employees who were employed at the time of privatisation which are at least as good as those they were receiving in the public sector, and prevents the employer or the scheme from making changes which reduce future pension accruals or increase employee contributions.

8. In two instances (coal and electricity) scheme changes can be made in limited circumstances if approved by a majority of the members. In the case of Rail any amendment of the scheme which is less favourable is not feasible. In the case of London Transport, any amendments will not have effect unless the member consents to them. The overall effect of these requirements makes it likely that none of these employers would be able to use the legislative power to amend scheme rules to adjust for the additional NI Contributions payable as a result of the abolition of contracting-out, unless the PPRs are overridden by the legislation.

9. If the PPRs are not overridden, such employers would face the additional cost of paying full-rate NI contributions, without being able to make a corresponding change to reduce their pension scheme liabilities. Annex B contains a summary of the legislation which restricts the ability of trustees and employers to amend scheme rules which are applicable to ‘protected persons’<sup>19</sup>

The Department estimated that there were around 50,000 active members who were “protected persons”. They were largely concentrated in the rail industry, but were also present in a number of the privatised power companies:<sup>20</sup>

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<sup>17</sup> For further detail, see [DEP 2014-0032](#)

<sup>18</sup> [HC Deb 13 January 2014, c10-11GC](#)

<sup>19</sup> [DWP, Abolition of contracting out – consultation on a statutory override for Protected Persons Regulations, January 2013](#)

<sup>20</sup> [Abolition of Contracting Out – Consultation on an override for Protected Persons Regulations, Impact Assessment, DWP0028a, 14 January 2013](#)



**Table 7: Active protected members by industry, 2011**

<b>Industry</b>	<b>Employers</b>	<b>Employees</b>
Electricity	c.134	c.10,000
Rail (including London Transport)	201	36,000
Coal	33	1,800

Source: Industry estimates provided to DWP

The Government summarised the arguments from the perspective of protected persons and their employers as follows:

From the perspective of an employer with scheme members who are protected persons:

- The end of contracting out, following the introduction of the Single-tier state pension, will leave employers in the position where they could reduce scheme benefits for the majority of employees – those not covered by PPR legislation – whilst not being able to make changes for those covered by PPR. In the interests of fairness and affordability rule changes should be allowed for all employees including those who are protected persons.
- Preserving the protected status for a minority of employees whilst the majority may face an increase in workplace pension costs would be very difficult to communicate.

From the perspective of a scheme member who is a protected person

- Protected persons have had their pension benefits protected in legislation since the 1990s.
- Protected persons could expect their status to continue until they retire – is it fair now for those rights to be removed?
- As protected persons tend to be a minority of scheme maintaining the pension benefits for these members would not affect costs of the scheme much overall.<sup>21</sup>

The Government has the power under clause 24 (3) to exclude certain schemes for the statutory override, by regulations. It appears that, if the Government decided that the statutory override should not apply to schemes with protected persons regulations, it would use this power to exclude them:

Clause 24(3) provides that the statutory override may not be used to amend certain schemes, including those specified in regulations made under clause 24(3) (b). **The Department has consulted on whether employers in certain denationalised industries, who are limited in their ability to change their scheme rules on account of ‘Protected Persons’ regulations, should be able use this statutory override.** (The ‘Protected Persons’ regulations provide protection for the accrued and future pension rights of employees who were transferred into the private sector when the nationalised industries they were employed in were denationalised. This applies mainly to schemes in the electricity, rail and coal industries.) The consultation ended on 14 March 2013; the Government is considering the responses and will set out its position in due course. **The power to specify excluded schemes in regulations**

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<sup>21</sup> DWP, [Abolition of contracting out – consultation on a statutory override for Protected Persons Regulations](#), January 2013

**provides the flexibility for the Government to legislate for the outcome of the consultation accordingly.<sup>22</sup>**

### **3.1 Comment**

The CBI has said that provision for the statutory override must be extended to this group:

This must apply to all businesses, including those with protected person status. State pension reform cannot be an excuse to raise business costs in these tough times.

It was concerned that excluding protected persons from the reform would “create a two-tier workforce within those affected companies.”<sup>23</sup>

Trade unions, on the other hand, are concerned that the protection arrangements put in place at privatisation should not be removed. In its response to the consultation, UNISON said:

Our members value this protection very highly and there is little doubt that this pension protection has greatly influenced their career choice and employment decisions over the years. It is very notable that the age distribution of “protected persons” is such that any detrimental changes to their pension terms will hit them disproportionately hard for the simple reason that they have limited time to their retirement age to make alternative pension provision. Protected Persons have as a condition of their employment quite rightly assumed that they will retain access to their prescribed pension terms until their retirement date and introducing a statutory override to allow employers to worsen these terms without requiring Trustee consent is a proposal that UNISON cannot support and believes to be very unfair.<sup>24</sup>

Pension scheme trustees have also expressed their concern. The Trustees of the Manweb group of the Electricity Supply Pension Scheme said:

The Trustees are not persuaded of any compelling reason to abandon the essential principles behind the Protected Persons regime. We submit that the actual rights and expectations of all parties would be best preserved by fully maintaining the existing protection.

[...] it is unacceptable for the present Government to override a promise given in statutory form by a previous government as part of the discussions and negotiations held in the last 1980s prior to the enactment of the Electricity Act 1989 and its coming into effect in April 1990.<sup>25</sup>

The Trustee Directors of the UK Power Networks Group of the Electricity Supply Pension Scheme argued that safeguards needed to be put in place. For example:

7. We believe that there is a strong case for requiring employer consultation with the scheme trustees prior to any exercise of the power, not least because the trustees will be responsible for administering whatever changes flow from such an exercise and, more importantly, because in the final analysis the members of pension schemes look to the trustees to protect their interests. [...]

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<sup>22</sup> DWP, [Pensions Bill - Delegated Powers](#), May 2013

<sup>23</sup> [CBI Comments on Pensions Bill, 10 May 2013](#)

<sup>24</sup> March 2013 – [UNISON Response to Department for Work and Pensions consultation: “Abolition of contracting-out – consultation on a statutory override for Protected Persons Regulations](#)

<sup>25</sup> Written evidence from the Group Trustees of the [Manweb Group of the Electricity Supply Pension Scheme \(PB 60\)](#); See also written evidence to the Public Bill Committee from the [Association of Electricity Supply Pensioners \(PB 72\)](#)

10 .We would also recommend that if the employer's proposal on which the affected members are to be consulted requires higher member contributions, then this should need to be approved by two-thirds of those members who choose to vote, with the default position being reduced future accruals.<sup>26</sup>

The RMT described the proposals as “an attack on the promises made by government prior to privatisation of the railways and parts of London Underground”. It said:

2.2 The government's proposal to introduce statutory legislation to override Protected Persons Regulations so that employers can increase contributions or/and change benefits of those employees with protection status would be to the detriment of promises made prior to privatisation. Let us not forget that it was government policy which dictated the privatisation of the railways and parts of London Underground (LUL) which went against the wishes of those employed in these formally nationalised industries. Many of these workers would have made life changing decisions based on the promises given to them by Parliament and it would be totally wrong to now break this confidence.<sup>27</sup>

Prospect was concerned that undermining the [protected persons] regulations could have implications for skills capacity in the electricity industry:

Undermining the regulations could have significant implications for skills capacity in the industry; a potential exodus of 'Protected Persons' from the industry as a result of undermining the regulations would be extremely counterproductive as the industry is already facing a significant skills gap.<sup>28</sup>

### 3.2 Debate in Parliament

On 4 July 2013, Pensions Minister Steve Webb told the Public Bill Committee on the Pensions Bill that he had not yet decided whether to allow a statutory override to affect “protected persons” in privatised industries:

The hon. Gentleman raised the issue of protected persons. We have consulted on that issue, and we are still considering our response. There might be a set of schemes to which we do not apply the override. For example, if someone was in a privatised firm where there is statute that protects their pensions, it would go against that potentially if we were to say that the employer in that industry can in any case change the rules of the scheme. We have to weigh up the rights of the members of the scheme—as the hon. Gentleman, the GMB and the TUC said—against the position of the employers. Clearly, the employers have got protected and non-protected workers. Would they recover the rebate wholly from the non-protected workers? Does that create even more of a two-tier work force and industrial relations problems? If they do not do that, and pass it on to the consumer, does that mean higher rail fares, energy prices or whatever it is? It is a complex issue. We will publish our conclusions later in the summer, but we have not reached any yet. We recognise the arguments on both sides on that point.<sup>29</sup>

At the Bill's Report Stage on 29 October 2013, Shadow Pensions Minister, Gregg McClymont moved an amendment that would exclude from the statutory override in clause 24, schemes to which protected persons regulations relate:

*Amendment proposed:* 37,page 11,line 40, at end insert—

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<sup>26</sup> [Written evidence from The Trustee Directors of the UK Power Networks Group of the Electricity Supply Pension Scheme \(PB 39\)](#)

<sup>27</sup> [Written evidence the Public Bill Committee from the Railway, Maritime and Transport Workers Union \(PB16\)](#)

<sup>28</sup> [Prospect submission on statutory override for protected persons. 13 March 2013](#)

<sup>29</sup> [PBC Deb 4 July 2013 c237](#)

(c) a scheme in respect of any of its terms which relate to persons protected under the terms of—

- (i) the *Electricity (Protected Persons) (England and Wales) Pension Regulations 1990*;
- (ii) the *Electricity (Protected Persons) (Scotland) Pension Regulations 1990*;
- (iii) the *Electricity (Protected Persons) (Northern Ireland) Pension Regulations 1992*;
- (iv) the *Railway Pensions (Protection and Designation of Schemes) Order 1984*;
- (v) the *London Transport Pensions Arrangements Order 2000*;
- (vi) the *Coal Industry (Protected Persons) Pensions Regulations 1994*; or
- (vii) the nuclear industry employees protected by Schedule 8 of the *Energy Act 2004*.<sup>30</sup>

He said:

I am certainly not saying that accruals and the terms and conditions of a pension can never be changed in any circumstances, but there is a specific set of politically charged circumstances to do with the privatisation of these industries. Specific undertakings were given to the members of those schemes to encourage them to accept, if not actively support, the privatisation of the industries in which they worked. I urge the Minister to tell us this evening, if he can do so, whether he intends to use the power he is giving himself in the Bill to honour the promises made to the members of those schemes. If he will not do so, we will force a Division to test the opinion of this House on amendment 37, which would mean that the promises made to the 50,000 or so men and women in those protected schemes were met.<sup>31</sup>

The amendment was defeated on division by 290 votes to 230.<sup>32</sup>

The Pensions Minister responded to a number of new clauses and amendments tabled by the Opposition but did not address this issue directly.<sup>33</sup> As stated above, the Government has yet to publish the conclusions of its review on this issue.<sup>34</sup>

In debate on the Bill in the House of Lords, Lord Browne asked when the Government would issue its response to the consultation on protected persons.<sup>35</sup> Lord Freud agreed that it would be “most unusual” if the Government were not able to notify Parliament of their decision before the Bill completed its passage.<sup>36</sup>

### **3.3 Government response to consultation**

On 12 February 2014, the Government announced that it had decided that it should honour the promises made at the time of privatisation:

We had to consider the best and fairest course of action in an area where the arguments are both finely balanced and highly polarised. The Government has decided that it should honour the promises that were made at the time of privatisation and

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<sup>30</sup> [HC Deb 29 October 2013 c660](#)

<sup>31</sup> [HC Deb 29 October 2013 c649](#)

<sup>32</sup> [HC Deb 29 October 2013 c860](#) (division no. 112); [House of Commons Votes and Proceedings Tuesday 29 October 2013](#)

<sup>33</sup> [HC Deb 29 October 2013 c852-5](#)

<sup>34</sup> When it does so, its response should be available on the Gov.UK website – [here](#)

<sup>35</sup> *Ibid* GC9

<sup>36</sup> *Ibid* GC11

which, in many cases, have been affirmed by Government Ministers subsequently. The Government thinks it is reasonable that issues arising from the end of contracting out for this small number of workers should be resolved through negotiation. Therefore the Government proposes that employers should not be allowed to use the statutory override to alter their pension schemes in relation to members with protected person status.<sup>37</sup>

It would table an amendment to the Pensions Bill for debate at Lords Report stage to ensure that the statutory override could not be applied in respect of scheme members with protected person status. The Governments [response to the public consultation](#) is on the Gov.UK website: DWP, [Abolition of contracting out: statutory override for Protected Persons – Government response to public consultation](#) (February 2014).

This amendment was made to clause 24 of the Bill at Lords' Report Stage on 24 February 2014. Lord Freud explained:

I turn now to Amendment 14, tabled in my name. This relates to the long-awaited response—long-awaited by the noble Lord, Lord Browne, if no one else—to the protected persons consultation. It provides that protected persons are excluded from the scope of the statutory override. Noble Lords will be aware of a small group of approximately 60,000 individuals employed on the railways, including by Transport for London, and in the electricity, coal, nuclear waste and decommissioning industries who were given guarantees at the time of privatisation. Legislation passed at that time limits employers and trustees in their ability to change scheme rules.

The Government consulted on whether employers should be permitted to use the statutory override in respect of these workers and published the outcome earlier this month. This is a finely balanced issue where the arguments are highly polarised. We received many responses with strong views expressed on both sides and from many different and conflicting interests. On one side, we were strongly urged to honour the promises made to this small group of individuals at the time of privatisation. On the other, employers and their representatives argued that it is important for all scheme members to be treated the same way when contracting out ends and said that, if protected persons are excluded, they would seek other ways to offset the loss of the national insurance rebate.

The Government have decided to honour the promises made at the time of privatisation, which in many cases have been subsequently reaffirmed by Ministers. Due to the interest expressed in the outcome of this consultation, my Amendment 14 seeks to make explicit the exclusion of protected persons from the scope of the statutory override. Regulations will specify who is considered a protected person in relation to the affected schemes. We intend to set this out to capture those persons who we described in our consultation response. In that response, we set out that we are aware that relevant legislation covers protected persons in the electricity, nuclear waste and decommissioning, coal and rail industries, including Transport for London. The gas workers, who were mentioned by the noble Lord, Lord Whitty, are not protected by statute. The matter of the gas workers was consulted on and the current intention is to exclude people protected under legislation.<sup>38</sup>

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<sup>37</sup> Written Ministerial Statement, Workplace pensions, 12 February 2014

<sup>38</sup> [HL Deb 24 February 2014 c805](#); See also [DEP 2014-0210](#)